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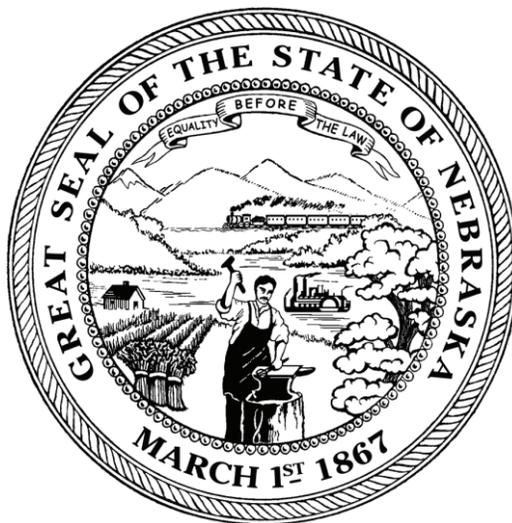


REVISED STATUTES OF NEBRASKA

2014 CUMULATIVE SUPPLEMENT

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CHAPTERS 1 TO 35, INCLUSIVE



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by

Joanne M. Pepperl
Revisor of Statutes

For the benefit of the
State of Nebraska

Errata:

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

Reissue of Volumes 1 to 6

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

Volumes 1, 1A, and 1B.....	2012
Volumes 2 and 2A	2008
Volume 3	2008
Volumes 3A and 3B.....	2010
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Volumes 5 and 5A	2014
Volume 6	2001
Cross Reference Tables	2000

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CERTIFICATE OF AUTHENTICATION

I, Joanne M. Pepperl, Revisor of Statutes, do hereby certify that the laws included in the 2014 Cumulative Supplement to the Revised Statutes of Nebraska are true and correct copies of the original acts enacted by the Ninety-seventh Legislature, First Special Session, 2001, through the One Hundred Third Legislature, Second Session, 2014, of the Nebraska State Legislature as shown by the enrolled bills on file in the office of the Secretary of State, save and except such compilation changes and omissions as are specifically authorized by sections 49-705 and 49-769.

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Lincoln, Nebraska
August 1, 2014

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CONSTITUTION OF THE STATE OF NEBRASKA

Article I, sec. 3.

The Due Process Clauses of the U.S. and Nebraska Constitutions preclude admissibility of an involuntary confession. *State v. Bormann*, 279 Neb. 320, 777 N.W.2d 829 (2010).

A state constitutional provision is not elevated to a fundamental right solely because it mandates legislative action. *Citizens for Eq. Ed. v. Lyons-Decatur Sch. Dist.*, 274 Neb. 278, 739 N.W.2d 742 (2007).

Besides guaranteeing fair process, the Nebraska due process clause provides heightened protection against government interference with certain fundamental rights and liberty interests. *Citizens for Eq. Ed. v. Lyons-Decatur Sch. Dist.*, 274 Neb. 278, 739 N.W.2d 742 (2007).

Fundamental rights are those implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed. *Citizens for Eq. Ed. v. Lyons-Decatur Sch. Dist.*, 274 Neb. 278, 739 N.W.2d 742 (2007).

The Nebraska due process clause forbids the government from infringing upon a fundamental liberty interest, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest. *Citizens for Eq. Ed. v. Lyons-Decatur Sch. Dist.*, 274 Neb. 278, 739 N.W.2d 742 (2007).

When a classification created by state action does not jeopardize the exercise of a fundamental right or categorize because of an inherently suspect characteristic, the Equal Protection Clause requires only that the classification rationally further a legitimate state interest. *Citizens for Eq. Ed. v. Lyons-Decatur Sch. Dist.*, 274 Neb. 278, 739 N.W.2d 742 (2007).

Although due process does not require the appointment of counsel to represent a prisoner in a private civil matter, due process does require that the prisoner receive meaningful access to the courts to defend against suits brought against him or her. *Conn v. Conn*, 13 Neb. App. 472, 695 N.W.2d 674 (2005).

Article I, sec. 4.

The Nebraska Supreme Court interprets the paucity of standards in the free instruction clause as the framers' intent to commit the determination of adequate school funding solely to the Legislature's discretion, greater resources, and expertise. *Nebraska Coalition for Ed. Equity v. Heineman*, 273 Neb. 531, 731 N.W.2d 164 (2007).

The plain language of the religious freedom clause textually commits to the Legislature the duty to encourage schools. *Nebraska Coalition for Ed. Equity v. Heineman*, 273 Neb. 531, 731 N.W.2d 164 (2007).

There are no qualitative, constitutional standards for public schools that the Nebraska Supreme Court could enforce, apart from the requirements that the education in public schools must be free and available to all children. *Nebraska Coalition for Ed. Equity v. Heineman*, 273 Neb. 531, 731 N.W.2d 164 (2007).

Article I, sec. 5.

Because the question of whether an initiative measure should appear on the ballot is determined solely by a state's constitution, the resubmission clause does not restrict the right to political association. *State ex rel. Lemon v. Gale*, 272 Neb. 295, 721 N.W.2d 347 (2006).

The resubmission clause of Neb. Const. art. III, sec. 2, is a limitation on the initiative process itself, but does not restrict speech or expression because it does not regulate the process of advocacy by dictating who can speak or how they must go about speaking. *State ex rel. Lemon v. Gale*, 272 Neb. 295, 721 N.W.2d 347 (2006).

A legislative act with an effective date prior to the date a referendum election on the act can be held does not violate the constitutional right to free speech, based on the fact that Nebraska's referendum provisions make it

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difficult for sponsors to repeal the act and even more difficult to suspend its operation. *Pony Lake Sch. Dist. v. State Committee for Reorg.*, 271 Neb. 173, 710 N.W.2d 609 (2006).

State restrictions on initiative and referendum rights violate the guarantee of free speech when they significantly inhibit communication with voters about proposed political change and are not warranted by the state interests (administrative efficiency, fraud detection, and informing voters) alleged to justify those restrictions. *Pony Lake Sch. Dist. v. State Committee for Reorg.*, 271 Neb. 173, 710 N.W.2d 609 (2006).

The parameters of the constitutional right to freedom of speech are the same under both the federal and the state Constitutions. *Pony Lake Sch. Dist. v. State Committee for Reorg.*, 271 Neb. 173, 710 N.W.2d 609 (2006).

Article I, sec. 7.

Although of limited usefulness, a court, in determining whether an officer had reasonable, articulable suspicion justifying continued detention of vehicle occupants following a traffic stop, may consider, with other factors, evidence that the occupants exhibited nervousness. *State v. Draganescu*, 276 Neb. 448, 755 N.W.2d 57 (2008).

An individual operating or traveling in an automobile does not lose all reasonable expectation of privacy simply because the automobile and its use are subject to government regulation. But in determining whether the government's intrusion into a motorist's Fourth Amendment interests was reasonable, the question is not whether the officer issued a citation for a traffic violation or whether the State ultimately proved the violation. An officer's stop of a vehicle is objectively reasonable when the officer has probable cause to believe that a traffic violation has occurred. *State v. Draganescu*, 276 Neb. 448, 755 N.W.2d 57 (2008).

Evidence that a motorist is returning to his or her home state in a vehicle rented from another state is not inherently indicative of drug trafficking when the officer has no reason to believe the motorist's explanation is untrue, but a court may nonetheless consider this factor when combined with other indicia that drug activity may be occurring, particularly the occupants' contradictory answers regarding their travel purpose and plans or an occupant's previous drug-related convictions. *State v. Draganescu*, 276 Neb. 448, 755 N.W.2d 57 (2008).

Factors that would independently be consistent with innocent activities may nonetheless amount to reasonable suspicion to detain a motorist following a traffic stop when considered collectively. *State v. Draganescu*, 276 Neb. 448, 755 N.W.2d 57 (2008).

Generally, the factors supporting an officer's reasonable suspicion of illegal drug activity when coupled with a well-trained dog's positive indication of drugs in a vehicle will give the officer probable cause to search the vehicle. *State v. Draganescu*, 276 Neb. 448, 755 N.W.2d 57 (2008).

In determining whether an officer had reasonable, articulable suspicion justifying continued detention of a motorist following a traffic stop, a court can consider, as part of the totality of the circumstances, the officer's knowledge of the motorist's drug-related criminal history. *State v. Draganescu*, 276 Neb. 448, 755 N.W.2d 57 (2008).

Reasonable suspicion to detain a motorist following a traffic stop entails some minimal level of objective justification for detention. Reasonable suspicion is something more than an inchoate and unparticularized hunch, but less than the level of suspicion required for probable cause. *State v. Draganescu*, 276 Neb. 448, 755 N.W.2d 57 (2008).

Subjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis. If an officer has probable cause to stop a violator, the stop is objectively reasonable and any ulterior motivation is irrelevant. *State v. Draganescu*, 276 Neb. 448, 755 N.W.2d 57 (2008).

Temporary detention of individuals during the stop of an automobile by the police, even if only for a brief period and for a limited purpose, constitutes a seizure of persons within the meaning of this provision. *State v. Draganescu*, 276 Neb. 448, 755 N.W.2d 57 (2008).

To detain a motorist for further investigation past the time reasonably necessary to conduct a routine investigation incident to a traffic stop, an officer must have a reasonable, articulable suspicion that the motorist is involved in criminal activity unrelated to the traffic violation. Reasonable suspicion for further detention must exist after the point that an officer issues a citation. *State v. Draganescu*, 276 Neb. 448, 755 N.W.2d 57 (2008).

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Whether a police officer has a reasonable suspicion to detain a motorist for further investigation past the time reasonably necessary to conduct a routine investigation incident to a traffic stop based on sufficient articulable facts depends on the totality of the circumstances. *State v. Draganescu*, 276 Neb. 448, 755 N.W.2d 57 (2008).

A consensual search by its very definition is circumscribed by the extent of the permission given, as determined by the totality of the circumstances. *State v. Rathjen*, 16 Neb. App. 799, 751 N.W.2d 668 (2008).

A suspect's general consent to a search of his pickup truck authorized a police officer to search a locked toolbox in the bed of the pickup truck. *State v. Rathjen*, 16 Neb. App. 799, 751 N.W.2d 668 (2008).

A condition of the appellant's probation requiring him to submit to warrantless searches contributed to the rehabilitation process and was reasonable and therefore, constitutional. *State v. Colby*, 16 Neb. App. 644, 748 N.W.2d 118 (2008).

The fact that the appellant's probation officer was not present during a warrantless probation search of the appellant's person and vehicle did not render the search unreasonable. *State v. Colby*, 16 Neb. App. 644, 748 N.W.2d 118 (2008).

A person is seized by police and thus entitled to challenge the government's action under the Fourth Amendment when the officer, by means of physical force or show of authority, terminates or restrains his or her freedom of movement. *Tyler v. Kyler*, 15 Neb. App. 939, 739 N.W.2d 463 (2007).

A police officer may make a seizure by a show of authority and without the use of physical force, but there is no seizure without actual submission; otherwise, there is at most an attempted seizure, so far as the Fourth Amendment is concerned. *Tyler v. Kyler*, 15 Neb. App. 939, 739 N.W.2d 463 (2007).

A search without a warrant of a readily mobile, unoccupied vehicle in a residential area was justified under the automobile exception to the warrant requirement where police officers had probable cause to believe that the search would uncover evidence of a crime. *State v. Sanders*, 15 Neb. App. 554, 733 N.W.2d 197 (2007).

The failure of an individual to secure his vehicle decreased his expectation of privacy relating to the vehicle. *State v. Sanders*, 15 Neb. App. 554, 733 N.W.2d 197 (2007).

The continued detention of a citizen by a law enforcement officer for approximately 52 minutes after a traffic stop and while awaiting the arrival of a drug detection dog—which detention was based upon a reasonable, articulable suspicion that the citizen was involved in additional criminal activity—was reasonable where the investigative methods employed during the detention were reasonable and the scope and intrusiveness of the detention were reasonable. *State v. Kehm*, 15 Neb. App. 199, 724 N.W.2d 88 (2006).

A citizen is not seized under the Fourth Amendment to the U.S. Constitution and this provision of the Nebraska Constitution when a police-citizen encounter involves no restraint of the citizen's liberty, but, rather, noncoercive questioning regarding the status of the citizen's operator's license. *State v. Hisey*, 15 Neb. App. 100, 723 N.W.2d 99 (2006).

An officer does not have probable cause to effectuate an arrest without a warrant where the officer relies upon erroneous information provided from records maintained by Nebraska's Department of Motor Vehicles as the basis for the arrest. *State v. Hisey*, 15 Neb. App. 100, 723 N.W.2d 99 (2006).

Article I, sec. 9.

Electrocution as an execution method violates the constitutional prohibition against cruel and unusual punishment because it will inflict intolerable pain unnecessary to cause death in enough executions to present a substantial risk that any prisoner will suffer unnecessary and wanton pain in a judicial execution by electrocution. *State v. Mata*, 275 Neb. 1, 745 N.W.2d 229 (2008).

In a method of execution challenge, "wanton" means that the method itself is inherently cruel. *State v. Mata*, 275 Neb. 1, 745 N.W.2d 229 (2008).

The death penalty, when properly imposed by a state, does not violate either the 8th or the 14th Amendments to the U.S. Constitution or the state Constitution's proscription against inflicting cruel and unusual punishment. *State v. Mata*, 275 Neb. 1, 745 N.W.2d 229 (2008).

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The prohibition against cruel and unusual punishment in the federal and state Constitutions is a restraint upon the exercise of legislative power. *State v. Mata*, 275 Neb. 1, 745 N.W.2d 229 (2008).

The relevant legal standards in deciding whether electrocution is cruel and unusual punishment are whether the State's chosen method of execution (1) presents a substantial risk that a prisoner will suffer unnecessary and wanton pain in an execution, (2) violates the evolving standards of decency that mark a mature society, and (3) minimizes physical violence and mutilation of the prisoner's body. *State v. Mata*, 275 Neb. 1, 745 N.W.2d 229 (2008).

Whether a method of execution violates the constitutional prohibition against cruel and unusual punishment presents a question of law. *State v. Mata*, 275 Neb. 1, 745 N.W.2d 229 (2008).

Whether a method of inflicting the death penalty inherently imposes a significant risk of causing pain in an execution is a question of fact. *State v. Mata*, 275 Neb. 1, 745 N.W.2d 229 (2008).

Whether the Legislature intended to cause pain in selecting a punishment is irrelevant to a constitutional challenge that a statutorily imposed method of punishment violates the prohibition against cruel and unusual punishment. *State v. Mata*, 275 Neb. 1, 745 N.W.2d 229 (2008).

Article I, sec. 11.

Under this provision of the Nebraska Constitution, a criminal defendant's right to conduct his or her own defense is not violated when the court determines that a defendant competent to stand trial nevertheless suffers from severe mental illness to the point where he or she is not competent to conduct trial proceedings without counsel. *State v. Lewis*, 280 Neb. 246, 785 N.W.2d 834 (2010).

A witness' testimony is not the result of unconstitutional coercion simply because it is motivated by a legitimate fear of a death sentence. *State v. Lotter*, 278 Neb. 466, 771 N.W.2d 551 (2009).

Perjury per se is not a ground for collateral attack on a judgment. *State v. Lotter*, 278 Neb. 466, 771 N.W.2d 551 (2009).

True promises of leniency are not proscribed when made by persons authorized to make them. *State v. Lotter*, 278 Neb. 466, 771 N.W.2d 551 (2009).

When the reliability of a given witness may be determinative of guilt or innocence, nondisclosure of evidence in the prosecutor's file which is relevant to the witness' credibility violates due process, irrespective of the good faith or bad faith of the prosecution. *State v. Lotter*, 278 Neb. 466, 771 N.W.2d 551 (2009).

Where the testimony is in any way relevant to a case, the knowing use of perjured testimony by the prosecution deprives a criminal defendant of his or her right to a fair trial. *State v. Lotter*, 278 Neb. 466, 771 N.W.2d 551 (2009).

There is no federal Sixth Amendment constitutional right to effective standby counsel, and there is no right to effective assistance of standby counsel under this provision. *State v. Gunther*, 278 Neb. 173, 768 N.W.2d 453 (2009).

A criminal defendant who proceeds pro se is held to the same trial standard as if he or she were represented by counsel, and it is not up to the trial court to conduct the defense of a pro se defendant. *State v. Gunther*, 271 Neb. 874, 716 N.W.2d 691 (2006).

A defendant does not have a constitutional right to receive personal instruction from the trial judge on courtroom procedure. *State v. Gunther*, 271 Neb. 874, 716 N.W.2d 691 (2006).

A defendant who elects to represent himself or herself cannot thereafter complain that the quality of his or her own defense amounted to a denial of effective assistance of counsel. *State v. Gunther*, 271 Neb. 874, 716 N.W.2d 691 (2006).

A knowing and intelligent waiver of the right to counsel can be inferred from a defendant's conduct. *State v. Gunther*, 271 Neb. 874, 716 N.W.2d 691 (2006).

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A waiver of counsel need not be prudent, just knowing and intelligent. *State v. Gunther*, 271 Neb. 874, 716 N.W.2d 691 (2006).

In order to determine whether a defendant's self-representation rights have been respected, the primary focus must be on whether the defendant had a fair chance to present his or her case in his or her own way. *State v. Gunther*, 271 Neb. 874, 716 N.W.2d 691 (2006).

In order to waive the constitutional right to counsel, the waiver must be made voluntarily, knowingly, and intelligently. *State v. Gunther*, 271 Neb. 874, 716 N.W.2d 691 (2006).

The fact that a defendant has had the advice of counsel throughout his or her prosecution is an indication that the defendant's waiver of counsel and election to represent himself or herself was knowing and voluntary. *State v. Gunther*, 271 Neb. 874, 716 N.W.2d 691 (2006).

An appeal based solely on an alleged violation of the constitutional right to a speedy trial can be effectively vindicated in an appeal after judgment. *State v. Wilson*, 15 Neb. App. 212, 724 N.W.2d 99 (2006).

The denial of a motion for discharge, based upon a constitutional right to a speedy trial and in the absence of a nonfrivolous statutory claim, is interlocutory. *State v. Wilson*, 15 Neb. App. 212, 724 N.W.2d 99 (2006).

Article I, sec. 12.

Double jeopardy protects a defendant against cumulative punishments for convictions on the same offense; however, it does not prohibit the State from prosecuting a defendant for multiple offenses in a single prosecution. *State v. Humbert*, 272 Neb. 428, 722 N.W.2d 71 (2006).

Article I, sec. 16.

Only the clearest proof suffices to establish the unconstitutionality of a statute as a bill of attainder. *State v. Galindo*, 278 Neb. 599, 774 N.W.2d 190 (2009).

Article I, sec. 22.

Because the right to participate in representative government is not implicated by a referendum proceeding, the constitutional right to vote is not violated by the Nebraska Constitution's limitations on the right to refer legislative enactments to the voters. *Pony Lake Sch. Dist. v. State Committee for Reorg.*, 271 Neb. 173, 710 N.W.2d 609 (2006).

The right to vote under this provision does not extend beyond issues involving the right to participate in representative government. *Pony Lake Sch. Dist. v. State Committee for Reorg.*, 271 Neb. 173, 710 N.W.2d 609 (2006).

Article II, sec. 1.

Nebraska's separation of powers clause prohibits the three governmental branches from exercising the duties and prerogatives of another branch and prohibits a branch from improperly delegating its own duties and prerogatives, except as the constitution directs or permits. *In re Petition of Nebraska Community Corr. Council*, 274 Neb. 225, 738 N.W.2d 850 (2007).

The Legislature may not delegate its lawmaking function to the executive or judicial branches. *In re Petition of Nebraska Community Corr. Council*, 274 Neb. 225, 738 N.W.2d 850 (2007).

This provision of the Nebraska Constitution prohibits the Legislature from mandating that the Supreme Court adopt sentencing guidelines for felony drug offenses. *In re Petition of Nebraska Community Corr. Council*, 274 Neb. 225, 738 N.W.2d 850 (2007).

In Nebraska, the distribution of powers clause prohibits one branch of government from exercising the duties of another branch. *Nebraska Coalition for Ed. Equity v. Heineman*, 273 Neb. 531, 731 N.W.2d 164 (2007).

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Article III, sec. 2.

An appellate court makes no attempt to judge the wisdom or the desirability of enacting initiative amendments. *State ex rel. Johnson v. Gale*, 273 Neb. 889, 734 N.W.2d 290 (2007).

The people of this state may amend their Constitution in any way they see fit, provided the amendments do not violate the federal Constitution or conflict with federal statutes or treaties. *State ex rel. Johnson v. Gale*, 273 Neb. 889, 734 N.W.2d 290 (2007).

Article III, sec. 3.

Sponsors who obtain the signatures of more than 5 percent but less than 10 percent of Nebraska's registered voters on a referendum petition are not entitled to have the contested enactment suspended pending a referendum election. *Pony Lake Sch. Dist. v. State Committee for Reorg.*, 271 Neb. 173, 710 N.W.2d 609 (2006).

This provision specifically reserves to the people the power of referendum and clearly defines the scope of that right and its limitations. *Pony Lake Sch. Dist. v. State Committee for Reorg.*, 271 Neb. 173, 710 N.W.2d 609 (2006).

Where the 10-percent signature requirement contained in this provision is not fulfilled, a referendum vote does not repeal a legislative bill retroactively so as to ameliorate the effects of the legislation while it was in effect. *Haskell v. Madison Cty. Sch. Dist. No. 0001*, 17 Neb. App. 669, 771 N.W.2d 156 (2009).

Article III, sec. 4.

The rule under this provision that "legislation which hampers or renders ineffective the power reserved to the people is unconstitutional" has no application outside of regulating legislation intended to facilitate the initiative or referendum procedures. *Pony Lake Sch. Dist. v. State Committee for Reorg.*, 271 Neb. 173, 710 N.W.2d 609 (2006).

Article III, sec. 12.

Subsection (3) of this provision operates only to determine whether an expired legislative term will count as a full term toward disqualification to seek a third consecutive term. *State ex rel. Johnson v. Gale*, 273 Neb. 889, 734 N.W.2d 290 (2007).

Article III, sec. 17.

An impeachment trial is conducted as a civil proceeding, and the standard of proof for a conviction of impeachment is clear and convincing evidence. *Nebraska Legislature on behalf of State v. Hergert*, 271 Neb. 976, 720 N.W.2d 372 (2006).

The Nebraska Supreme Court's role as fact finder is limited to finding whether the Legislature has shown by clear and convincing evidence that an officer is guilty of one or more impeachable offenses. *Nebraska Legislature on behalf of State v. Hergert*, 271 Neb. 976, 720 N.W.2d 372 (2006).

This provision limits the Nebraska Supreme Court's judgment to removal from office and disqualification to hold other state offices. This provision specifically provides that the party impeached, whether convicted or acquitted, shall nevertheless be liable to prosecution and punishment according to law. Thus, the Nebraska Constitution explicitly provides that a conviction of impeachment is not the same as a criminal conviction and that impeachment sanctions cannot rise to the level of criminal punishment. Because criminal conviction is not at stake in an impeachment proceeding, a "beyond a reasonable doubt" standard of proof is not required. *Nebraska Legislature on behalf of State v. Hergert*, 271 Neb. 976, 720 N.W.2d 372 (2006).

Article III, sec. 18.

A classification separating out commercial businesses or occupations as distinct from the use by the general public is a reasonable classification. *Anthony, Inc. v. City of Omaha*, 283 Neb. 868, 813 N.W.2d 467 (2012).

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Article III, sec. 19.

When the services for which compensation is granted are rendered prior to the date on which the terms of compensation are determined, the benefits awarded are not compensation but are a gratuity, and the payment of such benefits violates this provision. It follows that when the services for which compensation is paid are rendered after the date on which the terms of compensation are established, the benefits awarded are not a gratuity, and the payment of such benefits does not violate this provision. *City of Omaha v. City of Elkhorn*, 276 Neb. 70, 752 N.W.2d 137 (2008).

Article III, sec. 27.

This provision provides the only restriction on the Legislature's power to determine the effective date of its enactments. *Pony Lake Sch. Dist. v. State Committee for Reorg.*, 271 Neb. 173, 710 N.W.2d 609 (2006).

Article IV, sec. 5.

The phrase "misdemeanor in office" is a term of art, and the word "misdemeanor" in this phrase is not used as it is in a criminal context. An officer's conduct need not rise to the level of an indictable offense to be considered an impeachable offense. *Nebraska Legislature on behalf of State v. Hergert*, 271 Neb. 976, 720 N.W.2d 372 (2006).

Article V, sec. 2.

The Supreme Court has original jurisdiction to consider habeas corpus proceedings, but does not ordinarily entertain original actions, unless some good reason is shown why the application was not made to a county or district court. *Smeal Fire Apparatus Co. v. Kreikemeier*, 271 Neb. 616, 715 N.W.2d 134 (2006).

Article V, sec. 22.

This provision is not self-executing, but instead requires legislative action for waiver of the State's sovereign immunity. *Livengood v. Nebraska State Patrol Ret. Sys.*, 273 Neb. 247, 729 N.W.2d 55 (2007).

Nebraska's Uniform Declaratory Judgments Act does not waive the State's sovereign immunity. *JHK, Inc. v. Nebraska Dept. of Banking & Finance*, 17 Neb. App. 186, 757 N.W.2d 515 (2008).

Article V, sec. 27.

As a statutorily created court of limited and special jurisdiction, a juvenile court has only such authority as has been conferred on it by statute. *In re Interest of Veronica H.*, 272 Neb. 370, 721 N.W.2d 651 (2006).

Article VII, sec. 1.

The appropriate level of scrutiny in constitutional challenges to school funding decisions is whether the state action is rationally related to a legitimate government purpose. *Citizens for Eq. Ed. v. Lyons-Decatur Sch. Dist.*, 274 Neb. 278, 739 N.W.2d 742 (2007).

This provision of the constitution does not confer a fundamental right to equal and adequate funding of schools. *Citizens for Eq. Ed. v. Lyons-Decatur Sch. Dist.*, 274 Neb. 278, 739 N.W.2d 742 (2007).

Article VII, sec. 5.

Restitution ordered in an amount not exceeding the actual damage sustained by the victim, pursuant to section 29-2280, is not a penalty within the meaning of this provision and is constitutional. *State v. Moyer*, 271 Neb. 776, 715 N.W.2d 565 (2006).

Article VIII, sec. 1.

Because the levy authorized under section 77-3442(2)(b) is uniform throughout the entire learning community, which is the relevant taxing district, section 77-3442(2)(b) does not violate the uniformity clause under this provision. *Sarpy Cty. Farm Bureau v. Learning Community*, 283 Neb. 212, 808 N.W.2d 598 (2012).

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Because the levy distributed under section 79-1073 is uniform throughout the entire learning community, which is the relevant taxing district, section 79-1073 does not violate the uniformity clause under this provision. *Sarpy Cty. Farm Bureau v. Learning Community*, 283 Neb. 212, 808 N.W.2d 598 (2012).

Sections 77-132 and 77-1359 do not violate this provision. *Agena v. Lancaster Cty. Bd. of Equal.*, 276 Neb. 851, 758 N.W.2d 363 (2008).

This provision and section 6 provide that the Legislature can empower a city to tax, but article XI authorizes a city with a limitation of powers home rule charter to exercise that power to tax without first waiting for express delegation. *Home Builders Assn. v. City of Lincoln*, 271 Neb. 353, 711 N.W.2d 871 (2006).

This provision and section 77-1501, read together, require a county board of equalization to ultimately value comparable properties similarly, even where separate protests are heard in the first instance by referees who recommend greatly disparate property valuations. *Zabawa v. Douglas Cty. Bd. of Equal.*, 17 Neb. App. 221, 757 N.W.2d 522 (2008).

Article VIII, sec. 1A.

Section 77-3442(2)(b) was enacted for substantially local purposes, and therefore it does not violate the prohibition under this provision against a property tax for a state purpose. *Sarpy Cty. Farm Bureau v. Learning Community*, 283 Neb. 212, 808 N.W.2d 598 (2012).

Section 79-1073 was enacted for substantially local purposes, and therefore, it does not violate the prohibition under this provision against a property tax for a state purpose. *Sarpy Cty. Farm Bureau v. Learning Community*, 283 Neb. 212, 808 N.W.2d 598 (2012).

A property tax in furtherance of compliance with an interstate compact is, for purposes of analysis under this provision, a property tax levied by the State for state purposes. *Garey v. Nebraska Dept. of Nat. Resources*, 277 Neb. 149, 759 N.W.2d 919 (2009).

Section 2-3225(1)(d) violates the prohibition against levying a property tax for state purposes found in this provision and is therefore unconstitutional. *Garey v. Nebraska Dept. of Nat. Resources*, 277 Neb. 149, 759 N.W.2d 919 (2009).

Article VIII, sec. 4.

Because the levy authorized under section 77-3442(2)(b) benefits all taxpayers in a learning community, which is the relevant taxing district, section 77-3442(2)(b) does not violate the constitutional prohibition under this provision against a commutation of taxes. *Sarpy Cty. Farm Bureau v. Learning Community*, 283 Neb. 212, 808 N.W.2d 598 (2012).

Because the levy authorized under section 79-1073 benefits all taxpayers in a learning community, which is the relevant taxing district, section 79-1073 does not violate the constitutional prohibition under this provision against a commutation of taxes. *Sarpy Cty. Farm Bureau v. Learning Community*, 283 Neb. 212, 808 N.W.2d 598 (2012).

Article VIII, sec. 6.

Section 1 and this provision provide that the Legislature can empower a city to tax, but article XI authorizes a city with a limitation of powers home rule charter to exercise that power to tax without first waiting for express delegation. *Home Builders Assn. v. City of Lincoln*, 271 Neb. 353, 711 N.W.2d 871 (2006).

Article VIII, sec. 9.

Section 81-8,305 does not violate this provision. *Pavers, Inc. v. Board of Regents*, 276 Neb. 559, 755 N.W.2d 400 (2008).

Article XIII, sec. 3.

This provision prevents the state or any of its governmental subdivisions from extending the state's credit to private enterprise; it is designed to prohibit the state from acting as a surety or guarantor of the debt of another. *Japp v. Papio-Missouri River NRD*, 273 Neb. 779, 733 N.W.2d 551 (2007).

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7-101.

A parent who is not an attorney may not provide legal representation on behalf of his or her minor child in a negligence action. *Goodwin v. Hobza*, 17 Neb. App. 353, 762 N.W.2d 623 (2009).

8-1118.

Expert testimony is not required to prove that a party offered or sold an unregistered security which was required by law to be registered or sold a security by means of an untrue statement or omission of a material fact. *Hooper v. Freedom Fin. Group*, 280 Neb. 111, 784 N.W.2d 437 (2010).

Officers and directors of a corporation which violated the law are strictly liable for a violation of the Securities Act of Nebraska unless the statutory defense of lack of knowledge is proved. *Hooper v. Freedom Fin. Group*, 280 Neb. 111, 784 N.W.2d 437 (2010).

13-905.

A substantial compliance analysis is applied when there is a question about whether the content of the required claim meets the requirements of the statute; however, if the notice is not filed with the person designated by statute as the authorized recipient, a substantial compliance analysis is not applicable. *Lowe v. Lancaster Cty. Sch. Dist. 0001*, 17 Neb. App. 419, 766 N.W.2d 408 (2009).

The filing requirement of this section constitutes a “procedural precedent” to the commencement of a judicial action. *Lowe v. Lancaster Cty. Sch. Dist. 0001*, 17 Neb. App. 419, 766 N.W.2d 408 (2009).

There is no statutory requirement that a claim filed pursuant to the Political Subdivisions Tort Claims Act need be addressed to a particular individual. *Lowe v. Lancaster Cty. Sch. Dist. 0001*, 17 Neb. App. 419, 766 N.W.2d 408 (2009).

A motorist’s letter to the city substantially complied with the notice provisions of the Political Subdivisions Tort Claims Act, such that the motorist could maintain a negligence action against the city to recover damages for injuries he sustained in a motor vehicle accident with a city employee, where the letter stated the date, location, and circumstances of the accident, that the motorist suffered personal injuries as a result of the accident, and that the letter served as notice to the city under the act. *Villanueva v. City of South Sioux City*, 16 Neb. App. 288, 743 N.W.2d 771 (2008).

13-910.

Sovereign immunity barred a claim against the State of Nebraska and Cass County concerning a sight-restricted railroad crossing at which a collision occurred because neither the State nor the county had any mandatory legal duty to improve any sight restrictions at the crossing. *Shipley v. Department of Roads*, 283 Neb. 832, 813 N.W.2d 455 (2012).

Sovereign immunity barred a claim against the State of Nebraska and Cass County concerning the lack of pavement markings at a railroad crossing at which a collision occurred because the decision of whether to place pavement markings at the crossing was discretionary. *Shipley v. Department of Roads*, 283 Neb. 832, 813 N.W.2d 455 (2012).

Sovereign immunity barred failure-to-warn claim concerning a sight-restricted railroad crossing; neither the State of Nebraska nor Cass County had a nondiscretionary duty to warn where the truck wash facility alleged to be the cause of the sight restriction was built by a private party on private property and was readily apparent to a motorist approaching the crossing. *Shipley v. Department of Roads*, 283 Neb. 832, 813 N.W.2d 455 (2012).

In deciding whether conduct falls within the battery exception to the Political Subdivisions Tort Claims Act, it is only necessary to determine whether the conduct arises out of a battery; no determination has to be made as to whether the actor ultimately could be held liable for any damage resulting from the battery, based on the presence or absence of affirmative defenses. *Britton v. City of Crawford*, 282 Neb. 374, 803 N.W.2d 508 (2011).

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13-911.

Pursuant to subsection (5) of this section, an officer's merely following a vehicle in order to provide information to other officers as to the vehicle's location does not constitute a vehicular pursuit. *Perez v. City of Omaha*, 15 Neb. App. 502, 731 N.W.2d 604 (2007).

A passenger in a fleeing vehicle is not an innocent third party if such passenger either (1) promoted, provoked, or persuaded the driver to engage in flight from law enforcement personnel or (2) is one who is sought to be apprehended in the fleeing vehicle. *Jura v. City of Omaha*, 15 Neb. App. 390, 727 N.W.2d 735 (2007).

A police officer's grounds for seeking to apprehend occupants in a vehicular chase situation must have a reasonable basis in the law and facts. *Jura v. City of Omaha*, 15 Neb. App. 390, 727 N.W.2d 735 (2007).

Apprehension can mean to arrest, catch, or detain. *Jura v. City of Omaha*, 15 Neb. App. 390, 727 N.W.2d 735 (2007).

A passenger is not an innocent third party if the passenger either (1) has promoted, provoked, or persuaded the driver to engage in flight from law enforcement personnel or (2) is sought to be apprehended in the fleeing vehicle. *Reed v. City of Omaha*, 15 Neb. App. 234, 724 N.W.2d 834 (2006).

13-919.

A cause of action accrues, thereby starting the period of limitations, when a potential plaintiff discovers, or in the exercise of reasonable diligence should discover, the political subdivision's negligence. *Gard v. City of Omaha*, 18 Neb. App. 504, 786 N.W.2d 688 (2010).

Because compliance with statutory time limits such as that set forth in this section can be determined with precision, the doctrine of substantial compliance generally has no application. *Gard v. City of Omaha*, 18 Neb. App. 504, 786 N.W.2d 688 (2010).

For purposes of the Political Subdivisions Tort Claims Act, the relevant question is when the cause of action accrued, not when the last injury occurred. *Gard v. City of Omaha*, 18 Neb. App. 504, 786 N.W.2d 688 (2010).

Subsection (3) of this section of the Political Subdivisions Tort Claims Act, permitting 6-month extensions brought "under any other applicable law of the state" against a political subdivision after it is determined that a claim is not permitted under the act, does not extend the time for filing a claim under the act against a different or additional political subdivision after one political subdivision denies the claim. *Mace-Main v. City of Omaha*, 17 Neb. App. 857, 773 N.W.2d 152 (2009).

The discovery rule is applicable to the statute of limitations provisions applicable to prefiling notice requirements under the Political Subdivisions Tort Claims Act. *Mace-Main v. City of Omaha*, 17 Neb. App. 857, 773 N.W.2d 152 (2009).

14-109.

An occupation tax is a tax upon the privilege of doing business in a particular jurisdiction or upon the act of exercising, undertaking, or operating a given occupation, trade, or profession. *Anthony, Inc. v. City of Omaha*, 283 Neb. 868, 813 N.W.2d 467 (2012).

Both occupation taxes and sales taxes can be "gross receipts taxes." *Anthony, Inc. v. City of Omaha*, 283 Neb. 868, 813 N.W.2d 467 (2012).

The legal incidence of an occupation tax falls upon the retailer, because it is a tax upon the act or privilege of engaging in business activities. *Anthony, Inc. v. City of Omaha*, 283 Neb. 868, 813 N.W.2d 467 (2012).

There is no statutory limit on the amount of municipal occupation taxes. *Anthony, Inc. v. City of Omaha*, 283 Neb. 868, 813 N.W.2d 467 (2012).

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14-366.

This section authorizes cities of the metropolitan class to condemn private property for use as a public street. *City of Omaha v. Tract No. 1*, 18 Neb. App. 247, 778 N.W.2d 122 (2010).

14-411.

A property owner has standing to seek a variance from a zoning ordinance that, if strictly enforced, would adversely affect the owner's property rights or interests. *Field Club v. Zoning Bd. of Appeals of Omaha*, 283 Neb. 847, 814 N.W.2d 102 (2012).

A prospective purchaser has standing to seek a variance from, or a change in, a zoning ordinance if the prospective purchaser has executed a purchase agreement subject to the grant of a variance or rezoning of the property. Similarly, the holder of an option to purchase property has standing to apply for a variance when the holder is bound to purchase the property if the variance is obtained or when the property owner anticipated that the option holder would seek the variance to complete the sale. *Field Club v. Zoning Bd. of Appeals of Omaha*, 283 Neb. 847, 814 N.W.2d 102 (2012).

A zoning board of appeals need not find a taking in order to grant a variance from a zoning regulation. *Rousseau v. Zoning Bd. of Appeals of Omaha*, 17 Neb. App. 469, 764 N.W.2d 130 (2009).

Pursuant to this section, a zoning board of appeals is not precluded from granting a variance to a zoning regulation even though the regulation went in effect before the applicant purchased the property. *Rousseau v. Zoning Bd. of Appeals of Omaha*, 17 Neb. App. 469, 764 N.W.2d 130 (2009).

18-2148.

A mandamus action is an appropriate remedy for a redevelopment authority that believes that a county assessor has not complied with his or her duty under this section to transmit a redevelopment project valuation. *Community Redev. Auth. v. Gizinski*, 16 Neb. App. 504, 745 N.W.2d 616 (2008).

18-2523.

A municipal ballot measure with separate provisions does not violate the common-law single subject rule if each of its provisions has a natural and necessary connection with each other and together are part of one general subject. *City of North Platte v. Tilgner*, 282 Neb. 328, 803 N.W.2d 469 (2011).

A proposed municipal ballot measure is invalid if it would (1) compel voters to vote for or against distinct propositions in a single vote—when they might not do so if presented separately, (2) confuse voters on the issues they are asked to decide, or (3) create doubt as to what action they have authorized after the election. *City of North Platte v. Tilgner*, 282 Neb. 328, 803 N.W.2d 469 (2011).

Although the Nebraska Constitution does not prohibit a municipal ballot measure from asking voters to approve distinct and independent propositions in a single vote, a common-law single subject rule does prohibit this type of municipal ballot measure to preserve the integrity of the municipal electoral process. *City of North Platte v. Tilgner*, 282 Neb. 328, 803 N.W.2d 469 (2011).

Courts liberally construe grants of municipal initiative and referendum powers to permit, rather than restrict, the power and to attain, rather than prevent, its object. *City of North Platte v. Tilgner*, 282 Neb. 328, 803 N.W.2d 469 (2011).

To determine whether petitioners for a municipal ballot measure are acting under their initiative power or their referendum power, a court should look to the function of their proposed ballot measure—not its label. *City of North Platte v. Tilgner*, 282 Neb. 328, 803 N.W.2d 469 (2011).

When petitioners for a municipal ballot measure are not seeking to repeal an ordinance, the correct distinction for determining whether their proposed measure falls under the petitioners' initiative power or their referendum power is whether the proposed measure would enact a new ordinance (initiative power) or would amend an existing ordinance (referendum power). *City of North Platte v. Tilgner*, 282 Neb. 328, 803 N.W.2d 469 (2011).

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18-2527.

A municipal ballot measure with separate provisions does not violate the common-law single subject rule if each of its provisions has a natural and necessary connection with each other and together are part of one general subject. *City of North Platte v. Tilgner*, 282 Neb. 328, 803 N.W.2d 469 (2011).

A proposed municipal ballot measure is invalid if it would (1) compel voters to vote for or against distinct propositions in a single vote—when they might not do so if presented separately, (2) confuse voters on the issues they are asked to decide, or (3) create doubt as to what action they have authorized after the election. *City of North Platte v. Tilgner*, 282 Neb. 328, 803 N.W.2d 469 (2011).

Although the Nebraska Constitution does not prohibit a municipal ballot measure from asking voters to approve distinct and independent propositions in a single vote, a common-law single subject rule does prohibit this type of municipal ballot measure to preserve the integrity of the municipal electoral process. *City of North Platte v. Tilgner*, 282 Neb. 328, 803 N.W.2d 469 (2011).

Courts liberally construe grants of municipal initiative and referendum powers to permit, rather than restrict, the power and to attain, rather than prevent, its object. *City of North Platte v. Tilgner*, 282 Neb. 328, 803 N.W.2d 469 (2011).

To determine whether petitioners for a municipal ballot measure are acting under their initiative power or their referendum power, a court should look to the function of their proposed ballot measure—not its label. *City of North Platte v. Tilgner*, 282 Neb. 328, 803 N.W.2d 469 (2011).

When petitioners for a municipal ballot measure are not seeking to repeal an ordinance, the correct distinction for determining whether their proposed measure falls under the petitioners' initiative power or their referendum power is whether the proposed measure would enact a new ordinance (initiative power) or would amend an existing ordinance (referendum power). *City of North Platte v. Tilgner*, 282 Neb. 328, 803 N.W.2d 469 (2011).

18-2528.

Under subsection (1)(a) of this section, a general tax ordinance cannot be a measure necessary to carry out a contractual obligation if the obligation did not exist when the municipality passed it. Subsection (1)(a) does not shield from the referendum process a revenue measure that funds a city's subsequent contractual obligations for a project that was not previously approved by a measure that was subject to referendum. *City of North Platte v. Tilgner*, 282 Neb. 328, 803 N.W.2d 469 (2011).

18-2538.

If a municipality claims that a proposed ballot measure violates a statute under chapter 18, article 25, of the Nebraska Revised Statutes, the claim is a challenge to the procedure or form of the proposal that may be raised in a preelection declaratory judgment action. *City of North Platte v. Tilgner*, 282 Neb. 328, 803 N.W.2d 469 (2011).

Under this section, if a city files a declaratory judgment action to challenge a ballot measure within 40 days of receiving notice of the requisite signatures, a court may invalidate the measure because of a deficiency in form or procedure even if the voters approved it. *City of North Platte v. Tilgner*, 282 Neb. 328, 803 N.W.2d 469 (2011).

Under this section, when a city fails to file a declaratory judgment action to challenge the validity of a proposed ballot measure before it receives notification of the requisite signatures, a court does not have authority to keep the measure off the ballot, which precludes a court from blocking a count of the votes. *City of North Platte v. Tilgner*, 282 Neb. 328, 803 N.W.2d 469 (2011).

19-1832.

Employment may not be terminated solely on a ground enumerated in this section if the employee was not notified that termination was sought on the enumerated ground. *Parent v. City of Bellevue Civil Serv. Comm.*, 17 Neb. App. 458, 763 N.W.2d 739 (2009).

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20-209.

This section prevents multiple recoveries from a single publication, but it does not force a plaintiff to elect among libel, slander, and invasion of privacy with respect to the claim a plaintiff advances resulting from a single publication by the defendant. *Bojanski v. Foley*, 18 Neb. App. 929, 798 N.W.2d 134 (2011).

24-109.

Nebraska's impeachment statutes specifically provide that a state officer may be impeached notwithstanding the offense for which said officer is tried occurred during a term of office immediately preceding. *Nebraska Legislature on behalf of State v. Hergert*, 271 Neb. 976, 720 N.W.2d 372 (2006).

24-221.

The Nebraska Supreme Court will not accept a federal district court's certified question from an action challenging a city ordinance when the question fails to specify the nature of the plaintiffs' challenge to the ordinance on state law grounds and fails to identify any state statutes or state constitutional provisions that were allegedly violated. *Keller v. City of Fremont*, 280 Neb. 788, 790 N.W.2d 711 (2010).

24-312.

Jurisdiction under subsection (3) of this section is separate from the invocation of jurisdiction under section 25-2740. *Mahmood v. Mahmud*, 279 Neb. 390, 778 N.W.2d 426 (2010).

24-517.

In common-law and equity actions relating to decedents' estates, the county courts have concurrent original jurisdiction with the district courts. When the jurisdiction of the county court and the district court is concurrent, the basic principles of judicial administration require that the court which first acquires jurisdiction should retain it to the exclusion of the other court. *Washington v. Conley*, 273 Neb. 908, 734 N.W.2d 306 (2007).

Subsection (1) of this section confers upon the county court exclusive original jurisdiction of all matters relating to the decedents' estates, including the probate of wills and the construction thereof, except as provided in sections 30-2464(c) and 30-2486. *Lenner v. St. Paul Fire & Marine Ins. Co.*, 18 Neb. App. 772, 793 N.W.2d 357 (2010).

In the exercise of its jurisdiction over a custody modification proceeding, a county court sitting as a juvenile court cannot permanently modify child custody through the mere adoption of a case plan pursuant to section 43-285(2). *In re Interest of Ethan M.*, 18 Neb. App. 63, 774 N.W.2d 766 (2009).

This section, combined with sections 25-2740 and 43-247, vests juvenile courts and county courts sitting as juvenile courts with jurisdiction over a custody modification proceeding if the court already has jurisdiction over the juvenile under a separate provision of section 43-247. *In re Interest of Ethan M.*, 18 Neb. App. 63, 774 N.W.2d 766 (2009).

Jurisdiction over confirmation of arbitration awards is conferred upon the district court, and the county court has no such jurisdiction. *MBNA America Bank v. Hansen*, 16 Neb. App. 536, 745 N.W.2d 609 (2008).

24-722.

A clear violation of the Nebraska Code of Judicial Conduct constitutes, at a minimum, a violation of subsection (6) of this section. *In re Complaint Against Lindner*, 271 Neb. 323, 710 N.W.2d 866 (2006).

24-734.

Where defendant participated in a sentencing hearing at chambers in a county other than the county in which he was convicted and made no objection as to venue, his implied consent was sufficient to satisfy the consent requirement of subdivision (1)(d) of this section. *State v. Bruna*, 14 Neb. App. 408, 710 N.W.2d 329 (2006).

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24-1106.

Subsection (1) of this section does not require that all constitutional arguments, no matter how insubstantial, bypass review by the Court of Appeals. For the constitutionality of a statute to be genuinely “involved” in an appeal, the constitutional issue must be real and substantial; not merely colorable. For a constitutional claim to be real and substantial, the contention must disclose a contested matter of right, which presents a legitimate question involving some fair doubt and reasonable room for disagreement. *State v. Nelson*, 274 Neb. 304, 739 N.W.2d 199 (2007).

25-201.01.

The dismissal of a plaintiff’s first action for failure to abide by the progression standards is a dismissal because of a lack of action under this section. *Zitterkopf v. Maldonado*, 273 Neb. 145, 727 N.W.2d 696 (2007).

This section includes a savings clause for actions filed in federal court that are dismissed because of the loss of diversity jurisdiction. *Brodine v. Blue Cross Blue Shield*, 272 Neb. 713, 724 N.W.2d 321 (2006).

25-201.02.

This section eliminates the 6-month grace period from the time in which a substituted defendant could have acquired notice of the suit; therefore, the substituted defendant must have had notice before the statute of limitations ran. *Kotlarz v. Olson Bros., Inc.*, 16 Neb. App. 1, 740 N.W.2d 807 (2007).

25-205.

In a suit against the guarantors of a promissory note that contains an optional acceleration clause, the statute of limitations for an action on the whole indebtedness due begins to run from the time the creditor takes positive action indicating that the creditor has elected to exercise the option. *City of Lincoln v. Hershberger*, 272 Neb. 839, 725 N.W.2d 787 (2007).

In this case, the general 5-year statute of limitations must yield to the 3-year provision in a health insurance policy because such provision is authorized by the statutes regulating health insurance policies. *Brodine v. Blue Cross Blue Shield*, 272 Neb. 713, 724 N.W.2d 321 (2006).

A cause of action on an insurer’s duty to defend does not run until the underlying action is resolved against the insured. *Dutton-Lainson Co. v. Continental Ins. Co.*, 271 Neb. 810, 716 N.W.2d 87 (2006).

A suit to collect on a contract that is from the foreclosed deed of trust is governed by the statute of limitations found in this section, rather than the 3-month statute of limitations found in section 76-1013. *Boxum v. Munce*, 16 Neb. App. 731, 751 N.W.2d 657 (2008).

25-207.

A claim for damages caused by a continuing tort can be maintained for injuries caused by conduct occurring within the statutory limitations period. When there are continuing or repeated wrongs that are capable of being terminated, a claim accrues every day the wrong continues or each time it is repeated, the result being that a plaintiff is only barred from recovering damages that were ascertainable prior to the statutory period preceding the lawsuit. *Alston v. Hormel Foods Corp.*, 273 Neb. 422, 730 N.W.2d 376 (2007).

In the context of a professional relationship, a continuous relationship may toll the statute of limitations but requires that there be a continuity of the relationship and services for the same or a related subject matter after the alleged professional negligence. *Anonymous v. St. John Lutheran Church*, 14 Neb. App. 42, 703 N.W.2d 918 (2005).

25-213.

Under this section, a person is within the age of 20 years until he or she becomes 21 years old. *Carruth v. State*, 271 Neb. 433, 712 N.W.2d 575 (2006).

A mental disorder within the meaning of this section is an incapacity which disqualifies one from acting for the protection of one’s rights. *Anonymous v. St. John Lutheran Church*, 14 Neb. App. 42, 703 N.W.2d 918 (2005).

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A person with a mental disorder is one who suffers from a condition of mental derangement which actually prevents the sufferer from understanding his or her legal rights or from instituting legal action. *Anonymous v. St. John Lutheran Church*, 14 Neb. App. 42, 703 N.W.2d 918 (2005).

25-217.

This section is self-executing. If a defendant who is named in the action is not served with summons and a copy of the complaint within 6 months from the date the complaint is filed, the action is dismissed by operation of law, even if a full trial has been held on the merits. *Davis v. Choctaw Constr.*, 280 Neb. 714, 789 N.W.2d 698 (2010).

The provisions of this section requiring service of process are not applicable to condemnation actions. *Wooden v. County of Douglas*, 275 Neb. 971, 751 N.W.2d 151 (2008).

Pursuant to this section, an action is dismissed by operation of law as to any defendant who is named and who is not served with process within 6 months after the complaint is filed. *Reid v. Evans*, 273 Neb. 714, 733 N.W.2d 186 (2007).

25-222.

In order for a continuous relationship to toll the statute of limitations regarding a claim for malpractice, there must be a continuity of the relationship and services for the same or related subject matter after the alleged professional negligence. *Bellino v. McGrath North*, 274 Neb. 130, 738 N.W.2d 434 (2007).

The discovery exception of this section is a tolling provision which permits the filing of an action after the 2-year statute of limitations only in those circumstances where the cause of action was not discovered and could not reasonably have been discovered within that period. *Carruth v. State*, 271 Neb. 433, 712 N.W.2d 575 (2006).

Nebraska has a 2-year statute of limitations for actions for professional negligence except that causes of action not discovered, and which could not have been reasonably discovered until after the limitations period has run, can be filed within 1 year of discovery, with an overall limitation of 10 years after the date of rendering or failing to render such professional service which provides the basis for the cause of action. *Anonymous v. Vasconcellos*, 15 Neb. App. 363, 727 N.W.2d 708 (2007).

Under the 1-year discovery provision of this section, it is not necessary that the plaintiff have knowledge of the exact nature or source of the problem, but only knowledge that the problem existed. *Anonymous v. Vasconcellos*, 15 Neb. App. 363, 727 N.W.2d 708 (2007).

25-301.

A party has no standing to sue if the party has assigned all of its rights in the property which is the subject of the assignment. *Sherman v. Sherman*, 16 Neb. App. 766, 751 N.W.2d 168 (2008).

25-307.

If a minor lacks the capacity to bring an action, the court acquires no jurisdiction over the matter. *Carlos H. v. Lindsay M.*, 283 Neb. 1004, 815 N.W.2d 168 (2012).

This section recognizes the common law that an infant lacks the legal capacity to sue. *Carlos H. v. Lindsay M.*, 283 Neb. 1004, 815 N.W.2d 168 (2012).

25-309.

An infant must be defended in a lawsuit by a guardian. *Carlos H. v. Lindsay M.*, 283 Neb. 1004, 815 N.W.2d 168 (2012).

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25-319.

An individual who cannot maintain his or her individual cause of action against a defendant is unqualified to represent a purported class in a class action. *Lynch v. State Farm Mut. Auto. Ins. Co.*, 275 Neb. 136, 745 N.W.2d 291 (2008).

25-322.

An order reviving an action, whether the order was entered in proceedings under this section or under sections 25-1403 to 25-1420, is not a final order from which an appeal may immediately be taken. The order may be reviewed after final judgment in the case. *Platte Valley Nat. Bank v. Lasen*, 273 Neb. 602, 732 N.W.2d 347 (2007).

25-328.

Intervention after judgment cannot be obtained as a matter of right under this section. Leave to intervene after the entry of a final decree is not allowable as a matter of right and should seldom be granted, but equity sometimes requires a departure from the general rule; however, the burden of persuasion in such a case is a heavy one. *Jeffrey B. v. Amy L.*, 283 Neb. 940, 814 N.W.2d 737 (2012).

The plain language of this section makes clear that intervention as a matter of right is allowed only before trial begins. *Jeffrey B. v. Amy L.*, 283 Neb. 940, 814 N.W.2d 737 (2012).

Under this section, an intervenor must have a direct and legal interest of such character that the intervenor will lose or gain by the direct operation and legal effect of the judgment that may be rendered in the action. In re *Adoption of Amea R.*, 282 Neb. 751, 807 N.W.2d 736 (2011).

A petition in intervention under this section must be filed before the trial. *American Nat. Bank v. Medved*, 281 Neb. 799, 801 N.W.2d 230 (2011).

The existence of a statutory right of intervention before trial does not prevent a court of equity from allowing intervention after judgment. *Meister v. Meister*, 274 Neb. 705, 742 N.W.2d 746 (2007).

The interest required as a prerequisite to intervention is a direct and legal interest in the controversy, which is an interest of such character that the intervenor will lose or gain by the direct operation and legal effect of the judgment which may be rendered in the action. *Koch v. Aupperle*, 274 Neb. 52, 737 N.W.2d 869 (2007).

In order to intervene under this section, the intervenor must have a direct and legal interest of such character that the intervenor will lose or gain by the direct operation and legal effect of the judgment which may be rendered in the action. *Spear T Ranch v. Knaub*, 271 Neb. 578, 713 N.W.2d 489 (2006).

Under equity principles, laches, or unreasonable delay, is a proper reason to deny intervention. *Merz v. Seeba*, 271 Neb. 117, 710 N.W.2d 91 (2006).

Intervention after judgment cannot be obtained as a matter of right. *Miller v. Commercial Contractors Equip.*, 14 Neb. App. 606, 711 N.W.2d 893 (2006).

25-330.

Seeking leave to intervene by motion, and not by complaint, is not a procedural bar to intervention under this section. *State ex rel. Lanman v. Board of Cty. Commissioners*, 277 Neb. 492, 763 N.W.2d 392 (2009).

25-415.

A forum is seriously inconvenient only if one party would be effectively deprived of a meaningful day in court. *Polk Cty. Rec. Assn. v. Susquehanna Patriot Leasing*, 273 Neb. 1026, 734 N.W.2d 750 (2007).

A forum selection clause can be avoided for fraud only when the fraud relates to procurement of the forum selection clause itself, standing independently from the remainder of the agreement. *Polk Cty. Rec. Assn. v. Susquehanna Patriot Leasing*, 273 Neb. 1026, 734 N.W.2d 750 (2007).

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A party seeking to avoid a contractual forum selection clause bears a heavy burden of showing that the clause should not be enforced, and, accordingly, the party seeking to avoid the forum selection clause bears the burden of proving that one of the statutory exceptions applies. *Polk Cty. Rec. Assn. v. Susquehanna Patriot Leasing*, 273 Neb. 1026, 734 N.W.2d 750 (2007).

Aside from factual findings, a ruling on a motion to dismiss pursuant to this section is subject to de novo review. Where the trial court's decision is based upon the complaint and its own determination of disputed factual issues, an appellate court reviews the factual findings under the "clearly erroneous" standard. *Polk Cty. Rec. Assn. v. Susquehanna Patriot Leasing*, 273 Neb. 1026, 734 N.W.2d 750 (2007).

In the absence of one of the five listed exceptions, this section requires dismissal of an action only when the forum selection clause is mandatory. If the forum selection clause is permissive rather than mandatory, this section does not require dismissal of the Nebraska action. *Polk Cty. Rec. Assn. v. Susquehanna Patriot Leasing*, 273 Neb. 1026, 734 N.W.2d 750 (2007).

The proper procedure in Nebraska courts for a party to enforce a forum selection clause naming another state as a forum is to file a motion to dismiss pursuant to this section. *Polk Cty. Rec. Assn. v. Susquehanna Patriot Leasing*, 273 Neb. 1026, 734 N.W.2d 750 (2007).

25-505.01.

This section does not require service to be sent to the defendant's residence or restrict delivery to the addressee. But service must still comply with the due process requirement that notice be reasonably calculated to apprise interested parties of the pendency of the action and to afford them the opportunity to present their objections. *Doe v. Board of Regents*, 280 Neb. 492, 788 N.W.2d 264 (2010).

25-516.01.

A voluntary appearance signed the day before a complaint or petition is filed waives service of process if filed simultaneously with or after the petition. *Johnson v. Johnson*, 282 Neb. 42, 803 N.W.2d 420 (2011).

25-517.02.

Substitute service cannot be effectively completed by using certified mail; this section allows only for the use of first-class mail. *Thornton v. Thornton*, 13 Neb. App. 912, 704 N.W.2d 243 (2005).

25-520.01.

Section 30-2483 requires notice to be sent to the Department of Health and Human Services under certain circumstances. To comply with this requirement, notice must be sent in accordance with this section. In re Estate of Cushing, 283 Neb. 571, 810 N.W.2d 741 (2012).

The 3-year limitations period of section 30-2485(a)(2) applied to the Department of Health and Human Services' Medicaid estate recovery claim because the personal representative failed to send notice to the department within 5 days of the date on which notice to creditors was first published, as required by section 30-2483 and this section. In re Estate of Cushing, 283 Neb. 571, 810 N.W.2d 741 (2012).

25-534.

This section did not apply when the defendant in a paternity action did not appear in the action. *State v. Buckhalter*, 273 Neb. 443, 730 N.W.2d 340 (2007).

Service of agency's final decision was completed upon mailing pursuant to this section rather than upon receipt of decision by petitioner's attorney. *Roubal v. State*, 14 Neb. App. 554, 710 N.W.2d 359 (2006).

25-536.

Nebraska's long-arm statute confers jurisdiction over a noncustodial parent who removes a minor child from the child's Nebraska home under the guise of exercising visitation rights in another jurisdiction and then intentionally subjects the child to harm before returning her to this state. *S.L. v. Steven L.*, 274 Neb. 646, 742 N.W.2d 734 (2007).

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Nebraska's long-arm statute extends Nebraska's jurisdiction over nonresidents having any contact with or maintaining any relation to this state as far as the U.S. Constitution permits. *S.L. v. Steven L.*, 274 Neb. 646, 742 N.W.2d 734 (2007).

A parent company had sufficient minimum contacts with Nebraska for a Nebraska court to exercise personal jurisdiction where the parent company contracted with its Nebraska subsidiary, coordinated the exchange of equipment between the subsidiary and other centers, prepared all tax reports, provided all forms necessary for operations in Nebraska, and operated a toll-free telephone number and Web site accessible from Nebraska. *Erickson v. U-Haul Internat.*, 274 Neb. 236, 738 N.W.2d 453 (2007).

25-601.

A dismissal for lack of subject matter jurisdiction is not a judgment on the merits and is entered without prejudice. *In re Guardianship of David G.*, 18 Neb. App. 918, 798 N.W.2d 131 (2011).

An action may be dismissed without prejudice to a future action by the plaintiff before the final submission of the case to the court where the trial is by the court, and it is generally a right of the plaintiff that is not a matter of judicial grace or discretion. *In re Guardianship of David G.*, 18 Neb. App. 918, 798 N.W.2d 131 (2011).

After submission, a trial court has no authority to dismiss a case without prejudice on the basis that a plaintiff has failed to produce sufficient evidence to sustain his or her claims. *Holling v. Holling*, 16 Neb. App. 394, 744 N.W.2d 479 (2008).

25-824.

A frivolous action is one in which a litigant asserts a legal position wholly without merit; that is, the position is without rational argument based on law and evidence to support the litigant's position. The term "frivolous" connotes an improper motive or legal position so wholly without merit as to be ridiculous. *TFF, Inc. v. SID No. 59*, 280 Neb. 767, 790 N.W.2d 427 (2010).

Any doubt about whether a legal position is frivolous or taken in bad faith should be resolved in favor of the one whose legal position is in question. *TFF, Inc. v. SID No. 59*, 280 Neb. 767, 790 N.W.2d 427 (2010).

An argument that a referendum vote repealing a statute was retroactive to the statute's effective date, where the Nebraska Supreme Court had previously held that the operation of the statute had not been suspended pending the referendum vote, was not frivolous. *Haskell v. Madison Cty. Sch. Dist. No. 0001*, 17 Neb. App. 669, 771 N.W.2d 156 (2009).

An appeal from an order overruling a pretrial motion to dismiss was not frivolous and did not entitle the appellee to an award of attorney fees or costs where no prior Nebraska case had addressed the finality of such an order. *Qwest Bus. Resources v. Headliners—1299 Farnam*, 15 Neb. App. 405, 727 N.W.2d 724 (2007).

A jury's special finding does not abrogate the trial court's discretion to determine whether a party is entitled to attorney fees under subsection (2) of this section. *Harrington v. Farmers Union Co-op. Ins. Co.*, 13 Neb. App. 484, 696 N.W.2d 485 (2005).

Construing subsection (2) of this section in pari materia with section 25-824.01, the use of the term "shall" in this subsection is directory, rather than mandatory; Nebraska's statutory scheme requires the trial court to "exercise its sound discretion" in determining whether to award attorney fees, and whether a claim or defense was made in bad faith is but one factor to be considered by the trial court. *Harrington v. Farmers Union Co-op. Ins. Co.*, 13 Neb. App. 484, 696 N.W.2d 485 (2005).

25-824.01.

Nebraska's statutory scheme requires the trial court to "exercise its sound discretion" in determining whether to award attorney fees, and whether a claim or defense was made in bad faith is but one factor to be considered by the trial court. *Harrington v. Farmers Union Co-op. Ins. Co.*, 13 Neb. App. 484, 696 N.W.2d 485 (2005).

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25-901.

When read in conjunction with this section, section 44-359 prohibits an award of attorney fees to a plaintiff, in a suit against the plaintiff's insurer, who rejects an offer of judgment and later fails to recover more than the amount offered. *Dutton-Lainson Co. v. Continental Ins. Co.*, 279 Neb. 365, 778 N.W.2d 433 (2010).

For an insurer to take advantage of the protection of this section, the insurer must expressly comply with the requirement that an offer to allow judgment be made. *Young v. Midwest Fam. Mut. Ins. Co.*, 272 Neb. 385, 722 N.W.2d 13 (2006).

Read together, this section and section 44-359 prohibit an award of attorney fees to a plaintiff, in a suit against the plaintiff's insurer, who rejects an offer to allow judgment and later fails to recover more than the amount offered. *Young v. Midwest Fam. Mut. Ins. Co.*, 272 Neb. 385, 722 N.W.2d 13 (2006).

This section applies to offers to allow judgment against a defendant, which, under the plain meaning of this section, are not equivalent to settlement offers. *Young v. Midwest Fam. Mut. Ins. Co.*, 272 Neb. 385, 722 N.W.2d 13 (2006).

25-910.

This section requires that when notice of a motion is required and if affidavits are to be used on the hearing, the notice shall state that fact. *Galaxy Telecom v. SRS, Inc.*, 13 Neb. App. 178, 689 N.W.2d 866 (2004).

25-1026.

As a general rule, a garnishee owes a duty to act in good faith and answer fully and truthfully all proper interrogatories presented to him. *Petersen v. Central Park Properties*, 275 Neb. 220, 745 N.W.2d 884 (2008).

25-1028.

If the garnishee fails to answer interrogatories, it is presumed that the garnishee is indebted to the judgment debtor in the full amount of the judgment creditor's claim. This is a rebuttable presumption. *Petersen v. Central Park Properties*, 275 Neb. 220, 745 N.W.2d 884 (2008).

25-1056.

This section authorizes garnishments in aid of execution and, by incorporating other statutes, expressly authorizes assertion in garnishment proceedings of exemptions applicable to executions. *ARL Credit Servs. v. Piper*, 15 Neb. App. 811, 736 N.W.2d 771 (2007).

25-1072.

A court of equity has the power to interpret its own injunctive decree if a party later claims that a provision is unclear. *Smeal Fire Apparatus Co. v. Kreikemeier*, 279 Neb. 661, 782 N.W.2d 848 (2010).

In a civil contempt proceeding, a district court has inherent power to order compensatory relief when a contemnor has violated its order or judgment; overruling *Kasperek v. May*, 174 Neb. 732, 119 N.W.2d 512 (1963). *Smeal Fire Apparatus Co. v. Kreikemeier*, 279 Neb. 661, 782 N.W.2d 848 (2010).

In determining whether a party is in contempt of an order, a court may not expand an earlier order's prohibitory or mandatory language beyond a reasonable interpretation considering the purposes for which the order was entered. *Smeal Fire Apparatus Co. v. Kreikemeier*, 279 Neb. 661, 782 N.W.2d 848 (2010).

25-1079.

All reasonable damages may be recovered by an enjoined party if the injunction was granted in error. Reasonable attorney fees incurred in dissolving the bond may also be recovered. *Koch v. Aupperle*, 277 Neb. 560, 763 N.W.2d 415 (2009).

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25-1111.

In order to obtain relief concerning oral instructions, the appellant must demonstrate that it was prejudiced by the trial court's actions. *State v. McDaniel*, 17 Neb. App. 725, 771 N.W.2d 173 (2009).

25-1115.

In order to obtain relief concerning oral instructions, the appellant must demonstrate that it was prejudiced by the trial court's actions. *State v. McDaniel*, 17 Neb. App. 725, 771 N.W.2d 173 (2009).

This section has not been construed so as to require a trial court to reduce to writing all the admonitions which it may be proper to give the jury while the trial is in progress. *State v. Claycamp*, 14 Neb. App. 675, 714 N.W.2d 455 (2006).

25-1116.

If it becomes necessary to give further instructions to the jury during deliberation, the proper practice is to call the jury into open court and to give any additional instructions in writing in the presence of the parties or their counsel. *State v. Gutierrez*, 272 Neb. 995, 726 N.W.2d 542 (2007).

25-1124.

When polling the jury, the trial court is not required to go beyond the procedure specified in this section by inquiring into the basis for the jury's determination of the percentage of a party's negligence, because such inquiry would invade the province of the jury. *Anis v. BryanLGH Health System*, 14 Neb. App. 372, 707 N.W.2d 60 (2005).

25-1127.

Unsolicited, specific findings recited by the trial court during the hearing on a motion for new trial, and written by the court in the order denying that motion, may supplant the general finding made in the initial judgment. *C. Goodrich, Inc. v. Thies*, 14 Neb. App. 170, 705 N.W.2d 451 (2005).

25-1142.

In order to make a sufficient showing for a new trial on the ground of newly discovered evidence, the proof in support thereof must show that such evidence is now available which neither the litigant nor counsel could have discovered by the exercise of reasonable diligence and that the evidence is not merely cumulative, but competent, relevant, and material, and of such character as to reasonably justify a belief that its admission would bring about a different result if a new trial were granted. *Betterman v. Department of Motor Vehicles*, 273 Neb. 178, 728 N.W.2d 570 (2007).

25-1148.

The method by which the State sought a continuance, although not ideal under the requirements of this section, was not in itself a sufficient basis for finding error in the granting of the continuance. *State v. Shipler*, 17 Neb. App. 66, 758 N.W.2d 41 (2008).

25-1210.

The public ignominy privilege provided in this section cannot be asserted by a witness in a criminal case. *State v. Riensche*, 283 Neb. 820, 812 N.W.2d 293 (2012).

25-1224.

A DNA sample is not documentary in nature and is not discoverable under this section. *State v. McKinney*, 273 Neb. 346, 730 N.W.2d 74 (2007).

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25-1228.

There is no provision in this section for a court to compel a postdeposition reimbursement of fees. *Bedore v. Ranch Oil Co.*, 282 Neb. 553, 805 N.W.2d 68 (2011).

25-1233.

Section 25-1708 provides no basis for taxing to a defendant in a civil action the costs of transporting a plaintiff who is an incarcerated person and who must be transported pursuant to this section. *Jacob v. Schlichtman*, 16 Neb. App. 783, 753 N.W.2d 361 (2008).

25-1273.01.

The language of this section, in combination with section 27-802, indicates a clear intention by the Legislature to create an independent avenue to admit deposition testimony. *Walton v. Patil*, 279 Neb. 974, 783 N.W.2d 438 (2010).

25-1301.

For a final judgment to exist, there must be an order that is both signed by the court and file stamped and dated by the clerk of the court. *Kilgore v. Nebraska Dept. of Health & Human Servs.*, 277 Neb. 456, 763 N.W.2d 77 (2009).

This section sets forth two ministerial requirements for a final judgment: the rendition of the judgment and the entry thereof. *Kilgore v. Nebraska Dept. of Health & Human Servs.*, 277 Neb. 456, 763 N.W.2d 77 (2009).

Pursuant to subsection (1) of this section, the content of a document, rather than the intention of the judge or any interpretation of a party, dictates whether the document constitutes the final determination of the rights of the parties, for purposes of appeal. *Ferer v. Aaron Ferer & Sons Co.*, 16 Neb. App. 866, 755 N.W.2d 415 (2008).

This section sets forth two ministerial requirements for a final judgment: rendition of a judgment by the court making and signing a written notation of relief and entry of a judgment by the clerk of court placing a file stamp and date upon the judgment. *Rosen Auto Leasing v. Jordan*, 15 Neb. App. 1, 720 N.W.2d 911 (2006).

When a trial court order intended to finally dispose of a matter is announced but not rendered or entered pursuant to this section, but a party nonetheless files an otherwise timely notice of appeal, the appellate court has “potential jurisdiction” which “springs” into full jurisdiction when this section is complied with. *Rosen Auto Leasing v. Jordan*, 15 Neb. App. 1, 720 N.W.2d 911 (2006).

25-1315.

Where section 25-1315.03 and subsection (1) of this section are in conflict, section 25-1315.03 controls. *R & D Properties v. Altech Constr. Co.*, 279 Neb. 74, 776 N.W.2d 493 (2009).

A “final order” is a prerequisite to an appellate court’s obtaining jurisdiction of an appeal initiated pursuant to subsection (1) of this section. *Connelly v. City of Omaha*, 278 Neb. 311, 769 N.W.2d 394 (2009).

By its terms, subsection (1) of this section is implicated only where multiple causes of action are presented or multiple parties are involved, and a final judgment is entered as to one of the parties or causes of action. *Connelly v. City of Omaha*, 278 Neb. 311, 769 N.W.2d 394 (2009).

This section permits a judgment to become final only under the limited circumstances set forth in the statute. *Connelly v. City of Omaha*, 278 Neb. 311, 769 N.W.2d 394 (2009).

With the enactment of subsection (1) of this section, one may bring an appeal pursuant to such section only when (1) multiple causes of action or multiple parties are present, (2) the court enters a “final order” within the meaning of section 25-1902 as to one or more but fewer than all of the causes of action or parties, and (3) the trial court expressly directs the entry of such final order and expressly determines that there is no just reason for delay of an immediate appeal. Therefore, to be appealable, an order must satisfy the final order requirements of section 25-1902 and, additionally, where implicated, subsection (1) of this section. *Connelly v. City of Omaha*, 278 Neb. 311, 769 N.W.2d 394 (2009).

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A postconviction motion presents a single cause of action, and the various facts alleged as evidence that the defendant is entitled to postconviction relief are but multiple theories of recovery. *State v. Poindexter*, 277 Neb. 936, 766 N.W.2d 391 (2009).

The trial court's mere oral announcement of its judgment, without a written entry that is signed by the court, file stamped, and dated, is insufficient to render final judgment. *Kilgore v. Nebraska Dept. of Health & Human Servs.*, 277 Neb. 456, 763 N.W.2d 77 (2009).

A trial court considering certification of a final judgment under this section should weigh factors such as (1) the relationship between the adjudicated and unadjudicated claims; (2) the possibility that the need for review might or might not be mooted by future developments in the trial court; (3) the possibility that the reviewing court might be obliged to consider the same issue a second time; (4) the presence or absence of a claim or counterclaim which could result in setoff against the judgment sought to be made final; and (5) miscellaneous factors such as delay, economic and solvency considerations, shortening the time of trial, frivolity of competing claims, expense, and the like. *Cerny v. Todco Barricade Co.*, 273 Neb. 800, 733 N.W.2d 877 (2007).

Certification of a final judgment must be reserved for the unusual case in which the costs and risks of multiplying the number of proceedings and of overcrowding the appellate docket are outbalanced by pressing needs of the litigants for an early and separate judgment as to some claims or parties. *Cerny v. Todco Barricade Co.*, 273 Neb. 800, 733 N.W.2d 877 (2007).

In deciding whether to grant certification under subsection (1) of this section, a trial court must address two distinct issues. A trial court must first determine that it is dealing with a "final judgment." It must be a "judgment" in the sense that it is a decision upon a cognizable claim for relief, and it must be "final" in the sense that it is an ultimate disposition of an individual claim entered in the course of a multiple claims action. Once having found finality, the trial court must go on to determine whether there is any just reason for delay. *Cerny v. Todco Barricade Co.*, 273 Neb. 800, 733 N.W.2d 877 (2007).

One may bring an appeal pursuant to this section only when (1) multiple causes of action or multiple parties are present, (2) the court enters a "final order" within the meaning of section 25-1902 as to one or more but fewer than all of the causes of action or parties, and (3) the trial court expressly directs the entry of such final order and expressly determines that there is no just reason for delay of an immediate appeal. *Cerny v. Todco Barricade Co.*, 273 Neb. 800, 733 N.W.2d 877 (2007).

The power this section confers upon the trial judge should only be used in the infrequent harsh case as an instrument for the improved administration of justice, based on the likelihood of injustice or hardship to the parties of a delay in entering a final judgment as to part of the case. *Cerny v. Todco Barricade Co.*, 273 Neb. 800, 733 N.W.2d 877 (2007).

When a trial court concludes that entry of judgment under this section is appropriate, it should ordinarily make specific findings setting forth the reasons for its order. *Cerny v. Todco Barricade Co.*, 273 Neb. 800, 733 N.W.2d 877 (2007).

The policy behind subsection (1) of this section was the avoidance of piecemeal appellate review in routine cases, not the facilitation thereof. *Halac v. Girton*, 17 Neb. App. 505, 766 N.W.2d 418 (2009).

To be appealable in a case with multiple parties or causes of action, an order must satisfy the final order requirements of section 25-1902, as well as the requirements of subsection (1) of this section. *Halac v. Girton*, 17 Neb. App. 505, 766 N.W.2d 418 (2009).

A trial court's decision to certify a final judgment pursuant to subsection (1) of this section is reviewed for an abuse of discretion. *Sand Livestock Sys. v. Svoboda*, 17 Neb. App. 28, 756 N.W.2d 299 (2008).

The power that subsection (1) of this section confers upon the trial judge should only be used in the infrequent harsh case as an instrument for the improved administration of justice, based on the likelihood of injustice or hardship to the parties of a delay in entering a final judgment as to part of the case. *Sand Livestock Sys. v. Svoboda*, 17 Neb. App. 28, 756 N.W.2d 299 (2008).

The trial court did not abuse its discretion in making the certification under subsection (1) of this section, given that the length of time the litigation had been pending and the fact that a full jury trial had been brought to conclusion regarding the issues between certain parties, the case was the unusual case in which the costs and risks of multiplying the number of proceedings and of overcrowding the appellate docket were outbalanced by pressing

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needs of the litigants for an early and separate judgment as to some claims or parties. *Sand Livestock Sys. v. Svoboda*, 17 Neb. App. 28, 756 N.W.2d 299 (2008).

When a trial court concludes that entry of judgment under subsection (1) of this section is appropriate, it should ordinarily make specific findings setting forth the reasons for its order. *Sand Livestock Sys. v. Svoboda*, 17 Neb. App. 28, 756 N.W.2d 299 (2008).

When certifying a judgment as final under subsection (1) of this section, a court must make specific findings and explain the reasoning for its determination. *Murphy v. Brown*, 15 Neb. App. 914, 738 N.W.2d 466 (2007).

In the absence of any express determination and express direction under subsection (1) of this section, an unresolved complaint in intervention caused the order sought to be appealed to be interlocutory. *TierOne Bank v. Cup-O-Coa, Inc.*, 15 Neb. App. 648, 734 N.W.2d 763 (2007).

25-1315.03.

Where this section and section 25-1315(1) are in conflict, this section controls. *R & D Properties v. Altech Constr. Co.*, 279 Neb. 74, 776 N.W.2d 493 (2009).

25-1329.

A letter that had been in the defendant's possession at all relevant times did not constitute newly discovered evidence for purposes of a motion to alter or amend the judgment. *State v. Timmens*, 282 Neb. 787, 805 N.W.2d 704 (2011).

A "judgment," for purposes of a motion to alter or amend a judgment pursuant to this section, is the final determination of the rights of the parties in an action, or a court's final consideration and determination of the respective rights and obligations of the parties to an action as those rights and obligations presently exist. *Timmerman v. Neth*, 276 Neb. 585, 755 N.W.2d 798 (2008).

A "judgment," for purposes of this section, does not include an appellate decision of a district court. *Timmerman v. Neth*, 276 Neb. 585, 755 N.W.2d 798 (2008).

If, and only if, an amendment to a final judgment or decree affects the rights or obligations of the parties or creates a right of appeal that did not exist, a motion to alter or amend the amended judgment or decree terminates the running of the time for appeal from the original judgment or decree. *Law Offices of Ronald J. Palagi v. Howard*, 275 Neb. 334, 747 N.W.2d 1 (2008).

A motion to alter or amend is not an appropriate motion to file after the decision of a district court where the district court is functioning as an intermediate court of appeals and the motion does not toll the time for filing a notice of appeal. *Goodman v. City of Omaha*, 274 Neb. 539, 742 N.W.2d 26 (2007).

In order to qualify for treatment as a motion to alter or amend the judgment, the motion must be filed no later than 10 days after the entry of judgment, as required under this section, and must seek substantive alteration of the judgment. *Beckman v. McAndrew*, 16 Neb. App. 217, 742 N.W.2d 778 (2007).

It was not an abuse of discretion for a trial court to grant a motion to alter or amend judgment where there was no new evidence adduced at a hearing on the motion and the effect of the action was to correctly reflect the original evidence. *Russell v. Clarke*, 15 Neb. App. 221, 724 N.W.2d 840 (2006).

25-1332.

There is a difference between an issue of fact and a genuine issue as to any material fact within the meaning of this section. *Recio v. Evers*, 278 Neb. 405, 771 N.W.2d 121 (2009).

25-1335.

A continuance authorized by this section is within the discretion of the trial court, whose ruling will not be disturbed on appeal in the absence of an abuse of discretion. *King v. Burlington Northern Santa Fe Ry. Co.*, 16 Neb. App. 544, 746 N.W.2d 383 (2008).

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25-1401.

Despite the language of this section and section 25-1402 which suggests that all pending actions other than those specifically listed in the statutes survive the death of a party, Nebraska case law has limited the list of those actions which survive to exclude those which involve purely personal rights. *Sherman v. Neth*, 283 Neb. 895, 813 N.W.2d 501 (2012).

A survival claim is governed by the 4-year residual statute of limitations for tortious conduct, rather than the 2-year statute of limitations applicable to wrongful death claims. *Corona de Camargo v. Schon*, 278 Neb. 1045, 776 N.W.2d 1 (2009).

As an element of a decedent's personal injury action, conscious pre-fatal-injury fear and apprehension of impending death survives a decedent's death, under the provisions of this section, and inures to the benefit of such decedent's estate. *Scott v. Khan*, 18 Neb. App. 600, 790 N.W.2d 9 (2010).

25-1402.

Despite the language of section 25-1401 and this section which suggests that all pending actions other than those specifically listed in the statutes survive the death of a party, Nebraska case law has limited the list of those actions which survive to exclude those which involve purely personal rights. *Sherman v. Neth*, 283 Neb. 895, 813 N.W.2d 501 (2012).

25-1403.

An order reviving an action, whether the order was entered in proceedings under section 25-322 or under this section to section 25-1420, is not a final order from which an appeal may immediately be taken. The order may be reviewed after final judgment in the case. *Platte Valley Nat. Bank v. Lasen*, 273 Neb. 602, 732 N.W.2d 347 (2007).

25-1405.

Upon the cessation of a personal representative's powers as a result of his or her death, the personal injury action in which he or she is the plaintiff, while not abating but still surviving, becomes suspended or dormant until such time as it is revived or stricken from the docket in accordance with the procedure set forth by statute. *Linch v. Northport Irr. Dist.*, 14 Neb. App. 842, 717 N.W.2d 522 (2006).

25-1408.

An order reviving an action, whether the order was entered in proceedings under section 25-322 or under sections 25-1403 to 25-1420, is not a final order from which an appeal may immediately be taken. The order may be reviewed after final judgment in the case. *Platte Valley Nat. Bank v. Lasen*, 273 Neb. 602, 732 N.W.2d 347 (2007).

25-1415.

Where the record did not show that the plaintiff died more than 1 year prior to the trial court's order dismissing the cause for lack of prosecution, that order could not be construed as an order striking the action from the docket. *Linch v. Northport Irr. Dist.*, 14 Neb. App. 842, 717 N.W.2d 522 (2006).

25-1506.

When a defendant requests a stay of sale pursuant to this section, the defendant is precluded from appealing from the foreclosure decree. *Deutsche Bank Nat. Trust Co. v. Siegel*, 279 Neb. 174, 777 N.W.2d 259 (2010).

25-1515.

The date on which a workers' compensation court award is filed in a district court pursuant to section 48-188 is the date of the judgment for purposes of computing when the judgment becomes dormant. *Weber v. Gas 'N Shop*, 278 Neb. 49, 767 N.W.2d 746 (2009).

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The dormancy provisions of this section apply to an award of the Nebraska Workers' Compensation Court which is filed in the district court pursuant to section 48-188, and the date on which a workers' compensation award is filed in the district court is the date of judgment for purposes of computing when the judgment becomes dormant. *Allen v. Immanuel Med. Ctr.*, 278 Neb. 41, 767 N.W.2d 502 (2009).

25-1531.

Confirmation of judicial sales rests largely within the discretion of the trial court and will not be reviewed except for manifest abuse of such discretion. *Deutsche Bank Nat. Trust Co. v. Siegel*, 279 Neb. 174, 777 N.W.2d 259 (2010).

25-1552.

A judgment debtor may assert the in-lieu-of-homestead exemption, provided by this section, in response to a garnishment summons against the judgment debtor's bank account. *ARL Credit Servs. v. Piper*, 15 Neb. App. 811, 736 N.W.2d 771 (2007).

25-1708.

This section provides no basis for taxing to a defendant in a civil action the costs of transporting a plaintiff who is an incarcerated person and who must be transported pursuant to section 25-1233. *Jacob v. Schlichtman*, 16 Neb. App. 783, 753 N.W.2d 361 (2008).

In an equity action seeking declaratory judgment and injunction, the taxation of costs by the trial court to the plaintiff in whose favor judgment was entered was not an abuse of discretion. *R & S Investments v. Auto Auctions*, 15 Neb. App. 267, 725 N.W.2d 871 (2006).

25-1711.

The district court did not abuse its discretion in allocating costs between several parties. *City of Falls City v. Nebraska Mun. Power Pool*, 281 Neb. 230, 795 N.W.2d 256 (2011).

In an equity action seeking declaratory judgment and injunction, the taxation of costs by the trial court to the plaintiff in whose favor judgment was entered was not an abuse of discretion. *R & S Investments v. Auto Auctions*, 15 Neb. App. 267, 725 N.W.2d 871 (2006).

25-1901.

When an entity such as a city council is exercising its judicial functions, the petition in error statute is the proper method for challenging such actions. *Johnson v. City of Kearney*, 277 Neb. 481, 763 N.W.2d 103 (2009).

Where a city building board of review received evidence and considered statements by the applicant and city officials before making its determination of whether the facts supported the notice of violation, the board exercised "judicial functions." *McNally v. City of Omaha*, 273 Neb. 558, 731 N.W.2d 573 (2007).

The discretion exercised by a county board of commissioners under sections 39-1722 and 39-1725 is not judicial in nature, and as such, the trial court did not have jurisdiction to hear a petition in error under this section. *Camp Clarke Ranch v. Morrill Cty. Bd. of Comrs.*, 17 Neb. App. 76, 758 N.W.2d 653 (2008).

25-1902.

Where a child is adjudicated and placed in the custody of the Department of Health and Human Services, and the department is the child's guardian, a juvenile court order permanently changing the child's placement is a final, appealable order. *In re Interest of Karlie D.*, 283 Neb. 581, 811 N.W.2d 214 (2012).

A summary judgment motion does not invoke a special proceeding: It is a step in the overall action and cannot be a summary application made in an action after a judgment is rendered. Partial summary judgments are usually considered interlocutory. They are not appealable unless the order affects a substantial right and, in effect, determines the action and prevents a judgment. To be a final order under the first category of this section, the order must dispose of the whole merits of the case and leave nothing for the court's further consideration. *Big John's Billiards v. State*, 283 Neb. 496, 811 N.W.2d 205 (2012).

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An order resolving all the issues raised in an independent special proceeding is a final, appealable order. *Big John's Billiards v. State*, 283 Neb. 496, 811 N.W.2d 205 (2012).

If a plaintiff's other claims in an action are rendered moot by the court's ruling that a statute is unconstitutional, the trial court's order completely disposes of the subject matter of the litigation. Such an order both is final and affects a substantial right. *Big John's Billiards v. State*, 283 Neb. 496, 811 N.W.2d 205 (2012).

Substantial rights under this section include those legal rights that a party is entitled to enforce or defend. Therefore, an order that completely disposes of the subject matter of the litigation in an action or proceeding both is final and affects a substantial right because it conclusively determines a claim or defense. *Big John's Billiards v. State*, 283 Neb. 496, 811 N.W.2d 205 (2012).

When an appeal presents these two distinct jurisdictional issues—the lower court's subject matter jurisdiction and whether the order appealed from is final—the first step in determining the existence of appellate jurisdiction is to determine whether the lower court's order was final and appealable. *Big John's Billiards v. State*, 283 Neb. 496, 811 N.W.2d 205 (2012).

A substantial right under this section is not affected when that right can be effectively vindicated in an appeal from the final judgment. *In re Adoption of Amea R.*, 282 Neb. 751, 807 N.W.2d 736 (2011).

An order granting ancillary discovery of allegedly privileged information is not a final order under this section. *Schropp Indus. v. Washington Cty. Atty.'s Ofc.*, 281 Neb. 152, 794 N.W.2d 685 (2011).

A probate court's denial of an application for the appointment of a special administrator, brought pursuant to section 30-2457(2), is a final, appealable order within the meaning of this section. *In re Estate of Muncillo*, 280 Neb. 669, 789 N.W.2d 37 (2010).

A proceeding's characterization does not hinge upon the remedy granted, because it cannot be both a special proceeding and a step within an action. *Kremer v. Rural Community Ins. Co.*, 280 Neb. 591, 788 N.W.2d 538 (2010).

A stay in an independent special proceeding that is tantamount to a dismissal of an action or has the effect of a permanent denial of the requested relief is appealable as a final order. *Kremer v. Rural Community Ins. Co.*, 280 Neb. 591, 788 N.W.2d 538 (2010).

An order compelling arbitration or staying judicial proceedings pending arbitration is a final order under the second category of this section. It affects a substantial right in an independent special proceeding because it disposes of all the issues presented. *Kremer v. Rural Community Ins. Co.*, 280 Neb. 591, 788 N.W.2d 538 (2010).

Special proceedings include civil statutory remedies that are not encompassed in chapter 25 of the Nebraska Revised Statutes and sometimes statutory remedies within the civil procedure statutes. But regardless of a statutory remedy's location within Nebraska's statutes, actions and special proceedings are mutually exclusive. *Kremer v. Rural Community Ins. Co.*, 280 Neb. 591, 788 N.W.2d 538 (2010).

An order of contempt in a postjudgment proceeding to enforce a previous final judgment is a final order for appeal purposes; the contempt order affects a substantial right, made upon a summary application in an action after judgment. *Smeal Fire Apparatus Co. v. Kreikemeier*, 279 Neb. 661, 782 N.W.2d 848 (2010).

For appeal purposes, the distinction between criminal and civil contempt sanctions has no relevance to whether a party may appeal from a final order in a supplemental postjudgment contempt proceeding. *Smeal Fire Apparatus Co. v. Kreikemeier*, 279 Neb. 661, 782 N.W.2d 848 (2010).

In determining whether a party can appeal from an order clarifying an injunction, the critical question is whether the order merely interprets the decree or modifies the decree in a way that affects a party's substantial right. A court's order clarifying a permanent injunction is a final order only if it changes the parties' legal relationship by expanding or relaxing the terms, dissolving the injunction, or granting additional injunctive relief. *Smeal Fire Apparatus Co. v. Kreikemeier*, 279 Neb. 661, 782 N.W.2d 848 (2010).

An order denying a motion to vacate or modify a final order affects a substantial right upon a summary application in an action after judgment, and is itself a final, appealable order. *Capitol Construction v. Skinner*, 279 Neb. 419, 778 N.W.2d 721 (2010).

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With the enactment of section 25-1315(1), one may bring an appeal pursuant to such section only when (1) multiple causes of action or multiple parties are present, (2) the court enters a “final order” within the meaning of this section as to one or more but fewer than all of the causes of action or parties, and (3) the trial court expressly directs the entry of such final order and expressly determines that there is no just reason for delay of an immediate appeal. Therefore, to be appealable, an order must satisfy the final order requirements of this section and, additionally, where implicated, section 25-1315(1). *Connelly v. City of Omaha*, 278 Neb. 311, 769 N.W.2d 394 (2009).

An order granting an evidentiary hearing on some issues presented in a postconviction motion but denying a hearing on others is a final order. *State v. Poindexter*, 277 Neb. 936, 766 N.W.2d 391 (2009).

Under this section, the three types of final orders which may be reviewed on appeal are (1) an order which affects a substantial right in an action and which in effect determines the action and prevents a judgment, (2) an order affecting a substantial right made during a special proceeding, and (3) an order affecting a substantial right made on summary application in an action after a judgment is rendered. *Kilgore v. Nebraska Dept. of Health & Human Servs.*, 277 Neb. 456, 763 N.W.2d 77 (2009).

Proceedings regarding modification of a marital dissolution, which are controlled by section 42-364, are special proceedings as defined by this section. *Steven S. v. Mary S.*, 277 Neb. 124, 760 N.W.2d 28 (2009).

Under this section, custody determinations are considered special proceedings. *Steven S. v. Mary S.*, 277 Neb. 124, 760 N.W.2d 28 (2009).

A proceeding under section 30-2454 to remove a personal representative for cause is a special proceeding within the meaning of this section. In re *Estate of Nemetz*, 273 Neb. 918, 735 N.W.2d 363 (2007).

An order reviving an action is not a final order from which an appeal may immediately be taken; the order may be reviewed after final judgment in the case. *Platte Valley Nat. Bank v. Lasen*, 273 Neb. 602, 732 N.W.2d 347 (2007).

The resolution of a motion to amend a postconviction motion to assert additional claims does not affect a substantial right and is not a final order under this section. *State v. Hudson*, 273 Neb. 42, 727 N.W.2d 219 (2007).

A proceeding to determine the competency of an accused to stand trial is a special proceeding within the meaning of this section. An order finding the accused competent to stand trial is not a final order from which an appeal may be taken under section 25-1911. If an accused is found guilty, he may raise the issue of his competency on appeal. *State v. Lassek*, 272 Neb. 523, 723 N.W.2d 320 (2006).

A substantial right can be affected by an order if the right is irrevocably lost by operation of the order, while a substantial right is not affected when that right can be effectively vindicated in an appeal from the final judgment. *State v. Vela*, 272 Neb. 287, 721 N.W.2d 631 (2006).

None of the many steps or proceedings necessary or permitted to be taken in an action to commence it, to join issues in it, and conduct it to a final hearing and judgment can be a special proceeding within the terms of this section. *State v. Vela*, 272 Neb. 287, 721 N.W.2d 631 (2006).

An order denying a motion for in-chambers testimony in an adjudication proceeding is not a final order that is reviewable on appeal because a child does not have a substantial right to testify outside the presence of the parent. In re *Interest of Marcella B. & Juan S.*, 18 Neb. App. 153, 775 N.W.2d 470 (2009).

An order denying a motion for in-chambers testimony in an adjudication proceeding is reviewable under the collateral order doctrine. In re *Interest of Marcella B. & Juan S.*, 18 Neb. App. 153, 775 N.W.2d 470 (2009).

Where the issue of guardian ad litem fees has been raised and reserved for later determination, an order permanently modifying child custody but not resolving the issue of guardian ad litem fees is not a final, appealable order. *McCaul v. McCaul*, 17 Neb. App. 801, 771 N.W.2d 222 (2009).

To be appealable in a case with multiple parties or causes of action, an order must satisfy the final order requirements of this section, as well as the requirements of section 25-1315(1). *Halac v. Girton*, 17 Neb. App. 505, 766 N.W.2d 418 (2009).

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An order imposing a money judgment for attorney fees and expenses for discovery violations pursuant to Neb. Ct. R. Disc. section 6-337(a)(4) does not affect a “substantial right” as required by this section. *Frederick v. Seeba*, 16 Neb. App. 373, 745 N.W.2d 342 (2008).

A court’s decision to deny waiver of a 45-day jail term as a condition of probation was not a final, appealable order. *State v. Volcek*, 15 Neb. App. 416, 729 N.W.2d 90 (2007).

Sentencing orders in which a defendant is sentenced to probation with one term of probation’s being a jail term that may or may not ultimately be waived by the court are final, appealable orders. *State v. Volcek*, 15 Neb. App. 416, 729 N.W.2d 90 (2007).

An order overruling a pretrial motion to dismiss pursuant to Neb. Ct. R. Pldg. section 6-1112(b)(1), (2), and (6) is not a final order. *Qwest Bus. Resources v. Headliners—1299 Farnam*, 15 Neb. App. 405, 727 N.W.2d 724 (2007).

An appeal based solely on an alleged violation of the constitutional right to a speedy trial can be effectively vindicated in an appeal after judgment. *State v. Wilson*, 15 Neb. App. 212, 724 N.W.2d 99 (2006).

The denial of a motion for discharge, based upon a constitutional right to a speedy trial and in the absence of a nonfrivolous statutory claim, is interlocutory. *State v. Wilson*, 15 Neb. App. 212, 724 N.W.2d 99 (2006).

An order denying a petition to invalidate pursuant to section 43-1507 and motion to dismiss is a final order for purposes of this section. *In re Interest of Enrique P. et al.*, 14 Neb. App. 453, 709 N.W.2d 676 (2006).

In cases where section 29-1819.02 does not apply, an order overruling a motion to withdraw a plea does not affect a substantial right in a special proceeding and therefore does not constitute a final, appealable order. *State v. Cisneros*, 14 Neb. App. 112, 704 N.W.2d 550 (2005).

25-1905.

The timely filing of the praecipe for transcript with the clerk of the district court satisfies the jurisdictional filing requirement, even if the tribunal does not timely prepare and furnish the transcript for filing with the clerk of the district court. *McNally v. City of Omaha*, 273 Neb. 558, 731 N.W.2d 573 (2007).

25-1911.

A proceeding to determine the competency of an accused to stand trial is a special proceeding within the meaning of section 25-1902. An order finding the accused competent to stand trial is not a final order from which an appeal may be taken under this section. If an accused is found guilty, he may raise the issue of his competency on appeal. *State v. Lassek*, 272 Neb. 523, 723 N.W.2d 320 (2006).

25-1912.

Subsection (2) of this section applies only to a notice of appeal filed after the announcement of a decision or final order, but before entry of judgment; it was not intended to validate anticipatory notices of appeal filed prior to the announcement of final judgment. *Wright v. Omaha Pub. Sch. Dist.*, 280 Neb. 941, 791 N.W.2d 760 (2010).

This section does not expressly require a notice of appeal to display a trial court docket number, or be filed in a particular trial court docket; instead, it requires only a notice of intention to prosecute an appeal from a judgment, decree, or final order of the district court. A notice of appeal filed under the wrong docket number is not fatal to appellate jurisdiction. *Hearst-Argyle Prop. v. Entrex Comm. Servs.*, 279 Neb. 468, 778 N.W.2d 465 (2010).

The tolling motions listed in subsection (3) of this section are ineffective when a district court is acting as an intermediate court of appeals. *Timmerman v. Neth*, 276 Neb. 585, 755 N.W.2d 798 (2008).

Pursuant to subsection (2) of this section, a trial court’s dismissal of one defendant did not announce a judgment, decree, or final order, so as to allow the plaintiff’s premature notice of appeal to relate forward, since the trial court’s order did not dispose of all claims against all of the parties in each of their capacities. *Ferer v. Aaron Ferer & Sons Co.*, 16 Neb. App. 866, 755 N.W.2d 415 (2008).

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Pursuant to subsection (3) of this section, in order to be a tolling motion, a motion to alter or amend must seek substantive alteration of the judgment. *Gebhardt v. Gebhardt*, 16 Neb. App. 565, 746 N.W.2d 707 (2008).

A motion to dismiss was a tolling motion under this section, and because a ruling on the motion was not announced prior to the filing of the notice of appeal, the notice of appeal was of no effect and the appellate court did not have jurisdiction to hear the appeal. *Beckman v. McAndrew*, 16 Neb. App. 217, 742 N.W.2d 778 (2007).

This section does not contain a “good faith” exception to the requirement of timely payment of the docket fee. *In re Interest of Jesse D.*, 15 Neb. App. 534, 732 N.W.2d 694 (2007).

In order to initiate an appeal, a notice of appeal must be filed within 30 days after entry of the judgment, decree, or final order. *State v. Murphy*, 15 Neb. App. 398, 727 N.W.2d 730 (2007).

When a trial court’s order intended to finally dispose of a matter is announced but not rendered or entered pursuant to section 25-1301, but a party nonetheless files an otherwise timely notice of appeal, the appellate court has “potential jurisdiction” which “springs” into full jurisdiction when section 25-1301 is complied with. *Rosen Auto Leasing v. Jordan*, 15 Neb. App. 1, 720 N.W.2d 911 (2006).

Pursuant to subsection (3) of this section, when a motion terminating the 30-day appeal period is filed by either party, a notice of appeal filed before the court announces its decision upon the terminating motion has no effect and an appellate court acquires no jurisdiction, whether the notice of appeal is filed before or after the timely filing of the terminating motion. *State v. Blair*, 14 Neb. App. 190, 707 N.W.2d 8 (2005).

An appellant’s designation in the notice of appeal of the wrong court was not necessarily fatal, where the notice was timely forwarded to the proper appellate court and no opposing party claimed to have suffered prejudice. *In re Guardianship of Breehana C.*, 14 Neb. App. 182, 706 N.W.2d 66 (2005).

Section 29-2315.01 must be read in pari material with this section and mandates that when an appellate court grants the State leave to docket an appeal, the State must file a notice of appeal within 30 days in order to perfect jurisdiction in the appellate court. *State v. Kissell*, 13 Neb. App. 209, 690 N.W.2d 194 (2004).

25-1914.

Under section 43-2,106.01, an appeal taken in the same manner as an appeal from district court includes the appeal bond requirement set forth in this section. *In re Interest of Kayla F. et al.*, 13 Neb. App. 679, 698 N.W.2d 468 (2005).

25-1916.

The trial court may in its discretion grant supersedeas in cases not specified in this section. *Clark v. Tyrrell*, 16 Neb. App. 692, 750 N.W.2d 364 (2008).

25-1931.

Under rule that in a postconviction proceeding, an order granting an evidentiary hearing on some issues and denying a hearing on others is a final order, the appellate court lacked jurisdiction over claims dismissed in an order that also granted an evidentiary hearing, because no appeal was taken within 30 days from the date of the order. *State v. Timmens*, 282 Neb. 787, 805 N.W.2d 704 (2011).

25-1937.

Subsection (5) of section 23-114.01 provides for a right of appeal to the district court from a decision by the county planning commission or county board of commissioners or supervisors, without setting forth any procedure for prosecuting the appeal. Therefore, the appeal procedure in this section is also implicated. *In re Application of Olmer*, 275 Neb. 852, 752 N.W.2d 124 (2008).

25-2001.

The question of whether a paternity decree should be set aside must be determined under section 43-1412.01, applicable to setting aside a judgment of paternity, and not under the provisions of this section, applicable to vacating judgments in general. *Jeffrey B. v. Amy L.*, 283 Neb. 940, 814 N.W.2d 737 (2012).

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To be entitled to vacate a judgment after term by an action in equity, the litigant must show that, without fault or laches on his part, he was prevented from proceeding under this section. *Jeffrey B. v. Amy L.*, 283 Neb. 940, 814 N.W.2d 737 (2012).

A district court sitting as an appellate court has the same power to reconsider its orders, both inherently and under this section, as it does when it is a court of original jurisdiction. *Capitol Construction v. Skinner*, 279 Neb. 419, 778 N.W.2d 721 (2010).

A party seeking to set aside a judgment after term for fraud under subsection (4)(b) of this section must prove that he or she exercised due diligence at the former trial and was not at fault or negligent in the failure to secure a just decision. *Nielsen v. Nielsen*, 275 Neb. 810, 749 N.W.2d 485 (2008).

A district court may freely correct clerical errors after notice of appeal has been filed up until the time the parties submit the case at the conclusion of arguments. After that time, the district court must obtain leave of the appellate court to fix a clerical error in a prior order. *Eicher v. Mid America Fin. Invest. Corp.*, 275 Neb. 462, 748 N.W.2d 1 (2008).

Pursuant to subsection (3) of this section, “pendency” refers to the period of time after notice of appeal has been filed but before the parties have submitted the case at argument. *Eicher v. Mid America Fin. Invest. Corp.*, 275 Neb. 462, 748 N.W.2d 1 (2008).

“Submitted for decision” refers to the period after the case was submitted at oral argument but before appellate court’s opinion has issued. *Eicher v. Mid America Fin. Invest. Corp.*, 275 Neb. 462, 748 N.W.2d 1 (2008).

Subsection (3) of this section, which allows for the correction of clerical mistakes in judgments, orders, or other parts of the record and errors therein arising from oversight or omission by an order nunc pro tunc, does not authorize the district court to correct mistakes or errors made by a party or the party’s attorney. *Bevard v. Kelly*, 15 Neb. App. 960, 739 N.W.2d 243 (2007).

The county court may correct clerical mistakes in judgments, orders, or other parts of the record and errors therein arising from oversight or omission by issuing an order nunc pro tunc as provided in subsection (3) of this section. *State v. Ziemann*, 14 Neb. App. 117, 705 N.W.2d 59 (2005).

Under this section, a nunc pro tunc matter is not submitted for decision in the appellate court until after the hearing. *State v. Ziemann*, 14 Neb. App. 117, 705 N.W.2d 59 (2005).

25-2009.

The county court may correct clerical mistakes in judgments, orders, or other parts of the record and errors therein arising from oversight or omission by issuing an order nunc pro tunc as provided in section 25-2001(3). *State v. Ziemann*, 14 Neb. App. 117, 705 N.W.2d 59 (2005).

25-2121.

The juvenile court, as a court of record, has the statutory authority pursuant to this section to punish contemptuous conduct by fine or imprisonment. *In re Interest of Thomas M.*, 282 Neb. 316, 803 N.W.2d 46 (2011).

The Nebraska Workers’ Compensation Court is a court of record. *Hofferber v. Hastings Utilities*, 282 Neb. 215, 803 N.W.2d 1 (2011).

This section permits a court of record to punish contempt by fine and imprisonment, but not by dismissal of a petition. *Hofferber v. Hastings Utilities*, 282 Neb. 215, 803 N.W.2d 1 (2011).

25-2164.

A motion for summary judgment is a proper procedural device in an action for a writ of mandamus. *Russell v. Clarke*, 15 Neb. App. 221, 724 N.W.2d 840 (2006).

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25-21,149.

A declaratory judgment action under this section is the proper means of challenging the constitutionality of a tax statute. *Trumble v. Sarpy County Board*, 283 Neb. 486, 810 N.W.2d 732 (2012).

The district court did not have jurisdiction to hear a challenge to the constitutionality of a tax statute under this section when the plaintiff filed suit outside the same tax year in which the taxes were levied or assessed. *Trumble v. Sarpy County Board*, 283 Neb. 486, 810 N.W.2d 732 (2012).

When the plaintiff's pleadings in a declaratory judgment action put the defendant on notice of the remedy sought, a trial court may order relief which is clearly within the scope of its declaratory judgment. Conversely, when a plaintiff's requested relief is not clearly within the scope of a court's declaratory judgment, the court should grant such relief only for a plaintiff's concurrent or subsequent cause of action or the plaintiff's application for supplemental relief under section 25-21,156. *Wetovick v. County of Nance*, 279 Neb. 773, 782 N.W.2d 298 (2010).

A justiciable issue requires a present substantial controversy between parties having adverse legal interests susceptible to immediate resolution and capable of present judicial enforcement. *City of Fremont v. Kotas*, 279 Neb. 720, 781 N.W.2d 456 (2010).

An action for declaratory judgment cannot be used to decide the legal effect of a state of facts which are future, contingent, or uncertain. *City of Fremont v. Kotas*, 279 Neb. 720, 781 N.W.2d 456 (2010).

The existence of a justiciable issue is a fundamental requirement to a court's exercise of its discretion to grant declaratory relief. *City of Fremont v. Kotas*, 279 Neb. 720, 781 N.W.2d 456 (2010).

25-21,156.

When the plaintiff's pleadings in a declaratory judgment action put the defendant on notice of the remedy sought, a trial court may order relief which is clearly within the scope of its declaratory judgment. Conversely, when a plaintiff's requested relief is not clearly within the scope of a court's declaratory judgment, the court should grant such relief only for a plaintiff's concurrent or subsequent cause of action or the plaintiff's application for supplemental relief under this section. *Wetovick v. County of Nance*, 279 Neb. 773, 782 N.W.2d 298 (2010).

25-21,158.

Under this section, attorney fees are not taxed as "costs." Without another source of statutory authority permitting attorney fees to be taxed as costs, the prevailing party cannot recover attorney fees in a declaratory judgment action. *Wetovick v. County of Nance*, 279 Neb. 773, 782 N.W.2d 298 (2010).

25-21,185.07.

The Legislature did not intend for the comparative negligence scheme to apply in actions based on strict liability after February 8, 1992. *Shipler v. General Motors Corp.*, 271 Neb. 194, 710 N.W.2d 807 (2006).

25-21,185.09.

The language of this section allows a jury to compare a plaintiff's contributory negligence to the negligence of a defendant or defendants. It does not provide that the plaintiff's negligence may be applied in the plaintiff's cause of action based upon strict liability in tort. *Shipler v. General Motors Corp.*, 271 Neb. 194, 710 N.W.2d 807 (2006).

The trial court's refusal to determine a party negligent as a matter of law did not prejudice the other party, where evidence that both parties were negligent required the trial court to instruct the jury to weigh the relative contributions of the parties' negligence and the jury found both parties to be negligent. *Howe v. Hinzman*, 14 Neb. App. 544, 710 N.W.2d 669 (2006).

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25-21,185.10.

This section contemplates a process by which the finder of fact determines the total noneconomic damages suffered by the plaintiff as the result of injuries proximately caused by the negligence of multiple defendants; then, it allocates a portion of the total to each defendant “in direct proportion to that defendant’s percentage of negligence.” *Sinsel v. Olsen*, 279 Neb. 38, 777 N.W.2d 54 (2009).

When, because of the settlement with one of the defendants, the action no longer involves multiple party defendants, then this section is no longer applicable. *Tadros v. City of Omaha*, 273 Neb. 935, 735 N.W.2d 377 (2007).

This section does not provide that one defendant’s negligence may be compared to another in a cause of action for strict liability in tort. *Shipler v. General Motors Corp.*, 271 Neb. 194, 710 N.W.2d 807 (2006).

25-21,185.11.

An employer covered by workers’ compensation is not a “released person” within the meaning of this section. Unless the employer’s negligence is the sole cause of the accident, or when combined with the plaintiff’s negligence is the sole cause of the accident, the defendant may not argue the negligence of an immune employer. *Downey v. Western Comm. College Area*, 282 Neb. 970, 808 N.W.2d 839 (2012).

The element of specific identification is only met when the reference in the release is so particular that a stranger can readily identify the released party and his or her identity is not in doubt. *Podraza v. New Century Physicians of Neb.*, 280 Neb. 678, 789 N.W.2d 260 (2010).

There is a rebuttable presumption that a release benefits only those specifically designated; the unnamed party claiming under the release has the burden to show an actual intent to benefit him or her. *Podraza v. New Century Physicians of Neb.*, 280 Neb. 678, 789 N.W.2d 260 (2010).

Under the intent rule, general releases which fail to specifically designate who is discharged either by name or by some other specific identifying terminology are inherently ambiguous, and the actual intent of the parties will govern. *Podraza v. New Century Physicians of Neb.*, 280 Neb. 678, 789 N.W.2d 260 (2010).

When a claimant settles with a joint tort-feasor, the claimant forfeits joint and several liability for economic damages and cannot recover from a nonsettling joint tort-feasor more than that tort-feasor’s proportionate share of liability. *Tadros v. City of Omaha*, 273 Neb. 935, 735 N.W.2d 377 (2007).

25-21,187.

Maintenance of a building, within the meaning of subsection (1) of this section, does not encompass the ordinary activities associated with management of commercial property. *Kuhn v. Wells Fargo Bank of Neb.*, 278 Neb. 428, 771 N.W.2d 103 (2009).

25-21,206.

The waiver of immunity under this section is broad enough to encompass class action suits. *Livengood v. Nebraska State Patrol Ret. Sys.*, 273 Neb. 247, 729 N.W.2d 55 (2007).

25-21,237.

Nebraska law applied to a tort action arising from an automobile accident that occurred in Colorado when both the driver and the injured party were residents of Nebraska at the time of the accident, the trip began and was intended to end in Nebraska, the parties lived and worked in Nebraska, and their relationship was centered in Nebraska. *Heinze v. Heinze*, 274 Neb. 595, 742 N.W.2d 465 (2007).

Under the Restatement (Second) of Conflict of Laws section 146 (1971), the law of the site of an injury is usually applied to determine liability, except where another state has a more significant relationship on a particular issue. The fact that Nebraska has a guest statute provides this state with a more significant relationship to the parties when they are residents of Nebraska. *Heinze v. Heinze*, 274 Neb. 595, 742 N.W.2d 465 (2007).

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25-21,239.

Where the plaintiff's injury resulted from the operation of a truck outside the State of Nebraska, there was no finding of liability under this section. *Erickson v. U-Haul Internat.*, 278 Neb. 18, 767 N.W.2d 765 (2009).

25-21,243.

Under subsection (1) of this section, a trial court must first determine as a matter of law whether the action involving public petition and participation was commenced or continued without a substantial basis in fact and law and could not be supported by a substantial argument for the extension, modification, or reversal of existing law. *Sand Livestock Sys. v. Svoboda*, 17 Neb. App. 28, 756 N.W.2d 299 (2008).

25-21,274.

This section does not displace the common-law elements of *res ipsa loquitur* and does not prevent a *res ipsa loquitur* jury instruction in appropriate circumstances; it simply clarifies that the fact of escaped livestock is, standing alone, insufficient to raise an inference of negligence. *McLaughlin Freight Lines v. Gentrup*, 281 Neb. 725, 798 N.W.2d 386 (2011).

25-2205.

This section requires the clerk of the trial court to file all documents delivered to him or her for that purpose. *State v. Muse*, 15 Neb. App. 13, 721 N.W.2d 661 (2006).

25-2206.

This section requires the clerk of the trial court to endorse the day of filing upon any document delivered to him or her for that purpose. *State v. Muse*, 15 Neb. App. 13, 721 N.W.2d 661 (2006).

25-2221.

In the absence of a specific imperative to the contrary, this section applies to administrative rules and regulations. *Strode v. Saunders Cty. Bd. of Equal.*, 283 Neb. 802, 815 N.W.2d 856 (2012).

The application of this section is not limited to proceedings in a court, and this section applies to matters of practice which are not necessarily enunciated in statutes. *Strode v. Saunders Cty. Bd. of Equal.*, 283 Neb. 802, 815 N.W.2d 856 (2012).

In conjunction with this section and subsection (13) of section 49-801, a political subdivision has until the end of the last day of the 6-month period after a claimant has filed a tort claim upon which to make a final disposition of such claim. *Geddes v. York County*, 273 Neb. 271, 729 N.W.2d 661 (2007).

This section establishes a uniform rule applicable alike to the construction of statutes and to matters of practice, which the Nebraska Supreme Court has regularly applied in computing time periods specified in other statutes. *Geddes v. York County*, 273 Neb. 271, 729 N.W.2d 661 (2007).

25-2301.02.

A court may not immediately deny an application to proceed in *forma pauperis* on the ground the proposed complaint is illegible, as such does not fulfill the requirement of this section that the court find that the complaint was actually frivolous or malicious as a prerequisite to denying the application. *Tyler v. Natvig*, 17 Neb. App. 358, 762 N.W.2d 621 (2009).

A frivolous legal position is one wholly without merit, that is, without rational argument based on the law or on the evidence. *Tyler v. Nebraska Dept. of Corr. Servs.*, 13 Neb. App. 795, 701 N.W.2d 847 (2005).

Principles of liberal construction apply to the review of a denial of a motion to proceed in *forma pauperis* upon the ground that the complaint was frivolous. *Tyler v. Nebraska Dept. of Corr. Servs.*, 13 Neb. App. 795, 701 N.W.2d 847 (2005).

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25-2307.

A district court has jurisdiction to hear a motion for reimbursement of costs sought under this section, and an order entered thereon is appealable as a summary application in an action after judgment. *State v. Patterson*, 18 Neb. App. 255, 778 N.W.2d 756 (2010).

Neither this section nor *Heathman v. Kenney*, 263 Neb. 966, 644 N.W.2d 558 (2002), support a conclusion that a request for reimbursement of printing costs must be made during the pendency of the appeal. *State v. Patterson*, 18 Neb. App. 255, 778 N.W.2d 756 (2010).

The words “on appeal” in this section follow the requirement that a party be permitted to proceed in forma pauperis and precede the requirement that the county pay for printing of the appellate briefs; therefore, the logical interpretation is that the expense of printing of appellate briefs is to be reimbursed to a party who is allowed to proceed in forma pauperis on appeal. *State v. Patterson*, 18 Neb. App. 255, 778 N.W.2d 756 (2010).

25-2401.

Minor or isolated inaccuracies, omissions, interruptions, or other defects in translation are inevitable and do not warrant relief where the translation is on the whole reasonably timely, complete, and accurate, and the defects do not render the proceeding fundamentally unfair. *Tapia-Reyes v. Excel Corp.*, 281 Neb. 15, 793 N.W.2d 319 (2011).

The requirement that an interpreter provide an accurate translation implicates a defendant’s due process right to a fair trial as guaranteed by the Fifth Amendment, the ultimate question being whether the translator’s performance has rendered the trial fundamentally unfair. *Tapia-Reyes v. Excel Corp.*, 281 Neb. 15, 793 N.W.2d 319 (2011).

25-2602.01.

Under the federal McCarran-Ferguson Act, state law regulating the business of insurance controls over federal law that does not specifically govern insurance. Subsection (f)(4) of this section regulates the insurer-insured contractual relationship and, thus, the business of insurance. It is therefore not preempted by the Federal Arbitration Act. *Kremer v. Rural Community Ins. Co.*, 280 Neb. 591, 788 N.W.2d 538 (2010).

Under the federal McCarran-Ferguson Act, subsection (f)(4) of this section is preempted by the Federal Crop Insurance Act and regulations thereunder that specifically relate to the business of insurance and require arbitration of disputes. *Kremer v. Rural Community Ins. Co.*, 280 Neb. 591, 788 N.W.2d 538 (2010).

With specified exceptions, agreements to arbitrate future controversies concerning an insurance policy are invalid under subsection (f)(4) of this section, unless federal law preempts this provision. *Kremer v. Rural Community Ins. Co.*, 280 Neb. 591, 788 N.W.2d 538 (2010).

25-2602.02.

When a contract containing an arbitration clause is governed by federal law, the failure to include the statutory language of this section does not make the arbitration clause unenforceable. *Aramark Uniform & Career Apparel v. Hunan, Inc.*, 276 Neb. 700, 757 N.W.2d 205 (2008).

When a contract which attempts to establish binding arbitration as the sole remedy fails to strictly comply with this section, the arbitration clause is voidable and unenforceable. *Kramer v. Eagle Eye Home Inspections*, 14 Neb. App. 691, 716 N.W.2d 749 (2006).

25-2603.

Although this section specifies that the question of whether an agreement to arbitrate exists should be “summarily” tried, this section does not preclude the right to a jury trial in every circumstance. *Omaha Cold Storage Terminals v. Patterson*, 15 Neb. App. 548, 733 N.W.2d 219 (2007).

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25-2606.

The lack of a formal notice of hearing in compliance with this section of the postponement of a hearing previously scheduled and correctly noticed did not invalidate an award where evidence supported the conclusion that the parties to the arbitration had actual notice of the postponed hearing in advance. *Damrow v. Murdoch*, 15 Neb. App. 920, 739 N.W.2d 229 (2007).

The trial court did not err in finding that lack of a formal notice under this section was an insufficient ground to vacate an arbitration award. *Damrow v. Murdoch*, 15 Neb. App. 920, 739 N.W.2d 229 (2007).

25-2609.

The appellant waived an objection under this section where there was nothing in the record to support a conclusion that he notified the arbitrators of his objection prior to the delivery of the award. *Damrow v. Murdoch*, 15 Neb. App. 920, 739 N.W.2d 229 (2007).

25-2612.

This section does not allow for the exercise of discretion by the court when a request of confirmation is made where there has been no application for vacation or modification. *Drummond v. State Farm Mut. Auto. Ins. Co.*, 280 Neb. 258, 785 N.W.2d 829 (2010).

The appellees filed a motion under this section seeking to confirm an arbitration award. *Damrow v. Murdoch*, 15 Neb. App. 920, 739 N.W.2d 229 (2007).

25-2613.

A court may refuse to enforce an arbitration award that is contrary to a public policy that is explicit, well defined, and dominant. Such a public policy must be ascertained by reference to laws and legal precedents, not from general considerations of supposed public interests; but the arbitration award need not itself violate positive law to be unenforceable as against public policy. *State v. Henderson*, 277 Neb. 240, 762 N.W.2d 1 (2009).

The trial court did not err in finding that lack of a formal notice under section 25-2606 was an insufficient ground to vacate an arbitration award. *Damrow v. Murdoch*, 15 Neb. App. 920, 739 N.W.2d 229 (2007).

25-2618.

Jurisdiction over confirmation of arbitration awards is conferred upon the district court, and the county court has no such jurisdiction. *MBNA America Bank v. Hansen*, 16 Neb. App. 536, 745 N.W.2d 609 (2008).

25-2620.

An order compelling arbitration or staying judicial proceedings pending arbitration is a final order under the second category of section 25-1902. It affects a substantial right in an independent special proceeding because it disposes of all the issues presented. *Kremer v. Rural Community Ins. Co.*, 280 Neb. 591, 788 N.W.2d 538 (2010).

The list of appealable arbitration orders under this section is not exclusive. *Kremer v. Rural Community Ins. Co.*, 280 Neb. 591, 788 N.W.2d 538 (2010).

In reviewing a trial court's decision to vacate, modify, or confirm an arbitration award under Nebraska's Uniform Arbitration Act, an appellate court is obligated to reach a conclusion independent of the trial court's ruling regarding questions of law; however, the trial court's factual findings will not be set aside on appeal unless clearly erroneous. *Aramark Uniform & Career Apparel v. Hunan, Inc.*, 276 Neb. 700, 757 N.W.2d 205 (2008).

25-2701.

As subsection (1) of this section makes clear, all provisions of the criminal and civil procedure code govern all actions in the county court. *State v. Lebeau*, 280 Neb. 238, 784 N.W.2d 921 (2010).

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This section applies to the prosecution of city ordinances. *State v. Lebeau*, 280 Neb. 238, 784 N.W.2d 921 (2010).

25-2729.

A journal entry signed by the judge and filed is all that subsection (3) of this section required for a final order filed in 1998; a file stamp was not required. *State v. Solomon*, 16 Neb. App. 368, 744 N.W.2d 475 (2008).

When a trial court order intended to finally dispose of a matter is announced but not rendered or entered pursuant to section 25-1301, but a party nonetheless files an otherwise timely notice of appeal, the appellate court has “potential jurisdiction” which “springs” into full jurisdiction when section 25-1301 is complied with. *Rosen Auto Leasing v. Jordan*, 15 Neb. App. 1, 720 N.W.2d 911 (2006).

25-2740.

Jurisdiction under section 24-312(3) is separate from the invocation of jurisdiction under this section. *Mahmood v. Mahmud*, 279 Neb. 390, 778 N.W.2d 426 (2010).

In the exercise of its jurisdiction over a custody modification proceeding, a county court sitting as a juvenile court cannot permanently modify child custody through the mere adoption of a case plan pursuant to section 43-285(2). In *re Interest of Ethan M.*, 18 Neb. App. 63, 774 N.W.2d 766 (2009).

This section, combined with sections 24-517 and 43-247, vests juvenile courts and county courts sitting as juvenile courts with jurisdiction over a custody modification proceeding if the court already has jurisdiction over the juvenile under a separate provision of section 43-247. In *re Interest of Ethan M.*, 18 Neb. App. 63, 774 N.W.2d 766 (2009).

27-101.

In proceedings where the Nebraska Evidence Rules apply, the admissibility of evidence is controlled by the Nebraska Evidence Rules; judicial discretion is involved only when the rules make discretion a factor in determining admissibility. *State v. Draganescu*, 276 Neb. 448, 755 N.W.2d 57 (2008).

When a state evidence rule is substantially similar to a corresponding federal rule of evidence, state courts may look to federal decisions interpreting the corresponding federal rule for guidance in construing the state rule. *State v. Draganescu*, 276 Neb. 448, 755 N.W.2d 57 (2008).

Where the Nebraska Evidence Rules commit the evidentiary question at issue to the discretion of the trial court, an appellate court reviews the admissibility of evidence for an abuse of discretion. *State v. Draganescu*, 276 Neb. 448, 755 N.W.2d 57 (2008).

27-103.

In order to predicate error upon a ruling of the court refusing to permit a witness to testify, or to answer a specific question, the record must show an offer to prove the facts sought to be elicited. *State v. Schreiner*, 276 Neb. 393, 754 N.W.2d 742 (2008); *Sturzenegger v. Father Flanagan’s Boys’ Home*, 276 Neb. 327, 754 N.W.2d 406 (2008).

Subsection (1)(b) of this section allows an appellate court to find error in an exclusionary ruling when the substance of the evidence was apparent from the context even without an offer of proof. *State v. Rodriguez*, 272 Neb. 930, 726 N.W.2d 157 (2006).

An exhibit offered at trial but not received by the trial court is required to be included in the record in order to allow an appellate court—where an alleged error in refusing to receive the exhibit is properly raised in an appeal—to effectively review the court’s decision. *Dinges v. Dinges*, 16 Neb. App. 275, 743 N.W.2d 662 (2008).

27-104.

Unlike its counterpart in the Federal Rules of Evidence, subsection (1) of this section requires a court to first determine whether evidence is admissible under the hearsay rules before considering whether it is properly authenticated. *State v. Draganescu*, 276 Neb. 448, 755 N.W.2d 57 (2008).

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27-201.

A court may judicially notice adjudicative facts, which are not subject to reasonable dispute, at any stage of the proceeding. *Pennfield Oil Co. v. Winstrom*, 276 Neb. 123, 752 N.W.2d 588 (2008).

An appellate court may take judicial notice of a document, including briefs filed in an appeal, in a separate but related action concerning the same subject matter in the same court. *Pennfield Oil Co. v. Winstrom*, 276 Neb. 123, 752 N.W.2d 588 (2008).

In interwoven and interdependent cases, an appellate court may examine its own records and take judicial notice of the proceedings and judgment in a former action involving one of the parties. *Pennfield Oil Co. v. Winstrom*, 276 Neb. 123, 752 N.W.2d 588 (2008).

27-303.

When a trial court instructs a jury on an inference regarding a specific fact or set of facts, the instruction must specifically include a statement explaining to the jury that it may regard the basic facts as sufficient evidence of the inferred fact, but that it is not required to do so; the instruction must also explain that the existence of the inferred facts must, on all the evidence, be proved beyond a reasonable doubt. *State v. Taylor*, 282 Neb. 297, 803 N.W.2d 746 (2011).

27-401.

The term “pertinent” as used within the context of section 27-404(1)(b) is synonymous with the term “relevant” as used in this section. *State v. Floyd*, 277 Neb. 502, 763 N.W.2d 91 (2009).

An airline ticket stub found in the defendant’s pocket, which showed that the defendant had a seat on a flight from Los Angeles, California, to Las Vegas, Nevada, and from which it could be inferred that he lied to a state trooper about driving straight back to Michigan from Washington, was probative of the defendant’s consciousness of guilt and, thus, relevant in the prosecution for possession of a controlled substance with intent to deliver. *State v. Draganescu*, 276 Neb. 448, 755 N.W.2d 57 (2008).

Evidence is “relevant” if it tends in any degree to alter the probability of a material fact. *State v. Draganescu*, 276 Neb. 448, 755 N.W.2d 57 (2008).

Evidence of a defendant’s consciousness of guilt is relevant as a circumstance supporting an inference that the defendant is guilty of the crime charged. When the evidence is sufficient to justify an inference that the defendant acted with consciousness of guilt, the fact finder can consider such evidence even if the conduct could be explained in another way. *State v. Draganescu*, 276 Neb. 448, 755 N.W.2d 57 (2008).

Relevancy of evidence requires only that the degree of probativeness be something more than nothing. *State v. Draganescu*, 276 Neb. 448, 755 N.W.2d 57 (2008).

The exercise of judicial discretion is implicit in determining the relevance of evidence, and a trial court’s decision regarding relevance will not be reversed absent an abuse of discretion. *State v. Draganescu*, 276 Neb. 448, 755 N.W.2d 57 (2008).

Unlike general denials of guilt, a defendant’s exculpatory statements of fact that are proved to be false at trial are probative of the defendant’s consciousness of guilt. *State v. Draganescu*, 276 Neb. 448, 755 N.W.2d 57 (2008).

In a malpractice action involving professional negligence, the burden of proof is upon the plaintiff to demonstrate the generally recognized medical standard of care, that there was a deviation from that standard by the defendant, and that the deviation was the proximate cause of the plaintiff’s alleged injuries. *Karel v. Nebraska Health Sys.*, 274 Neb. 175, 738 N.W.2d 831 (2007).

The exercise of judicial discretion is implicit in determinations of relevancy under this section and prejudice under section 27-403, and a trial court’s decision under these evidentiary rules will not be reversed absent an abuse of discretion. *State v. Schmidt*, 16 Neb. App. 741, 750 N.W.2d 390 (2008); *State v. Kuhl*, 16 Neb. App. 127, 741 N.W.2d 701 (2007).

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27-403.

The admission of photographs of a gruesome nature rests largely within the discretion of the trial court, which must determine their relevancy and weigh their probative value against their prejudicial effect. In a homicide prosecution, a court may receive photographs of a victim into evidence for the purpose of identification, to show the condition of the body or the nature and extent of wounds and injuries to it, and to establish malice or intent. *State v. Bauldwin*, 283 Neb. 678, 811 N.W.2d 267 (2012).

Most, if not all, evidence offered by a party is calculated to be prejudicial to the opposing party; only evidence tending to suggest a decision on an improper basis is unfairly prejudicial. *State v. Pullens*, 281 Neb. 828, 800 N.W.2d 202 (2011).

Under this section, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury. *State v. Sellers*, 279 Neb. 220, 777 N.W.2d 779 (2010).

The fact that evidence is prejudicial is not enough to require exclusion under this section, because most, if not all, of the evidence a party offers is calculated to be prejudicial to the opposing party; it is only the evidence which has a tendency to suggest a decision on an improper basis that is unfairly prejudicial under this section. *State v. Daly*, 278 Neb. 903, 775 N.W.2d 47 (2009).

Under this section, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, but only evidence tending to suggest a decision on an improper basis is unfairly prejudicial. *State v. Gutierrez*, 272 Neb. 995, 726 N.W.2d 542 (2007).

The fact that evidence is prejudicial is not enough to require exclusion under this section, because most, if not all, of the evidence a party offers is calculated to be prejudicial to the opposing party; it is only evidence which has a tendency to suggest a decision on an improper basis that is unfairly prejudicial under this section. *State v. Robinson*, 272 Neb. 582, 724 N.W.2d 35 (2006).

Generally, the State may choose its evidence: The prosecutor's choice will generally survive an analysis pursuant to this section when a defendant seeks to force the substitution of an admission for evidence creating a coherent narrative of his thoughts and actions in perpetrating the offense for which he is being tried. *State v. McDaniel*, 17 Neb. App. 725, 771 N.W.2d 173 (2009).

In an incest case, the court did not abuse its discretion in allowing evidence of sexual activity occurring between the defendant and his daughter before they moved to Nebraska and evidence that the defendant could not be excluded as the father of his daughter's child. *State v. Aguilar-Moreno*, 17 Neb. App. 623, 769 N.W.2d 784 (2009).

The exercise of judicial discretion is implicit in determinations of relevancy under section 27-401 and prejudice under this section, and a trial court's decision under these evidentiary rules will not be reversed absent an abuse of discretion. *State v. Schmidt*, 16 Neb. App. 741, 750 N.W.2d 390 (2008); *State v. Kuhl*, 16 Neb. App. 127, 741 N.W.2d 701 (2007).

27-404.

Under subsection (3) of this section, an appellate court will affirm a trial court's ruling that the defendant committed an uncharged extrinsic crime or bad act if, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found with a firm conviction the essential elements of the uncharged crime. *State v. Kofoed*, 283 Neb. 767, 817 N.W.2d 225 (2012).

Intrinsic evidence, or evidence necessary to tell a complete story of the crime, is admissible to provide the context in which the crime occurred. *State v. Nolan*, 283 Neb. 50, 807 N.W.2d 520 (2012).

Evidence of prior crimes was not so similar, unusual, or distinctive so as to support its independent relevance on the issue of identity and was inadmissible. *State v. Glazebrook*, 282 Neb. 412, 803 N.W.2d 767 (2011).

Pursuant to subsection (2) of this section, where there are an overwhelming number of significant similarities between the other crime and the charged offense or offenses, the evidence of the other crime may be admitted, and any dissimilarities merely go to the weight of the evidence. *State v. Pullens*, 281 Neb. 828, 800 N.W.2d 202 (2011).

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Pursuant to subsection (2) of this section, while remoteness in time may weaken the value of prior bad acts evidence, such remoteness does not, in and of itself, necessarily justify exclusion of that evidence. *State v. Pullens*, 281 Neb. 828, 800 N.W.2d 202 (2011).

Subsection (2) of this section prohibits the admissibility of relevant evidence for the purpose of proving the character of a person in order to show that he or she acted in conformity therewith; or, stated another way, the rule prohibits the admission of other bad acts evidence for the purpose of demonstrating a person's propensity to act in a certain manner. *State v. Ellis*, 281 Neb. 571, 799 N.W.2d 267 (2011).

Bad acts that form the factual setting of the crime in issue or that form an integral part of the crime charged are not subject to this section. *State v. Baker*, 280 Neb. 752, 789 N.W.2d 702 (2010).

Evidence can be properly admitted to explain the victim's failure to make a prompt complaint. *State v. Baker*, 280 Neb. 752, 789 N.W.2d 702 (2010).

The term "pertinent" as used within the context of subsection (1)(b) of this section is synonymous with the term "relevant" as used in section 27-401. *State v. Floyd*, 277 Neb. 502, 763 N.W.2d 91 (2009).

Evidence of a plaintiff's prior bad acts may be admitted, pursuant to subsection (2) of this section, where it rebuts the plaintiff's evidence of damages. *Sturzenegger v. Father Flanagan's Boys' Home*, 276 Neb. 327, 754 N.W.2d 406 (2008).

Evidence of prior bad acts which is relevant for any purpose other than to show the actor's propensity is admissible under subsection (2) of this section. Evidence that is offered for a proper purpose is often referred to as having "special" or "independent relevance," which means its relevance does not depend on its tendency to show propensity. *Sturzenegger v. Father Flanagan's Boys' Home*, 276 Neb. 327, 754 N.W.2d 406 (2008).

Whether subsection (2) of this section or section 27-608(2) applies to the admissibility of other-acts evidence depends on the purpose for which the proponent introduced the other-acts evidence. Subsection (2) of this section applies when extrinsic evidence is offered as relevant to a material issue in the case. Section 27-608(2) applies when extrinsic evidence is offered to impeach a witness, to show the character of the witness for untruthfulness – in other words, where the only theory of relevance is impeachment by prior misconduct. So, because section 27-608(2) affects only evidence of prior instances of conduct when properly relevant solely for the purpose of attacking or supporting a witness' credibility, it in no way affects the admission of evidence of such prior acts for other purposes under subsection (2) of this section. *Sturzenegger v. Father Flanagan's Boys' Home*, 276 Neb. 327, 754 N.W.2d 406 (2008).

In a prosecution for child abuse, evidence of previous abuse of a child is admissible to show absence of accident only if the state shows by a preponderance of the evidence that there is a connection between the defendant and the child's injuries. *State v. Kuehn*, 273 Neb. 219, 728 N.W.2d 589 (2007).

Bad acts that form the factual setting of the crime in issue or that form an integral part of the crime charged are not covered under subsection (2) of this section. *State v. Robinson*, 271 Neb. 698, 715 N.W.2d 531 (2006).

In a murder trial, evidence of the defendant's returning from a city and of a vehicle the defendant drove being burned in a field in that city was intrinsic to the crimes for which he was charged. Accordingly, the trial court did not err in admitting this evidence without first conducting a hearing pursuant to this section. *State v. Robinson*, 271 Neb. 698, 715 N.W.2d 531 (2006).

Where evidence of other crimes is so blended or connected with the ones on trial so that proof of one incidentally involves the others, or explains the circumstances, or tends logically to prove any element of the crime charged, it is admissible as an integral part of the immediate context of the crime charged. When the other crimes evidence is so integrated, it is not extrinsic and therefore not governed by this section. *State v. Robinson*, 271 Neb. 698, 715 N.W.2d 531 (2006).

An appellate court's analysis under subsection (2) of this section considers (1) whether the evidence was relevant for some purpose other than to prove the character of a person to show that he or she acted in conformity therewith, (2) whether the probative value of the evidence is substantially outweighed by its potential for unfair prejudice, and (3) whether the trial court, if requested, instructed the jury to consider the evidence only for the limited purpose for which it was admitted. *State v. Sutton*, 16 Neb. App. 185, 741 N.W.2d 713 (2007).

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Evidence of other bad acts falls into two categories under subsection (2) of this section, according to the basis of the relevance of the acts: (1) evidence which is relevant only to show propensity, which is not admissible, and (2) otherwise relevant (nonpropensity) evidence, which is admissible. *State v. Sutton*, 16 Neb. App. 185, 741 N.W.2d 713 (2007).

Evidence of other crimes which is relevant for any purpose other than to show the actor's propensity is admissible under subsection (2) of this section. *State v. Sutton*, 16 Neb. App. 185, 741 N.W.2d 713 (2007).

Subsection (2) of this section prohibits the admission of evidence of other bad acts for the purpose of demonstrating a person's propensity to act in a certain manner. *State v. Sutton*, 16 Neb. App. 185, 741 N.W.2d 713 (2007).

The admissibility of evidence under subsection (2) of this section must be determined upon the facts of each case and is within the discretion of the trial court. *State v. Sutton*, 16 Neb. App. 185, 741 N.W.2d 713 (2007).

27-406.

Evidence was insufficient to show a routine or habit within the meaning of this section, because a single incident did not establish a routine, and the relevance of the evidence depended on the claim that the actor engaged in a deliberate volitional act, not a habit. *State v. Edwards*, 278 Neb. 55, 767 N.W.2d 784 (2009).

Admissibility of habit evidence depends on the trial judge's evaluation of the particular facts and is thus reviewed for an abuse of discretion. *Borley Storage & Transfer Co. v. Whitted*, 271 Neb. 84, 710 N.W.2d 71 (2006).

27-410.

The fact of conviction resulting from a nolo contendere plea may be used in a subsequent proceeding. In re Interest of Verle O., 13 Neb. App. 256, 691 N.W.2d 177 (2005).

27-504.

Section 38-3131 does not nullify the rule set forth in subdivision (2)(a) of this section. In re Interest of Dennis W., 14 Neb. App. 827, 717 N.W.2d 488 (2006).

This section sets forth the physician-patient privilege that applies to individuals such as a licensed psychologist; such privilege is nullified in proceedings to hospitalize the patient for physical, mental, or emotional illness if the physician, in the course of diagnosis or treatment, has determined that the patient is in need of hospitalization. In re Interest of Dennis W., 14 Neb. App. 827, 717 N.W.2d 488 (2006).

27-606.

A juror's knowledge about the burden of proof is personal knowledge that is not directly related to the litigation at issue and is not extraneous information. *Malchow v. Doyle*, 275 Neb. 530, 748 N.W.2d 28 (2008).

When polling the jury, the trial court is not required to go beyond the procedure specified in section 25-1124 by inquiring into the basis for the jury's determination of the percentage of a party's negligence, because such inquiry would invade the province of the jury. *Anis v. BryanLGH Health System*, 14 Neb. App. 372, 707 N.W.2d 60 (2005).

27-607.

Under this section, the credibility of a witness may be attacked by any party, including the party calling the witness. A party may not, however, use the rule as an artifice for putting before the jury substantive evidence that is otherwise inadmissible. But evidence of a witness' bias, however, is substantive evidence that a party can present on direct or cross-examination. *State v. Iromuanya*, 282 Neb. 798, 806 N.W.2d 404 (2011).

27-608.

Subsection (2) of this section does not prohibit inquiry into specific instances of a witness' conduct; it only prohibits proof of that conduct by extrinsic evidence. *State v. Baker*, 280 Neb. 752, 789 N.W.2d 702 (2010).

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The application of subsection (2) of this section to exclude extrinsic evidence of a witness' conduct is limited to instances where the evidence is introduced to show a witness' general character for truthfulness. Evidence relevant to a material issue is not rendered inadmissible because it happens to include references to specific bad acts of a witness, and such evidence should be admitted where it is introduced to disprove a specific fact material to the case. Subsection (2) of this section does not bar evidence introduced to contradict – and which the jury might find to disprove – a witness' testimony as to a material issue of the case. *Sturzenegger v. Father Flanagan's Boys' Home*, 276 Neb. 327, 754 N.W.2d 406 (2008).

Whether section 27-404(2) or this section applies to the admissibility of other-acts evidence depends on the purpose for which the proponent introduced the other-acts evidence. Section 27-404(2) applies when extrinsic evidence is offered as relevant to a material issue in the case. This section applies when extrinsic evidence is offered to impeach a witness, to show the character of the witness for untruthfulness – in other words, where the only theory of relevance is impeachment by prior misconduct. So, because subsection (2) of this section affects only evidence of prior instances of conduct when properly relevant solely for the purpose of attacking or supporting a witness' credibility, it in no way affects the admission of evidence of such prior acts for other purposes under section 27-404(2). *Sturzenegger v. Father Flanagan's Boys' Home*, 276 Neb. 327, 754 N.W.2d 406 (2008).

27-609.

While this section clearly allows a witness' credibility to be attacked with previous convictions, this section does not include pending charges. *State v. White*, 15 Neb. App. 486, 732 N.W.2d 677 (2007).

27-611.

When the object of cross-examination is to collaterally ascertain the accuracy or credibility of the witness, some latitude should be permitted, and the scope of such latitude is ordinarily subject to the discretion of the trial judge. *State v. Kuehn*, 273 Neb. 219, 728 N.W.2d 589 (2007).

27-615.

The general rule is that witnesses shall be excluded from a proceeding at the request of a party; this rule has certain exceptions, including a person whose presence is shown by a party to be essential to the presentation of its cause. *In re Interest of Dennis W.*, 14 Neb. App. 827, 717 N.W.2d 488 (2006).

27-702.

Fundamentally, it is always the burden of the proponent of the evidence to establish the necessary foundation for its admission, including its scientific reliability under *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 113 S. Ct. 2786, 125 L. Ed. 2d 469 (1993), and *Schafersman v. Agland Coop*, 262 Neb. 215, 631 N.W.2d 862 (2001). *State v. Casillas*, 279 Neb. 820, 782 N.W.2d 882 (2010).

The horizontal gaze nystagmus test involves scientific knowledge and falls generally under the rules of *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 113 S. Ct. 2786, 125 L. Ed. 2d 469 (1993), and *Schafersman v. Agland Coop*, 262 Neb. 215, 631 N.W.2d 862 (2001). *State v. Casillas*, 279 Neb. 820, 782 N.W.2d 882 (2010).

To sufficiently call specialized knowledge into question under *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 113 S. Ct. 2786, 125 L. Ed. 2d 469 (1993), and *Schafersman v. Agland Coop*, 262 Neb. 215, 631 N.W.2d 862 (2001), is to object with enough specificity so that the court understands what is being challenged and can accordingly determine the necessity and extent of any pretrial proceeding. *State v. Casillas*, 279 Neb. 820, 782 N.W.2d 882 (2010).

A trial court should admit expert testimony if there are good grounds for the expert's conclusion notwithstanding the judge's belief that there are better grounds for some alternative conclusion. *King v. Burlington Northern Santa Fe Ry. Co.*, 277 Neb. 203, 762 N.W.2d 24 (2009).

Absent evidence that an expert's testimony grows out of the expert's own prelitigation research or that an expert's research has been subjected to peer review, experts must show that they reached their opinions by following an accepted scientific method or procedure as it is practiced by others in their field. *King v. Burlington Northern Santa Fe Ry. Co.*, 277 Neb. 203, 762 N.W.2d 24 (2009).

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An expert's opinion must be based on good grounds, not mere subjective belief or unsupported speculation. "Good grounds" mean an inference or assertion derived by scientific method and supported by appropriate validation. *King v. Burlington Northern Santa Fe Ry. Co.*, 277 Neb. 203, 762 N.W.2d 24 (2009).

Before admitting expert opinion testimony, a trial court must determine whether the expert's knowledge, skill, experience, training, and education qualify the witness as an expert. If the opinion involves scientific or specialized knowledge, trial courts must also determine whether the reasoning or methodology underlying the expert's opinion is scientifically valid. *King v. Burlington Northern Santa Fe Ry. Co.*, 277 Neb. 203, 762 N.W.2d 24 (2009).

If the data underlying an expert's opinion involving scientific or specialized knowledge are so lacking in probative force and reliability that no reasonable expert could base an opinion on them, an opinion which rests entirely upon them must be excluded. *King v. Burlington Northern Santa Fe Ry. Co.*, 277 Neb. 203, 762 N.W.2d 24 (2009).

In determining the admissibility of an expert's opinion, the court must focus on the validity of the underlying principles and methodology – not the conclusions that they generate. *King v. Burlington Northern Santa Fe Ry. Co.*, 277 Neb. 203, 762 N.W.2d 24 (2009).

The relevant factors for assessing the reliability or scientific validity of an expert's opinion are whether (1) the theory or technique can be, or has been, tested; (2) the theory or technique has been subjected to peer review and publication; (3) there is a known or potential rate of error; (4) there are standards controlling the technique's operation; and (5) the theory or technique enjoys general acceptance within the relevant scientific community. *King v. Burlington Northern Santa Fe Ry. Co.*, 277 Neb. 203, 762 N.W.2d 24 (2009).

Trial courts are not required to delve into every possible error in the data underlying an expert's opinion involving scientific or specialized knowledge unless it is raised by the party opposing the admission of the expert's opinion. *King v. Burlington Northern Santa Fe Ry. Co.*, 277 Neb. 203, 762 N.W.2d 24 (2009).

Under the framework set out in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 113 S. Ct. 2786, 125 L. Ed. 2d 469 (1993), and *Schafersman v. Agland Coop*, 262 Neb. 215, 631 N.W.2d 862 (2001), the proponent of expert testimony must establish by a preponderance of the evidence that (1) the reasoning or methodology underlying an expert's testimony is scientifically valid and (2) the reasoning or methodology can be properly applied to the facts. *King v. Burlington Northern Santa Fe Ry. Co.*, 277 Neb. 203, 762 N.W.2d 24 (2009).

The first portion of analysis under *Daubert v. Merrell Pharmaceuticals, Inc.*, 509 U.S. 579, 113 S. Ct. 2786, 125 L. Ed. 2d 469 (1993), and *Schafersman v. Agland Coop*, 262 Neb. 215, 631 N.W.2d 862 (2001), establishes the standard of reliability; the second portion assesses whether the scientific evidence will assist the trier of fact to understand the evidence or determine a fact in issue by providing a valid scientific connection to the pertinent inquiry as a precondition to admissibility. *McNeel v. Union Pacific RR. Co.*, 276 Neb. 143, 753 N.W.2d 321 (2008).

Under the analysis in *Daubert v. Merrell Pharmaceuticals, Inc.*, 509 U.S. 579, 113 S. Ct. 2786, 125 L. Ed. 2d 469 (1993), and *Schafersman v. Agland Coop*, 262 Neb. 215, 631 N.W.2d 862 (2001), expert testimony lacks "fit" when a large analytical leap must be made between the facts and the opinion. *McNeel v. Union Pacific RR. Co.*, 276 Neb. 143, 753 N.W.2d 321 (2008).

Expert witness' background and research provided sufficient foundation for her opinion despite her statement that her opinion was her "best guess." *Orchard Hill Neighborhood v. Orchard Hill Mercantile*, 274 Neb. 154, 738 N.W.2d 820 (2007).

Under this section, a witness can testify concerning scientific, technical, or other specialized knowledge only if the witness is qualified as an expert. *Jackson v. Brotherhood's Relief & Comp. Fund*, 273 Neb. 1013, 734 N.W.2d 739 (2007).

An expert's opinion is ordinarily admissible under this section if the witness (1) qualifies as an expert, (2) has an opinion that will assist the trier of fact, (3) states his or her opinion, and (4) is prepared to disclose the basis of that opinion on cross-examination. *State v. Gutierrez*, 272 Neb. 995, 726 N.W.2d 542 (2007); *State v. Robinson*, 272 Neb. 582, 724 N.W.2d 35 (2006).

ANNOTATIONS

A medical expert's testimony concerning causes of the plaintiff's multiple myeloma was properly excluded. *King v. Burlington Northern Santa Fe Ry. Co.*, 16 Neb. App. 544, 746 N.W.2d 383 (2008).

A trial court adequately demonstrates that it has performed its gatekeeping duty in determining the reliability of expert testimony when the record shows (1) the court's conclusion whether the expert's opinion is admissible and (2) the reasoning the court used to reach that conclusion, specifically noting the factors bearing on reliability that the court relied on in reaching its determination. *Kirkwood v. State*, 16 Neb. App. 459, 748 N.W.2d 83 (2008).

No analysis pursuant to *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 113 S. Ct. 2786, 125 L. Ed. 2d 469 (1993), is necessary where the party asserting error does not challenge the scientific validity and reliability of the guidelines set forth in the Manual on Uniform Traffic Control Devices. *Kirkwood v. State*, 16 Neb. App. 459, 748 N.W.2d 83 (2008).

The mental health board did not abuse its discretion in receiving the opinion of a licensed psychologist on the subject's mental health when the psychologist evaluated the subject, qualified as an expert, and had an opinion which would assist the board. In re *Interest of Michael U.*, 14 Neb. App. 918, 720 N.W.2d 403 (2006).

27-703.

When an assumption used by an expert is not proved untrue or to be without any basis in fact, whether the stated grounds for the assumption are credible is a jury question. *Gary's Implement v. Bridgeport Tractor Parts*, 281 Neb. 281, 799 N.W.2d 249 (2011).

27-801.

A statement offered to prove its impact on the listener, instead of its truth, is offered for a valid nonhearsay purpose if the listener's knowledge, belief, response, or state of mind after hearing the statement is relevant to an issue in the case. *State v. McCave*, 282 Neb. 500, 805 N.W.2d 290 (2011).

A verbal act is a statement that has legal significance, i.e., it brings about a legal consequence simply because it was spoken. A nonhearsay purpose for offering a statement exists when a statement has legal significance because it was spoken, independent of the truth of the matter asserted. *State v. McCave*, 282 Neb. 500, 805 N.W.2d 290 (2011).

Apart from statements falling under the definitional exclusions and statutory exceptions, the admissibility of an out-of-court statement depends upon whether the statement is offered for one or more recognized nonhearsay purposes relevant to an issue in the case. *State v. McCave*, 282 Neb. 500, 805 N.W.2d 290 (2011).

Under subsection (3) of this section, a witness' previous out-of-court statements are inadmissible hearsay if they are offered for the truth of the matter asserted and do not fall within a definitional exclusion under subsection (4)(a) or a statutory exception. *State v. McCave*, 282 Neb. 500, 805 N.W.2d 290 (2011).

When overruling a hearsay objection on the ground that testimony about an out-of-court statement is received not for its truth but only to prove that the statement was made, a trial court should identify the specific nonhearsay purpose for which the making of the statement is relevant and probative. *State v. Baker*, 280 Neb. 752, 789 N.W.2d 702 (2010).

Before the trier of facts may consider testimony under the coconspirator exception to the hearsay rule, a prima facie case establishing the existence of the conspiracy must be shown by independent evidence. *State v. Hudson*, 279 Neb. 6, 775 N.W.2d 429 (2009).

The coconspirator exception to the hearsay rule is applicable regardless of whether a conspiracy has been charged in the information or not. *State v. Hudson*, 279 Neb. 6, 775 N.W.2d 429 (2009).

The purpose of requiring independent evidence to establish a conspiracy is to prevent the danger of hearsay evidence being lifted by its own bootstraps, i.e., relying on the hearsay statements to establish the conspiracy, and then using the conspiracy to permit the introduction of what would otherwise be hearsay testimony in evidence. *State v. Hudson*, 279 Neb. 6, 775 N.W.2d 429 (2009).

To be admissible, the statements of the coconspirator must have been made while the conspiracy was pending and in furtherance of its objects. *State v. Hudson*, 279 Neb. 6, 775 N.W.2d 429 (2009).

ANNOTATIONS

A party on appeal may not assert a different ground for an objection to the admission of evidence than was offered to the trial court. But an appellate court can consider whether the record clearly shows an exhibit was admissible for the truth of the matter asserted under a different rule from the one erroneously applied by the trial court when both parties had a fair opportunity to develop the record on the underlying facts. *State v. Draganescu*, 276 Neb. 448, 755 N.W.2d 57 (2008).

A party's possession of a written statement can be an adoption of what its contents reveal under circumstances that tie the party to the document in a meaningful way. *State v. Draganescu*, 276 Neb. 448, 755 N.W.2d 57 (2008).

A written assertion offered to prove the truth of the matter asserted is a hearsay statement unless it falls within an exception or exclusion under the hearsay rules. *State v. Draganescu*, 276 Neb. 448, 755 N.W.2d 57 (2008).

A coconspirator's idle chatter or casual conversation about past events is generally not considered to be in furtherance of the conspiracy purposes of this section. *State v. Gutierrez*, 272 Neb. 995, 726 N.W.2d 542 (2007).

Statements made by a coconspirator in furtherance of avoiding capture or punishment are made in furtherance of the conspiracy within the meaning of this section. *State v. Gutierrez*, 272 Neb. 995, 726 N.W.2d 542 (2007).

Subsection (4)(b)(v) of this section governs only the admissibility of testimony about out-of-court statements made by a coconspirator – not the admissibility of all the other testimony offered by the same witness. It is irrelevant to the direct testimony of a coconspirator. There is no reason why a witness cannot testify to the existence of a conspiracy, and that the defendant was a participant, and then testify to out-of-court statements made by the alleged coconspirators. *State v. Gutierrez*, 272 Neb. 995, 726 N.W.2d 542 (2007).

The "in furtherance" language of this section is to be construed broadly. *State v. Gutierrez*, 272 Neb. 995, 726 N.W.2d 542 (2007).

To be admissible, the statements of a coconspirator must have been made while the conspiracy was pending and in furtherance of its objects. If the statements took place after the conspiracy had ended, or if merely narrative of past events, they are not admissible. In other words, for an out-of-court statement to be admissible under subsection (4)(b)(v) of this section, there must be evidence that there was a conspiracy involving the declarant and the nonoffering party and that the statement was made during the course and in furtherance of the conspiracy. *State v. Gutierrez*, 272 Neb. 995, 726 N.W.2d 542 (2007).

Out-of-court statements of two unavailable witnesses who said they were at a restaurant at the time of the murder were offered for the purpose of proving that such statements were false, and thus, the trial court erred in excluding them as hearsay. *State v. Robinson*, 271 Neb. 698, 715 N.W.2d 531 (2006).

27-802.

The language of section 25-1273.01, in combination with this section, indicates a clear intention by the Legislature to create an independent avenue to admit deposition testimony. *Walton v. Patil*, 279 Neb. 974, 783 N.W.2d 438 (2010).

A trial judge does not have discretion to admit inadmissible hearsay statements. *State v. Draganescu*, 276 Neb. 448, 755 N.W.2d 57 (2008).

Apart from rulings under the residual hearsay exception, an appellate court reviews for clear error the factual findings underpinning a trial court's hearsay ruling and reviews de novo the court's ultimate determination to admit evidence over a hearsay objection. *State v. Draganescu*, 276 Neb. 448, 755 N.W.2d 57 (2008).

27-803.

A statement is admissible under the medical purpose hearsay exception if gathered for dual medical and investigatory purposes, so long as the proponent demonstrates that (1) the declarant's purpose in making the statements was to assist in the provision of medical diagnosis or treatment and (2) the statements were of a nature reasonably pertinent to medical diagnosis or treatment by a medical professional. *State v. Vigil*, 283 Neb. 129, 810 N.W.2d 687 (2012).

A statement made by a child victim of sexual abuse to a forensic interviewer in a medical setting may be admissible under subsection (3) of this section, even though the interview has the partial purpose of assisting law enforcement's investigation of the crimes. *State v. Vigil*, 283 Neb. 129, 810 N.W.2d 687 (2012).

ANNOTATIONS

Where an individual is alleged to be the victim of sexual assault, statements reasonably pertinent to medical diagnosis and treatment of both physical and psychological trauma are admissible under subsection (3) of this section. *State v. Vigil*, 283 Neb. 129, 810 N.W.2d 687 (2012).

Whether a statement was both taken and given in contemplation of medical diagnosis or treatment is a factual finding made by the trial court in determining the admissibility of the evidence under subsection (3) of this section, and an appellate court reviews that determination for clear error. *State v. Vigil*, 283 Neb. 129, 810 N.W.2d 687 (2012).

For purposes of the excited utterance exception to the hearsay rule found in subsection (1) of this section, in making a preliminary determination that a shocking or startling event has taken place, a trial judge may consider hearsay evidence which itself fails to satisfy any exception. *State v. Pullens*, 281 Neb. 828, 800 N.W.2d 202 (2011).

Computerized printouts that are merely the visual counterparts to routine electronic business records are usually hearsay, but they can be admissible under the business records exception. *State v. Draganescu*, 276 Neb. 448, 755 N.W.2d 57 (2008).

Under subsection (17) of this section, certain published treatises, periodicals, or pamphlets may be admissible, but the foundational requirements must still be met. *Jackson v. Brotherhood's Relief & Comp. Fund*, 273 Neb. 1013, 734 N.W.2d 739 (2007).

The party seeking to admit a business record under the business records exception to the hearsay rule bears the burden of establishing foundation under a three-part test. First, the proponent must establish that the activity recorded is of a type that regularly occurs in the course of the business' day-to-day activities. Second, the proponent must establish that the record was made as part of a regular business practice at or near the time of the event recorded. Third, the proponent must authenticate the record by a custodian or other qualified witness. *State v. Robinson*, 272 Neb. 582, 724 N.W.2d 35 (2006).

The reason for excluding business records from the hearsay rule is their circumstantial guarantees of trustworthiness. The business records exception contemplates that certain events are regularly recorded as routine reflections of the day-to-day operations of a business so that the character of the records and their earmarks of reliability import trustworthiness. Thus, the recordation becomes a reliable recitation of the fact. *State v. Robinson*, 272 Neb. 582, 724 N.W.2d 35 (2006).

When computer-stored records satisfy the business records exception to the hearsay rule, preparing printouts for evidentiary purposes does not deprive the printouts of their character as business records. *State v. Robinson*, 272 Neb. 582, 724 N.W.2d 35 (2006).

27-804.

Statements made during plea negotiations are not against penal interest when the defendant is told the statements will not be used against him or her in any form. *State v. McGee*, 282 Neb. 387, 803 N.W.2d 497 (2011).

Neb. Ct. R. Disc. section 6-332 creates an exception to the hearsay rule as it applies to depositions, and a deposition need no longer satisfy the requirements of subdivision (2)(a) of this section to be admissible under the rules of discovery. *Walton v. Patil*, 279 Neb. 974, 783 N.W.2d 438 (2010).

An adverse party's knowledge of a statement is not enough to satisfy the notice requirement of subsection (2)(e) of this section. The proponent of the evidence must provide notice before trial to the adverse party of his or her intentions to use the statement to take advantage of the residual hearsay exception under subsection (2)(e) of this section. *State v. Draganescu*, 276 Neb. 448, 755 N.W.2d 57 (2008).

Hearsay rulings under the residual hearsay exception are reviewed on appeal for an abuse of discretion. *State v. Draganescu*, 276 Neb. 448, 755 N.W.2d 57 (2008).

The burden to establish a declarant's unavailability is on the party seeking to introduce the declarant's deposition testimony under the hearsay exception for deposition testimony of an unavailable witness. *Worth v. Kolbeck*, 273 Neb. 163, 728 N.W.2d 282 (2007).

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The determination whether a witness is unavailable to appear at trial and give testimony, for purposes of the hearsay exception for deposition testimony of an unavailable witness, is within the discretion of the trial court. *Worth v. Kolbeck*, 273 Neb. 163, 728 N.W.2d 282 (2007).

Where the appellant submitted an insufficient record for the appellate court to review the trial court's alleged error in admitting deposition testimony under the unavailable witness exception, the trial court's ruling was affirmed because the appellate court had no way of knowing whether an expert's deposition testimony was cumulative or whether other evidence sustained the judgment. *Worth v. Kolbeck*, 273 Neb. 163, 728 N.W.2d 282 (2007).

In determining admissibility under subsection (2)(e) of this section, a court must examine the circumstances surrounding the declaration in issue and may consider a variety of factors affecting trustworthiness of a statement. *State v. Robinson*, 271 Neb. 698, 715 N.W.2d 531 (2006).

In determining whether a statement is admissible under subsection (2)(e) of this section, the residual exception to the hearsay rule, a court considers five factors: a statement's trustworthiness, materiality of the statement, probative importance of the statement, interests of justice, and whether notice of the statement's prospective use as evidence was given to an opponent. *State v. Robinson*, 271 Neb. 698, 715 N.W.2d 531 (2006).

It is not enough that the adverse party is aware of the unavailable declarant's statement; the proponent of the evidence must provide notice to the adverse party of his or her intentions to use the statement in order to take advantage of the hearsay exception in subsection (2)(e) of this section. *State v. Robinson*, 271 Neb. 698, 715 N.W.2d 531 (2006).

The trial court did not abuse its discretion in concluding that out-of-court statements were not sufficiently trustworthy to fall within the residual exception to the hearsay rule where the declarant was in police custody when the statements were made. *State v. Robinson*, 271 Neb. 698, 715 N.W.2d 531 (2006).

Pursuant to subsection (2) of this section, an alleged verbal cancellation or discharge of a promissory note cannot be said to be against a decedent's pecuniary interest, because there was no evidence of discharge by one of the physical acts, as detailed in Uniform Commercial Code section 3-604(a)(i), nor was there a signed writing, as detailed in section 3-604(a)(ii), offered or received into evidence which purported to discharge the debt owed to the decedent. *Haynes v. Dover*, 17 Neb. App. 640, 768 N.W.2d 140 (2009).

27-806.

Under this section, if a hearsay statement is admitted in evidence, a party may discredit the out-of-court declarant by utilizing recognized methods of impeachment. *State v. Morrow*, 273 Neb. 592, 731 N.W.2d 558 (2007).

Under this section, the declarant of a hearsay statement may be impeached by the introduction of a prior or subsequent statement made by the declarant that is inconsistent with the hearsay statement already admitted at trial. *State v. Morrow*, 273 Neb. 592, 731 N.W.2d 558 (2007).

27-901.

This section does not impose a particularly high hurdle. If foundation is laid for the business records exception, then the authentication requirements of this section are also met. *State v. Nolan*, 283 Neb. 50, 807 N.W.2d 520 (2012).

A proponent of evidence is not required to conclusively prove the genuineness of the evidence or to rule out all possibilities inconsistent with authenticity; if the proponent's showing is sufficient to support a finding that the evidence is what it purports to be, the proponent has satisfied the requirement of the authentication rule. *State v. Taylor*, 282 Neb. 297, 803 N.W.2d 746 (2011).

Pursuant to subsection (1) of this section, the possibility of an alteration or misuse by another of an e-mail address generally goes to weight, not admissibility. *State v. Pullens*, 281 Neb. 828, 800 N.W.2d 202 (2011).

A court must determine whether there is sufficient foundation evidence for the admission of physical evidence on a case-by-case basis. *State v. Draganescu*, 276 Neb. 448, 755 N.W.2d 57 (2008).

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A proponent may authenticate a document under subsection (2)(a) of this section by the testimony of someone with personal knowledge that it is what it is claimed to be, such as a person familiar with its contents. *State v. Draganescu*, 276 Neb. 448, 755 N.W.2d 57 (2008).

Because authentication rulings are necessarily fact specific, a trial court has discretion to determine whether evidence has been properly authenticated. We review a trial court's ruling on authentication for abuse of discretion. *State v. Draganescu*, 276 Neb. 448, 755 N.W.2d 57 (2008).

This section does not impose a high hurdle for authentication or identification. A proponent of evidence is not required to conclusively prove the genuineness of the evidence or to rule out all possibilities inconsistent with authenticity. If the proponent's showing is sufficient to support a finding that the evidence is what it purports to be, the proponent has satisfied the requirement of subsection (1) of this section. *State v. Draganescu*, 276 Neb. 448, 755 N.W.2d 57 (2008).

Under subsection (2)(d) of this section, a proponent may authenticate a document by circumstantial evidence, or its "[a]pppearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances." *State v. Draganescu*, 276 Neb. 448, 755 N.W.2d 57 (2008).

Unlike its counterpart in the Federal Rules of Evidence, section 27-104 requires a court to first determine whether evidence is admissible under the hearsay rules before considering whether it is properly authenticated. *State v. Draganescu*, 276 Neb. 448, 755 N.W.2d 57 (2008).

A document is properly authenticated by evidence sufficient to support a finding that the matter in question is what its proponent claims. *State v. Jacobson*, 273 Neb. 289, 728 N.W.2d 613 (2007).

A document may be authenticated under subsection (2)(a) of this section by testimony by one with personal knowledge that it is what it is claimed to be, such as a person familiar with its contents. *State v. Jacobson*, 273 Neb. 289, 728 N.W.2d 613 (2007).

A showing of specific authorship is not always necessary to authenticate a document. *State v. Jacobson*, 273 Neb. 289, 728 N.W.2d 613 (2007).

Proper authentication may be attained by evidence of appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances, sufficient to support a finding that the matter in question is what it is claimed to be. *State v. Jacobson*, 273 Neb. 289, 728 N.W.2d 613 (2007).

The authentication requirement does not demand that the proponent of a piece of evidence conclusively demonstrate the genuineness of his or her article, but only that he or she make a showing sufficient to support a finding that the matter in question is what its proponent claims. *State v. Jacobson*, 273 Neb. 289, 728 N.W.2d 613 (2007).

27-902.

Under subsection (7) of this section, distinctive labels and brands are prima facie evidence of ownership or origin. *State v. Draganescu*, 276 Neb. 448, 755 N.W.2d 57 (2008).

Under subsection (4) of this section, an out-of-state record of trial proceedings is self-authenticating if the document is authorized by law to be filed in court and its accuracy has been certified by court reporting personnel in compliance with a rule of the state's highest court which is harmonious with the Nebraska Supreme Court's corresponding rule of practice and procedure. *State v. King*, 272 Neb. 638, 724 N.W.2d 80 (2006).

27-1002.

This section is a rule of preference for the production of the original of a writing, recording, or photograph when the contents of the item are sought to be proved. *Richter v. City of Omaha*, 273 Neb. 281, 729 N.W.2d 67 (2007).

27-1101.

Preliminary examinations or hearings in criminal cases are exempt from application of the evidence rules under subsection (4)(b) of this section. *State v. Peterson*, 280 Neb. 641, 788 N.W.2d 560 (2010).

ANNOTATIONS

28-105.

A defendant found guilty of a Class III felony does not have an equal protection right to a Specialized Substance Abuse Supervision evaluation when such defendant fails to show that he was similarly situated to felony drug offenders who were eligible for the program. *State v. Borges*, 18 Neb. App. 322, 791 N.W.2d 336 (2010).

The geographic limitations on the Specialized Substance Abuse Supervision program do not violate the Equal Protection Clause because the program is rationally related to the State's interests. *State v. Borges*, 18 Neb. App. 322, 791 N.W.2d 336 (2010).

28-105.01.

This section is based on the determination that mentally retarded persons who meet the law's requirements for criminal responsibility should be tried and punished when they commit crimes, but because of their disabilities in areas of reasoning, judgment, and control of their impulses, they do not act with the level of moral culpability that characterizes the most serious adult criminal conduct. This section prohibits the execution of mentally retarded persons because of a widespread judgment about the relative culpability of mentally retarded offenders, and the relationship between mental retardation and the penological purposes served by the death penalty. *State v. Vela*, 272 Neb. 287, 721 N.W.2d 631 (2006).

28-109.

The trial court did not err in declining to use the defendant's proposed jury instruction defining "recklessly" which mirrored the language of subsection (19) of this section where trial court gave pattern jury instruction definition of "reckless." *State v. Walls*, 17 Neb. App. 90, 756 N.W.2d 542 (2008).

28-206.

Aiding and abetting is not a separate crime in Nebraska. Rather, it is another theory for holding one liable for the underlying crime. *State v. Dixon*, 282 Neb. 274, 802 N.W.2d 866 (2011).

An aider and abettor is accountable for that which is proximately caused by the principal's conduct regardless of whether the crime would have occurred without the aider and abettor's participation. *State v. Barfield*, 272 Neb. 502, 723 N.W.2d 303 (2006).

28-303.

Deliberate means not suddenly, not rashly, and requires that the defendant considered the probable consequences of his or her act before doing the act. *State v. Robinson*, 272 Neb. 582, 724 N.W.2d 35 (2006).

No particular length of time for premeditation is required, provided that the intent to kill is formed before the act is committed and not simultaneously with the act that caused the death. The time required to establish premeditation may be of the shortest possible duration and may be so short that it is instantaneous, and the design or purpose to kill may be formed upon premeditation and deliberation at any moment before the homicide is committed. *State v. Robinson*, 272 Neb. 582, 724 N.W.2d 35 (2006).

The term "premeditated" means to have formed a design to commit an act before it is done. One kills with premeditated malice if, before the act causing the death occurs, one has formed the intent or determined to kill the victim without legal justification. *State v. Robinson*, 272 Neb. 582, 724 N.W.2d 35 (2006).

28-304.

A sentence of life imprisonment on a second degree murder conviction and 10 years' imprisonment for a conviction of use of a weapon to commit a felony, with the sentences to run consecutively, were not excessive. *State v. Davis*, 276 Neb. 755, 757 N.W.2d 367 (2008).

Evidence was held to be sufficient to support a conviction for murder in the second degree when an unprovoked defendant shot the victim in the back of the head as the victim was leaving the confrontation. *State v. Davis*, 276 Neb. 755, 757 N.W.2d 367 (2008).

ANNOTATIONS

Malice is not a necessary element of second degree murder; however, a finding of malice is not necessarily prejudicial to the defendant because it places a greater burden on the State regarding intent. *State v. Davis*, 276 Neb. 755, 757 N.W.2d 367 (2008).

The trial court did not abuse its discretion in sentencing the defendant to two consecutive life sentences on two counts of second degree murder, which sentences were within the statutory limits, when the record showed that despite being 17 years old at the time of the murders, the defendant admitted to shooting one victim in the head while he was struggling with her codefendant over a shotgun and was callous about her role 5 days after the murders. *State v. Reid*, 274 Neb. 780, 743 N.W.2d 370 (2008).

Multiple convictions for second degree murder and child abuse resulting in death do not violate the Double Jeopardy Clauses of the state or federal Constitution. *State v. Molina*, 271 Neb. 488, 713 N.W.2d 412 (2006).

28-305.

An intentional killing committed without malice upon a “sudden quarrel,” as that term is defined by our jurisprudence, constitutes the offense of manslaughter. *State v. Smith*, 282 Neb. 720, 806 N.W.2d 383 (2011).

28-306.

Misdemeanor motor vehicle homicide is a public welfare offense which does not require proof of mens rea. *State v. Perina*, 282 Neb. 463, 804 N.W.2d 164 (2011).

A conviction for motor vehicle homicide by reckless/willful reckless driving does not give the sentencing court any authority to order a driver’s license revocation. *State v. Andersen*, 16 Neb. App. 651, 748 N.W.2d 124 (2008).

28-310.

Third degree assault is a lesser-included offense of assault by a confined person, because the elements of the two offenses are identical, except that the greater offense, assault by a confined person, requires the assault to be committed by someone who is legally confined. *State v. McKay*, 15 Neb. App. 169, 723 N.W.2d 644 (2006).

This section creates one offense of third degree assault, punishable by two different ranges of penalties depending on whether the assault was committed in a fight or scuffle entered into by mutual consent. Whether a fight or scuffle entered into by mutual consent occurred is not an element of the offense of third degree assault. Rather, it is a mitigating factor, the existence of which determines which of the two penalties is to be imposed—whether the defendant will receive a lesser penalty instead of the ordinary penalty. Whether a fight or scuffle was entered into by mutual consent is not a factual issue that must be submitted to a jury. *State v. Stahla*, 13 Neb. App. 79, 688 N.W.2d 641 (2004).

28-311.01.

The words “terror” and “terrorize,” as used in this section, are not unconstitutionally vague. *State v. Nelson*, 274 Neb. 304, 739 N.W.2d 199 (2007).

A defendant does not have to actually commit a crime of violence, because it is the threat of violence which is at the heart of the crime of terroristic threats. *State v. Tucker*, 17 Neb. App. 487, 764 N.W.2d 137 (2009).

For purposes of the offense of terroristic threats, a threat may be written, oral, physical, or any combination thereof. *State v. Tucker*, 17 Neb. App. 487, 764 N.W.2d 137 (2009).

28-311.02.

Given the language of Nebraska’s stalking statutes and the purpose announced by the Legislature for enacting the statutes, an objective construction of the statute is appropriate, and the victim’s experience resulting from the perpetrator’s conduct should be assessed on an objective basis. *In re Interest of Jeffrey K.*, 273 Neb. 239, 728 N.W.2d 606 (2007).

Nebraska’s stalking statutes focus both on the behavior of the perpetrator and on the experience of the victim. *In re Interest of Jeffrey K.*, 273 Neb. 239, 728 N.W.2d 606 (2007).

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28-311.03.

Nebraska's stalking statutes focus both on the behavior of the perpetrator and on the experience of the victim. In re Interest of Jeffrey K., 273 Neb. 239, 728 N.W.2d 606 (2007).

28-311.09.

Pursuant to subsection (8) of this section, personal service is an element of the misdemeanor crime of violating a harassment protection order. State v. Graff, 282 Neb. 746, 810 N.W.2d 140 (2011).

A proper form under this section is not a prerequisite for subject matter jurisdiction, and this section does not change the rules of notice pleading generally applicable to civil actions. Mahmood v. Mahmud, 279 Neb. 390, 778 N.W.2d 426 (2010).

28-318.

In the context of a conviction for third degree sexual assault under section 28-320, evidence of physical contact between the defendant's penis and the victim's shin was sufficient to support a finding of "sexual contact" as defined in subdivision (5) of this section. State v. Fuller, 279 Neb. 568, 779 N.W.2d 112 (2010).

The slightest intrusion into the genital opening is sufficient to constitute penetration, and such element may be proved by either direct or circumstantial evidence. State v. Archie, 273 Neb. 612, 733 N.W.2d 513 (2007).

In proving sexual contact, as defined in subdivision (5) of this section, the State need not prove sexual arousal or gratification, but only circumstances and conduct which could be construed as being for such purpose. In re Interest of Kyle O., 14 Neb. App. 61, 703 N.W.2d 909 (2005).

Nebraska does not criminalize sexual contact for the purpose of humiliating or degrading a person. In re Interest of Kyle O., 14 Neb. App. 61, 703 N.W.2d 909 (2005).

The issue of intent of sexual gratification in minors must be determined on a case-by-case basis, and the fact finder must consider all the evidence, including the offender's age and maturity, before deciding whether intent can be inferred. In re Interest of Kyle O., 14 Neb. App. 61, 703 N.W.2d 909 (2005).

Without some evidence of the child's maturity, intent, experience, or other factor indicating his or her purpose in acting, sexual ambitions must not be assigned to a child's actions. In re Interest of Kyle O., 14 Neb. App. 61, 703 N.W.2d 909 (2005).

28-319.

First degree sexual assault under subsection (1)(a) of this section is a general intent crime. State v. Sutton, 16 Neb. App. 287, 741 N.W.2d 713 (2008).

28-320.

In the context of a conviction for third degree sexual assault under this section, evidence of physical contact between the defendant's penis and the victim's shin was sufficient to support a finding of "sexual contact" as defined in section 28-318(5). State v. Fuller, 279 Neb. 568, 779 N.W.2d 112 (2010).

28-320.02.

This section does not implicate speech regarding otherwise legal activity; it targets only speech used for the purpose of enticing a child to engage in illegal sexual conduct, and such speech is not protected by the First Amendment. State v. Rung, 278 Neb. 855, 774 N.W.2d 621 (2009).

Under the former law, a person was guilty of a Class IIIA felony where a person knowingly solicits, coaxes, entices, or lures (1) a child 16 years of age or younger or (2) a peace officer who is believed by such person to be a child 16 years of age or younger, by means of a computer as that term is defined in section 28-1343, to engage in a sexual act. State v. Atchison, 15 Neb. App. 422, 730 N.W.2d 115 (2007).

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28-321.

Subsection (2)(a) of this section permits evidence of prior sexual behavior with persons other than the defendant only when offered by the defendant “upon the issue whether the defendant was or was not, with respect to the victim, the source of any physical evidence, including but not limited to, semen, injury, blood, saliva, and hair.” *State v. Ford*, 279 Neb. 453, 778 N.W.2d 473 (2009).

28-323.

Pursuant to this section, the defendant and the victim were in a dating relationship and the victim was the defendant’s “intimate partner,” where their relationship began as casual or social, but progressed into a more serious relationship, their families considered them to be dating and each other’s girlfriend or boyfriend, and the altercation was precipitated by the victim’s concerns that the defendant was cheating on her by dating other girls. *State v. Gay*, 18 Neb. App. 163, 778 N.W.2d 494 (2009).

28-324.

Whether a person intends to destroy, abandon, or gift property to another, there is an “intent to steal” under this section if such property was taken with the intention of permanently depriving the owner of it. *State v. Barfield*, 272 Neb. 502, 723 N.W.2d 303 (2006).

28-349.

A public policy exception to the employment-at-will doctrine applies to allow a cause of action for retaliatory discharge when an employee is fired for making a report of abuse as mandated by the Adult Protective Services Act. *Wendeln v. Beatrice Manor*, 271 Neb. 373, 712 N.W.2d 226 (2006).

28-372.

In order for a retaliatory discharge action to lie against an employer for discharging an employee in retaliation for the mandatory filing of a report of patient abuse pursuant to this section, such report must be based upon reasonable cause. *Wendeln v. Beatrice Manor*, 271 Neb. 373, 712 N.W.2d 226 (2006).

28-401.

The “personal use exception” in subsection (14) of this section applies to only “preparation” and “compounding” of a controlled substance, but does not apply to the “production” of a controlled substance. *State v. Bossow*, 274 Neb. 836, 744 N.W.2d 43 (2008).

28-416.

Subsection (5)(a) of this section requires the State to prove that the defendant is someone (1) who is 18 years of age or older and (2) who knowingly and intentionally (a) used a person under 18 years of age in one of the ways listed (b) to perform one of the listed acts related to drug distribution. *State v. Reinhart*, 283 Neb. 710, 811 N.W.2d 258 (2012).

A juror may reasonably infer that a driver with a possessory interest in a vehicle who is transporting a large quantity of illegal drugs would not invite someone into his or her vehicle who had no knowledge of the driver’s drug activities. *State v. Draganescu*, 276 Neb. 448, 755 N.W.2d 57 (2008).

A passenger’s mere presence in a vehicle with contraband is insufficient to support a finding of joint possession. *State v. Draganescu*, 276 Neb. 448, 755 N.W.2d 57 (2008).

Circumstantial evidence may support a finding that a defendant intended to distribute, deliver, or dispense a controlled substance. *State v. Draganescu*, 276 Neb. 448, 755 N.W.2d 57 (2008).

Circumstantial evidence to establish possession of a controlled substance with intent to distribute or deliver may consist of several factors: the quantity of the substance, the equipment and supplies found with it, the place it was found, the manner of packaging, and the testimony of witnesses experienced and knowledgeable in the field. *State v. Draganescu*, 276 Neb. 448, 755 N.W.2d 57 (2008).

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Constructive possession of an illegal substance may be proved by direct or circumstantial evidence. *State v. Draganescu*, 276 Neb. 448, 755 N.W.2d 57 (2008).

Evidence of the quantity of a controlled substance possessed combined with expert testimony that such quantity indicates an intent to deliver can be sufficient for a jury to infer an intent to deliver. *State v. Draganescu*, 276 Neb. 448, 755 N.W.2d 57 (2008).

Generally, a passenger's joint possession of a controlled substance found in a vehicle can be established by evidence that (1) supports an inference that the driver was involved in drug trafficking, as distinguished from possessing illegal drugs for personal use; (2) shows the passenger acted suspiciously during a traffic stop; and (3) shows the passenger was not a casual occupant but someone who had been traveling a considerable distance with the driver. *State v. Draganescu*, 276 Neb. 448, 755 N.W.2d 57 (2008).

Possession of a controlled substance is a lesser-included offense of distribution of the controlled substance. *State v. Draganescu*, 276 Neb. 448, 755 N.W.2d 57 (2008).

Possession of an illegal substance can be inferred from a vehicle passenger's proximity to the substance or other circumstantial evidence that affirmatively links the passenger to the substance. *State v. Draganescu*, 276 Neb. 448, 755 N.W.2d 57 (2008).

When a defendant did not dispute the State's evidence on the separate element of intent to deliver, he was not entitled to an instruction on the lesser-included offense of simple possession. *State v. Draganescu*, 276 Neb. 448, 755 N.W.2d 57 (2008).

28-431.

Subsection (4) of this section sets forth two avenues by which a purported owner or claimant may prevent forfeiture and recover his or her property. First, the forfeiture statute allows the owner of record of such property, at any time after seizure and prior to court disposition, to petition the district court of the county in which seizure was made to release such property. Second, subsection (4) provides that any person having an interest in the property proceeded against or any person against whom civil or criminal liability would exist if such property is in violation of the Uniform Controlled Substances Act may, within 30 days after seizure, appear and file an answer or demurrer to the petition. *Obad v. State*, 277 Neb. 866, 766 N.W.2d 89 (2009).

The alleged owner of cash cannot be an owner of record under subsection (4) of this section. *Obad v. State*, 277 Neb. 866, 766 N.W.2d 89 (2009).

28-507.

Unless the State limits its burglary prosecution to establishing that the defendant intended to steal property, the State must specify which felony or felonies it believes the defendant intended to commit after the breaking and entering. *State v. Nero*, 281 Neb. 680, 798 N.W.2d 597 (2011).

28-510.

Read in conjunction with this section, theft by unlawful taking under section 28-511 is the same offense as theft by receiving stolen property under section 28-517. *State v. Miner*, 273 Neb. 837, 733 N.W.2d 891 (2007).

28-511.

Read in conjunction with section 28-510, theft by unlawful taking under this section is the same offense as theft by receiving stolen property under section 28-517. *State v. Miner*, 273 Neb. 837, 733 N.W.2d 891 (2007).

The Nebraska Legislature has unambiguously defined theft as a single offense which can be committed in several different ways. *State v. Miner*, 273 Neb. 837, 733 N.W.2d 891 (2007).

28-517.

In a prosecution for receiving stolen property, the court must instruct the jury on the subjective standard of "knowing . . . or believing" as it is used in this section. *State v. Almasaudi*, 282 Neb. 162, 802 N.W.2d 110 (2011).

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This section imposes a subjective standard of knowledge or belief. *State v. Almasaudi*, 282 Neb. 162, 802 N.W.2d 110 (2011).

Read in conjunction with section 28-510, theft by receiving stolen property under this section is the same offense as theft by unlawful taking under section 28-511. *State v. Miner*, 273 Neb. 837, 733 N.W.2d 891 (2007).

The Nebraska Legislature has unambiguously defined theft as a single offense which can be committed in several different ways. *State v. Miner*, 273 Neb. 837, 733 N.W.2d 891 (2007).

28-518.

Subsection (8) of this section requires only that some value be proved as an element of a theft offense, not that a particular threshold value be proved as an element of the offense. *State v. Almasaudi*, 282 Neb. 162, 802 N.W.2d 110 (2011).

Subsection (7) of this section permits the value of all items of property taken pursuant to one scheme or course of conduct from one person to be aggregated in order to determine the classification of the theft offense, but specifically prohibits aggregation of individual values into more than one offense. *State v. Miner*, 273 Neb. 837, 733 N.W.2d 891 (2007).

In reference to the crime of theft, value is established by evidence concerning the price at which property identical or reasonably similar to the property stolen is offered for sale and sold in proximity to the site of the theft. *State v. Connor*, 16 Neb. App. 871, 754 N.W.2d 774 (2008).

28-521.

In a trespass prosecution, a defendant may introduce evidence that an owner or other person empowered to license access to the property told the defendant that he or she could be on the property. Such statements are verbal acts, i.e., nonhearsay statements, because they have legal significance merely because they were spoken. *State v. McCave*, 282 Neb. 500, 805 N.W.2d 290 (2011).

28-522.

A valid license from any owner or other person empowered to license access to a property is sufficient to show that a defendant reasonably believed that he or she was licensed to be on the premises. A defendant need not show that every owner licensed his or her presence. *State v. McCave*, 282 Neb. 500, 805 N.W.2d 290 (2011).

An ownership interest is not an affirmative defense to the charge of criminal trespass. *State v. Anderson*, 14 Neb. App. 253, 706 N.W.2d 564 (2005).

28-703.

Incest of an adult is not a registrable offense under the Sex Offender Registration Act. *State v. Aguilar-Moreno*, 17 Neb. App. 623, 769 N.W.2d 784 (2009).

28-707.

Involuntary manslaughter is a lesser-included offense of child abuse resulting in death, and the jury should be so instructed if there is a rational basis upon which it could conclude that the defendant committed child abuse negligently, but not knowingly and intentionally. *State v. Sinica*, 277 Neb. 629, 764 N.W.2d 111 (2009).

Multiple convictions for second degree murder and child abuse resulting in death do not violate the Double Jeopardy Clauses of the state or federal Constitution. *State v. Molina*, 271 Neb. 488, 713 N.W.2d 412 (2006).

Negligent child abuse and intentional child abuse are lesser-included offenses of child abuse resulting in serious bodily injury and child abuse resulting in death. *State v. Molina*, 271 Neb. 488, 713 N.W.2d 412 (2006).

Misdemeanor child abuse is a lesser-included offense of felony child abuse. It is the defendant's state of mind which differentiates the offenses—if the abuse is committed knowingly and intentionally, it is a felony; if committed negligently, it is a misdemeanor. *State v. Nguth*, 13 Neb. App. 783, 701 N.W.2d 852 (2005).

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28-833.

This section is not overbroad and thus, does not violate the First Amendment. *State v. Kass*, 281 Neb. 892, 799 N.W.2d 680 (2011).

This section proscribes a person age 19 or older from knowingly and intentionally using an electronic communication device to contact a child under age 16, or peace officer whom the person believes to be a child under age 16, and using language that conjures up repugnant sexual images. *State v. Kass*, 281 Neb. 892, 799 N.W.2d 680 (2011).

28-901.

A defendant may not be convicted of obstructing government operations by a physical act unless the public servant was engaged in a specific authorized act at the time of the physical interference. *State v. Stolen*, 276 Neb. 548, 755 N.W.2d 596 (2008).

The physical act component of this section consists of disjunctive, or independent, elements; force or violence is not required in all circumstances involving obstruction of government operations by physical act, partially overruling *State v. Fahlk*, 246 Neb. 834, 524 N.W.2d 39 (1994). *State v. Stolen*, 276 Neb. 548, 755 N.W.2d 596 (2008).

This section proscribes three separate means of committing obstruction of government operations; the physical act component must consist of some physical interference, force, violence, or obstacle. *State v. Stolen*, 276 Neb. 548, 755 N.W.2d 596 (2008).

The defendant's cleaning of a campsite and removal of alcohol containers were physical acts contemplated by the plain language of this section. *State v. Stolen*, 16 Neb. App. 121, 741 N.W.2d 168 (2007).

28-905.

An attempt to arrest is an essential element of the offense of fleeing in a motor vehicle to avoid arrest, but proof that the defendant actually committed the law violation for which the arrest was attempted is not required. *State v. Claussen*, 276 Neb. 630, 756 N.W.2d 163 (2008).

The evidence was sufficient to convict the defendant under subsection (1) of this section where the defendant fled in his vehicle after an officer questioned him about an argument with his wife and ordered him to exit his vehicle while the officer's patrol car's emergency lights were engaged and where the defendant admitted to the officer after the ensuing chase that he had feared being arrested. *State v. Ellingson*, 13 Neb. App. 931, 703 N.W.2d 273 (2005).

28-906.

The evidence was sufficient to convict the defendant under subsection (1) of this section where the defendant fled in his vehicle because he feared being arrested after he had been questioned by an officer, ordered to exit his vehicle, and approached by two officers and where the defendant disobeyed the officers' orders to get on the ground after the ensuing chase through a residential area. *State v. Ellingson*, 13 Neb. App. 931, 703 N.W.2d 273 (2005).

28-907.

Subsection (1)(a) of this section includes other officials besides police officers who have the authority to investigate actual criminal matters. *Nebraska Legislature on behalf of State v. Hergert*, 271 Neb. 976, 720 N.W.2d 372 (2006).

Subsection (1)(a) of this section prohibits a person from furnishing material information he or she knows to be false to any peace officer or other official with the intent to impede the investigation of an actual criminal matter. *Nebraska Legislature on behalf of State v. Hergert*, 271 Neb. 976, 720 N.W.2d 372 (2006).

The purpose of subsection (1)(a) of this section is to prevent the public from willfully furnishing erroneous information to law enforcement officers and thus interfering with the performance of their duties. Interference

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with an officer's duties includes false statements that impede an officer's gathering of information. Nebraska Legislature on behalf of State v. Hergert, 271 Neb. 976, 720 N.W.2d 372 (2006).

A local ordinance which did not explicitly require that the false statement be material or be given with the intent to instigate or impede a criminal investigation is not inconsistent with this section where the ordinance does not restrict anything expressly permitted by this section and the provisions are able to coexist. In re Interest of Genevieve C., 13 Neb. App. 665, 698 N.W.2d 462 (2005).

28-912.

A juvenile is being held in detention pursuant to official proceedings when he flees from a transportation employee that is escorting him to a medical appointment. In re Interest of Matthew P., 275 Neb. 189, 745 N.W.2d 574 (2008).

28-922.

The crime of tampering with physical evidence, as defined by subdivision (1)(a) of this section, does not include mere abandonment of physical evidence in the presence of law enforcement. State v. Lasu, 278 Neb. 180, 768 N.W.2d 447 (2009).

To conceal or remove physical evidence, within the meaning of subdivision (1)(a) of this section, is to act in a way that will prevent it from being disclosed or recognized. State v. Lasu, 278 Neb. 180, 768 N.W.2d 447 (2009).

28-932.

Third degree assault is a lesser-included offense of assault by a confined person, because the elements of the two offenses are identical, except that the greater offense, assault by a confined person, requires the assault to be committed by someone who is legally confined. State v. McKay, 15 Neb. App. 169, 723 N.W.2d 644 (2006).

To prove legal confinement under this section, the State is required to prove only that the defendant was technically in the custody of law enforcement, not that the defendant was substantively confined in a lawful manner. State v. McKay, 15 Neb. App. 169, 723 N.W.2d 644 (2006).

28-1009.

Under section 28-1019, if a person is convicted of a Class IV felony under this section, the sentencing court shall order such person not to own, possess, or reside with any animal for at least 5 years and no more than 15 years after the date of conviction. State v. Meduna, 18 Neb. App. 818, 794 N.W.2d 160 (2011).

Under subsection (1) of this section, a person who intentionally, knowingly, or recklessly abandons or cruelly neglects an animal is guilty of a Class I misdemeanor, unless the abandonment or cruel neglect results in serious injury or illness or death of the animal, in which case it is a Class IV felony. State v. Meduna, 18 Neb. App. 818, 794 N.W.2d 160 (2011).

28-1019.

If a person is convicted of a Class IV felony under section 28-1009, the sentencing court shall order such person not to own, possess, or reside with any animal for at least 5 years and no more than 15 years after the date of conviction. State v. Meduna, 18 Neb. App. 818, 794 N.W.2d 160 (2011).

28-1101.

The language of this section, strictly construed, simply and plainly asserts that an activity is gambling in Nebraska if its outcome is predominantly caused by chance. American Amusements Co. v. Nebraska Dept. of Rev., 282 Neb. 908, 807 N.W.2d 492 (2011).

28-1205.

A defendant must commit an underlying or predicate felony before he or she can be convicted of use of a deadly weapon to commit a felony. State v. Sepulveda, 278 Neb. 972, 775 N.W.2d 40 (2009).

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This statutory language expressly provides that the Legislature intended the crime of using a deadly weapon to commit a felony to remain an independent offense from the underlying felony. There can be no question that the Legislature intended that one using a deadly weapon be subjected to cumulative punishments for committing the underlying felony and for the use of the weapon to commit it. *State v. Mata*, 273 Neb. 474, 730 N.W.2d 396 (2007).

The trial court's sentencing arrangement ordering consecutive sentences for the second robbery and use of a deadly weapon convictions to be served concurrently with the first sentences for robbery and use of a deadly weapon convictions constituted plain error because it had the effect of making one of the sentences for use of a deadly weapon run concurrently with the other sentence for use of a deadly weapon. *State v. Schnell*, 17 Neb. App. 211, 757 N.W.2d 732 (2008).

Pursuant to a plea agreement which was explained and was entered into knowingly, voluntarily, and intelligently, a defendant can be convicted of and sentenced to imprisonment for both an underlying charge of manslaughter, an unintentional crime, and a charge of use of a weapon to commit a felony, an intentional crime. *State v. Drinkwalter*, 14 Neb. App. 944, 720 N.W.2d 415 (2006).

Because a reckless terroristic threat is an intentional crime, it cannot be the underlying felony for the use of a weapon charge. *State v. Rye*, 14 Neb. App. 133, 705 N.W.2d 236 (2005).

28-1206.

Use of a prior conviction to establish status as a felon and then enhance a sentence does not constitute impermissible double enhancement. *State v. Ramirez*, 274 Neb. 873, 745 N.W.2d 214 (2008).

Possession of a knife by a convicted felon is not unlawful under the plain language of this section. *State v. Gozzola*, 273 Neb. 309, 729 N.W.2d 87 (2007).

28-1212.04.

Evidence was sufficient to support the defendant's conviction under this section, which proscribes intentionally discharging a firearm in the general direction of an occupied motor vehicle while in the proximity of a motor vehicle, where evidence showed the defendant was present when shots were fired into an occupied motor vehicle and permitted a reasonable inference that the defendant was one of the persons shooting into the vehicle. *State v. Ross*, 283 Neb. 742, 811 N.W.2d 298 (2012).

28-1213.

Even if a pill bottle filled with the powder from fireworks and then taped and equipped with a fuse is considered one of the enumerated devices in subdivision (7)(a)(i) of this section, such pill bottle is not a destructive device if it was neither designed nor redesigned for use as a weapon to be used against person or property. *In re Interest of Anthony P.*, 13 Neb. App. 659, 698 N.W.2d 457 (2005).

As structured, this section generally applies the exceptions to the definition of "destructive device" to all of the types of destructive device listed under subdivision (7)(a). *In re Interest of Joseph S.*, 13 Neb. App. 636, 698 N.W.2d 212 (2005).

To the extent the Legislature categorized a dry ice bomb as an explosive, it obviously considered that term in its ordinary and plain meaning rather than a technical definition based upon the specific chemical process utilized. *In re Interest of Joseph S.*, 13 Neb. App. 636, 698 N.W.2d 212 (2005).

28-1322.

The State cannot constitutionally criminalize speech under this section solely because it inflicts emotional injury, annoys, offends, or angers another person. But speech can be criminalized under this section if it tends to or is likely to provoke violent reaction. *State v. Drahota*, 280 Neb. 627, 788 N.W.2d 796 (2010).

28-1343.

Under the former law, a person was guilty of a Class IIIA felony where a person knowingly solicits, coaxes, entices, or lures (1) a child 16 years of age or younger or (2) a peace officer who is believed by such person to be

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a child 16 years of age or younger, by means of a computer as that term is defined in this section, to engage in a sexual act. *State v. Atchison*, 15 Neb. App. 422, 730 N.W.2d 115 (2007).

28-1409.

A defendant's use of deadly force in self-defense is justified if a reasonable ground existed under the circumstances for the defendant's belief that he or she was threatened with death or serious bodily harm, even if the defendant was actually mistaken about the extent of the danger. *State v. Miller*, 281 Neb. 343, 798 N.W.2d 827 (2011).

28-1413.

This section does not create or confer an affirmative right to use physical or corporal punishment, but, rather, this section only provides a defense against criminal liability. *State v. Nguth*, 13 Neb. App. 783, 701 N.W.2d 852 (2005).

28-1463.02.

Probable cause to search for evidence of crimes involving visual depiction of sexually explicit conduct involving minors may be established by a detailed verbal description of the conduct depicted in the images. *State v. Nuss*, 279 Neb. 648, 781 N.W.2d 60 (2010).

While copies of images obtained during a law enforcement investigation may be used to establish probable cause to search for evidence of crimes involving visual depiction of sexually explicit conduct involving minors, they are not absolutely required. *State v. Nuss*, 279 Neb. 648, 781 N.W.2d 60 (2010).

29-110.

A complaint charging the defendant with second-offense driving under the influence was "pending" for statute of limitations purposes during the time period in which the State appealed to the district court and to the Supreme Court the county court's order granting the defendant's motion to quash. *State v. Loyd*, 275 Neb. 205, 745 N.W.2d 338 (2008).

In order for the tolling provision under subsection (1) of this section to apply, a subsequent indictment, information, or suit must charge the "same offense" as the prior indictment, information, or suit. *State v. Loyd*, 275 Neb. 205, 745 N.W.2d 338 (2008).

29-215.

Subsection (2)(c)(ii)(C) of this section does not require that an officer requesting assistance tell the responding officer that he or she fears evidence will be lost; it asks whether the suspect may destroy or conceal evidence of the commission of a crime and whether an officer needs assistance in making an arrest. *State v. Voichahoske*, 271 Neb. 64, 709 N.W.2d 659 (2006).

29-752.

This section fixes the expenses of extradition to be taxed as costs as the mileage at the applicable statutory rate necessarily incurred in traveling to return the prisoner to Nebraska. *State v. Smith*, 13 Neb. App. 477, 695 N.W.2d 440 (2005).

29-759.

A detainer for a prisoner who has been convicted but not sentenced does not relate to an "untried indictment, information or complaint" and thus does not trigger the procedural requirements of Article III of the Interstate Agreement on Detainers. *State v. Jimenez*, 283 Neb. 95, 808 N.W.2d 352 (2012).

29-814.04.

An affidavit in support of a search warrant need not contain a separate statement of facts showing why the public interest requires that the warrant be served at night, in order for the nighttime search to be valid. If the

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affidavit, read in a commonsense manner and as a whole, reasonably supports the inference that the interests of justice are best served by the authorization of nighttime service of a search warrant, provision for such service in the warrant is proper. *State v. Ramirez*, 274 Neb. 873, 745 N.W.2d 214 (2008).

29-818.

Property seized and held as evidence is to be safely kept by the officer seizing it unless otherwise directed by the court, and the officer is to exercise reasonable care and diligence for the safekeeping of the property. The property shall be kept so long as necessary for the purpose of being produced as evidence at trial. *State v. Agee*, 274 Neb. 445, 741 N.W.2d 161 (2007).

The court in which a criminal charge was filed has exclusive jurisdiction to determine the rights to seized property and the property's disposition. *State v. Agee*, 274 Neb. 445, 741 N.W.2d 161 (2007).

29-820.

When criminal proceedings have terminated, the person from whom property was seized is presumed to have a right to its return, and the burden is on the government to show that it has a legitimate reason to retain the property. *State v. Agee*, 274 Neb. 445, 741 N.W.2d 161 (2007).

29-1205.

Subsection (1) of this section does not demand that all previously scheduled civil trials accommodate the rescheduling of a criminal trial as a result of a defense motion to continue. *State v. Sims*, 272 Neb. 811, 725 N.W.2d 175 (2006).

29-1207.

A "proceeding" within the meaning of subsection (4)(a) of this section is an application to a court of justice, however made, for aid in the enforcement of rights, for relief, for redress of injuries, for damages, or for any remedial object. *State v. Tamayo*, 280 Neb. 836, 791 N.W.2d 152 (2010).

An "examination and hearing on competency" within the meaning of subsection (4)(a) of this section is the well-defined statutory procedure for determining competency to stand trial established by section 29-1823. *State v. Tamayo*, 280 Neb. 836, 791 N.W.2d 152 (2010).

"Misdemeanor offense involving intimate partners," within the meaning of subsection (2) of this section, does not encompass any and all misdemeanors in which intimate partners may be engaged. Rather, the exception applies only to those misdemeanor offenses in which the involvement of an "intimate partner" is an element of the offense. *State v. Lebeau*, 280 Neb. 238, 784 N.W.2d 921 (2010).

The delay caused by a continuance granted for the defendant is excluded from the 6-month period during which the defendant must be brought to trial, pursuant to subsection (4)(b) of this section. *State v. Wells*, 277 Neb. 476, 763 N.W.2d 380 (2009).

An interlocutory appeal taken by the defendant is a period of delay resulting from other proceedings concerning the defendant within the meaning of subsection (4)(a) of this section. *State v. Williams*, 277 Neb. 133, 761 N.W.2d 514 (2009).

Effective March 9, 2009, when ruling on a motion for absolute discharge pursuant to section 29-1208, the trial court shall make specific findings of each period of delay excludable under subsections (4)(a) to (e) of this section, in addition to the findings under subsection (4)(f) of this section. Such findings shall include the date and nature of the proceedings, circumstances, or rulings which initiated and concluded each excludable period; the number of days composing each excludable period; and the number of days remaining in which the defendant may be brought to trial after taking into consideration all excludable periods. *State v. Williams*, 277 Neb. 133, 761 N.W.2d 514 (2009).

For speedy trial purposes, the calculation for a continuance begins the day after the continuance is granted and includes the day on which the continuance ends. In the case of an indefinite continuance, the calculation runs from the day immediately following the grant of the continuance and ends when the defendant takes some affirmative

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action, such as requesting a trial date, to show his or her desire for the indefinite continuance to end or, absent such a showing, on the rescheduled trial date. *State v. Williams*, 277 Neb. 133, 761 N.W.2d 514 (2009).

In calculating the number of excludable days resulting from an interlocutory appeal, for speedy trial purposes, the period to be excluded due to the appeal commences on and includes the date on which the defendant filed his or her notice of appeal. Where further proceedings are to be had following an interlocutory appeal, for speedy trial purposes, the period of time excludable due to the appeal concludes when the district court first reacquires jurisdiction over the case by taking action on the mandate of the appellate court. *State v. Williams*, 277 Neb. 133, 761 N.W.2d 514 (2009).

It is presumed that a delay in hearing defense pretrial motions is attributable to the defendant unless the record affirmatively indicates otherwise. *State v. Williams*, 277 Neb. 133, 761 N.W.2d 514 (2009).

Subsection (4)(a) of this section excludes all time between the time of the filing of a defendant's pretrial motions and their final disposition, regardless of the promptness or reasonableness of the delay. The excludable period commences on the day immediately after the filing of a defendant's pretrial motion. Final disposition under subsection (4)(a) of this section occurs on the date the motion is granted or denied. *State v. Williams*, 277 Neb. 133, 761 N.W.2d 514 (2009).

The burden of proof is upon the State to show that one or more of the excluded time periods under subsection (4) of this section are applicable when the defendant is not tried within 6 months. *State v. Williams*, 277 Neb. 133, 761 N.W.2d 514 (2009).

To determine the last day on which a defendant may be tried for speedy trial purposes, a court must exclude the day the information was filed, count forward 6 months, back up 1 day, and then add any time excluded under subsection (4) of this section. *State v. Williams*, 277 Neb. 133, 761 N.W.2d 514 (2009).

Once a mistrial is granted, the speedy trial clock is restarted. *State v. Dockery*, 273 Neb. 330, 729 N.W.2d 320 (2007).

The period of delay resulting from an attempt to have a defendant examined to determine his mental and physical competency to stand trial is not included in calculating the speedy trial period. *State v. Dockery*, 273 Neb. 330, 729 N.W.2d 320 (2007).

In determining whether a period of delay is attributable to defense counsel's motion to continue, an appellate court need not inquire as to what extent there was "good cause" for the delay. *State v. Sims*, 272 Neb. 811, 725 N.W.2d 175 (2006).

Final disposition under subsection (4)(a) of this section occurs on the date the defendant's motion is granted or denied. *State v. Curry*, 18 Neb. App. 284, 790 N.W.2d 441 (2010).

In a speedy trial analysis under subsection (4)(a) of this section, the excludable period commences on the day immediately after the filing of a defendant's pretrial motion. *State v. Curry*, 18 Neb. App. 284, 790 N.W.2d 441 (2010).

The State has the burden of proving that one or more of the excluded periods of time under subsection (4) of this section are applicable if the defendant is not tried within 6 months of the filing of the information in a criminal action. *State v. Curry*, 18 Neb. App. 284, 790 N.W.2d 441 (2010).

To calculate the time for speedy trial purposes, a court must exclude the day the information was filed, count forward 6 months, back up 1 day, and then add any time excluded under subsection (4) of this section to determine the last day the defendant can be tried. *State v. Curry*, 18 Neb. App. 284, 790 N.W.2d 441 (2010).

Under subsection (4) of this section, it is presumed that a delay in hearing defense pretrial motions is attributable to the defendant unless the record affirmatively indicates otherwise. *State v. Curry*, 18 Neb. App. 284, 790 N.W.2d 441 (2010).

When a nonlawyer makes a motion for continuance made on behalf of a defendant in a criminal case, such motion constitutes a nullity and cannot form the basis for an exclusion from the speedy trial calculation under subsection (4)(b) of this section. *State v. Craven*, 17 Neb. App. 127, 757 N.W.2d 132 (2008).

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The burden of proof is upon the State to show that one or more of the excluded time periods under subsection (4) of this section is applicable when the defendant is not tried within 6 months. *State v. Shipler*, 17 Neb. App. 66, 758 N.W.2d 41 (2008).

This section requires discharge of a defendant whose case has not been tried within 6 months after the filing of the information, unless the 6 months are extended by any period to be excluded in computing the time for trial. *State v. Shipler*, 17 Neb. App. 66, 758 N.W.2d 41 (2008).

To calculate the time for speedy trial purposes, a court must exclude the day the information was filed, count forward 6 months, back up 1 day, and then add any time excluded under subsection (4) of this section to determine the last day the defendant can be tried. *State v. Shipler*, 17 Neb. App. 66, 758 N.W.2d 41 (2008).

Where the period of delay sought by the State's motion fell under the period specifically enumerated in subsection (4)(c)(i) of this section, that was the applicable subsection for purposes of speedy trial analysis. *State v. Shipler*, 17 Neb. App. 66, 758 N.W.2d 41 (2008).

A plea agreement not entered into on the record before any court or tribunal, but, rather, made during private negotiations between the parties, is not a "proceeding" within the meaning of subsection (4)(a) of this section. *State v. Vasquez*, 16 Neb. App. 406, 744 N.W.2d 500 (2008).

Where the defendant appeared without the private counsel that he had earlier informed the court he intended to retain and the trial court appointed a public defender and suddenly announced that it was continuing the matter, the resulting delay was properly excluded under subsection (4)(f) of this section rather than (4)(b), because the record did not show that the postponement was granted at the defendant's request or with his consent. *State v. Craig*, 15 Neb. App. 836, 739 N.W.2d 206 (2007).

The burden of proof is upon the State that one or more of the excluded time periods under this section are applicable when the defendant is not tried within 6 months. *State v. Droz*, 14 Neb. App. 32, 703 N.W.2d 637 (2005).

This section requires that every person indicted or informed against for any offense shall be brought to trial within 6 months, unless the 6 months are extended by any period to be excluded in computing the time for trial. *State v. Droz*, 14 Neb. App. 32, 703 N.W.2d 637 (2005).

To calculate the time for speedy trial purposes, a court must exclude the day the information was filed, count forward 6 months, back up 1 day, and then add in any time excluded under subsection (4) of this section to determine the last day the defendant can be tried. *State v. Droz*, 14 Neb. App. 32, 703 N.W.2d 637 (2005).

Although the constitutional right to a speedy trial and the statutory implementation of that right exist independently of each other, this section provides a useful standard for assessing whether the length of the delay is unreasonable under the U.S. and Nebraska Constitutions. *State v. Schmader*, 13 Neb. App. 321, 691 N.W.2d 559 (2005).

The burden of proof is upon the State that one or more of the excluded time periods under subsection (4) of this section are applicable when the defendant is not tried within 6 months. *State v. Schmader*, 13 Neb. App. 321, 691 N.W.2d 559 (2005).

This section requires that every person indicted or informed against for any offense shall be brought to trial within 6 months, unless the 6 months are extended by any period to be excluded in computing the time for trial. *State v. Schmader*, 13 Neb. App. 321, 691 N.W.2d 559 (2005).

29-1208.

Effective March 9, 2009, when ruling on a motion for absolute discharge pursuant to this section, the trial court shall make specific findings of each period of delay excludable under section 29-1207(4)(a) to (e), in addition to the findings under section 29-1207(4)(f). Such findings shall include the date and nature of the proceedings, circumstances, or rulings which initiated and concluded each excludable period; the number of days composing each excludable period; and the number of days remaining in which the defendant may be brought to trial after taking into consideration all excludable periods. *State v. Williams*, 277 Neb. 133, 761 N.W.2d 514 (2009).

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29-1209.

A defendant waives any objection on the basis of a violation of the right to a speedy trial when he or she does not file a motion to discharge before trial begins. *State v. Dockery*, 273 Neb. 330, 729 N.W.2d 320 (2007).

29-1301.

A court must evaluate several factors in determining whether a defendant has met the burden of showing that pretrial publicity has made it impossible to secure a fair trial and impartial jury. These factors include (1) the nature of the publicity, (2) the degree to which the publicity has circulated throughout the community, (3) the degree to which the venue could be changed, (4) the length of time between the dissemination of the publicity complained of and the date of the trial, (5) the care exercised and ease encountered in the selection of the jury, (6) the number of challenges exercised during voir dire, (7) the severity of the offenses charged, and (8) the size of the area from which the venire was drawn. *State v. Rodriguez*, 272 Neb. 930, 726 N.W.2d 157 (2007).

29-1407.01.

Where the State violated this section by providing witnesses copies of their grand jury testimony without a court order, violation was subject to harmless error review, because it was a trial error instead of a structural error. *State v. McKinney*, 273 Neb. 346, 730 N.W.2d 74 (2007).

29-1418.

This section requires the clerk of the trial court to endorse upon an indictment the date of its filing and to enter the case upon the docket. *State v. Muse*, 15 Neb. App. 13, 721 N.W.2d 661 (2006).

29-1602.

The requirement that the names of the witnesses for the State must be endorsed upon the information has no application to rebuttal witnesses. *State v. Molina*, 271 Neb. 488, 713 N.W.2d 412 (2006).

29-1808.

A motion to quash which raises the issue of the admissibility of a defendant's prior driving under the influence convictions, for enhancement purposes, should not be filed until after a determination of the defendant's guilt on the underlying offense. *State v. Head*, 14 Neb. App. 684, 712 N.W.2d 822 (2006).

The proper procedure for determining the admissibility of prior driving under the influence convictions as prior convictions for the purposes of enhancement is to file a motion to quash on the enhancement issues after a determination of guilt on the underlying offense. *State v. Head*, 14 Neb. App. 684, 712 N.W.2d 822 (2006).

29-1812.

Under this section, once a defendant has entered a plea, or a plea is entered for the defendant by the court, the defendant waives all facial constitutional challenges to a statute unless that defendant asks leave of the court to withdraw the plea and thereafter files a motion to quash, even if the defendant entered his plea through a written arraignment under section 29-4206. *State v. Liston*, 271 Neb. 468, 712 N.W.2d 264 (2006).

29-1817.

A plea in bar pursuant to this section may be filed to assert any nonfrivolous double jeopardy claim arising from a prior prosecution, including a claim that jeopardy was terminated by entry of a mistrial without manifest necessity. *State v. Williams*, 278 Neb. 841, 774 N.W.2d 384 (2009).

A plea in bar is not a proper procedure after a defendant's conviction has been affirmed on appeal, and the cause is remanded only for resentencing. *State v. Mata*, 275 Neb. 1, 745 N.W.2d 229 (2008).

Driving while under the influence of alcohol and refusal to submit to a chemical test are not the same offense for double jeopardy purposes, and double jeopardy does not prohibit the State from prosecuting the two offenses in a single prosecution. *State v. Grizzle*, 18 Neb. App. 48, 774 N.W.2d 634 (2009).

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The defendant's claim that he was being subjected to multiple punishments for the same offense was unripe because he had pled guilty to one offense but had not been tried or convicted of the other offense. *State v. Grizzle*, 18 Neb. App. 48, 774 N.W.2d 634 (2009).

29-1819.02.

Under this section, all a defendant must show before withdrawing a plea of guilty or nolo contendere is (1) that the trial court failed to warn the defendant of one of the listed consequences and (2) that the defendant is currently facing one of the omitted consequences. *State v. Mena-Rivera*, 280 Neb. 948, 791 N.W.2d 613 (2010).

Subsection (2) of this section establishes a statutory procedure whereby a convicted person may file a motion to have the criminal judgment vacated and the plea withdrawn when the advisement required by subsection (1) was not given and the conviction may have the consequences for the defendant of removal from the United States, or denial of naturalization pursuant to the laws of the United States. *State v. Yos-Chiguil*, 278 Neb. 591, 772 N.W.2d 574 (2009).

The remedy created by subsection (2) of this section extends to those serving sentences at the time the motion to withdraw the plea is filed. *State v. Yos-Chiguil*, 278 Neb. 591, 772 N.W.2d 574 (2009).

This section gives a court discretion to vacate a judgment or withdraw a plea where a court has failed to provide the advisement required for pleas made on or after July 20, 2002, but it does not confer the power to vacate a judgment after the defendant has already completed his or her sentence. *State v. Rodriguez-Torres*, 275 Neb. 363, 746 N.W.2d 686 (2008).

The defendant was properly advised under this section where advisement was not given verbatim but only minor, inconsequential wording changes were used in giving advisement as to immigration consequences of the defendant's plea. *State v. Molina-Navarrete*, 15 Neb. App. 966, 739 N.W.2d 771 (2007).

In cases where this section does not apply, an order overruling a motion to withdraw a plea does not affect a substantial right in a special proceeding and therefore does not constitute a final, appealable order. *State v. Cisneros*, 14 Neb. App. 112, 704 N.W.2d 550 (2005).

29-1823.

An individual has a constitutional right not to be put to trial when lacking mental competency, and this includes sentencing. *State v. Hessler*, 282 Neb. 935, 807 N.W.2d 504 (2011).

An "examination and hearing on competency" within the meaning of section 29-1207(4)(a) is the well-defined statutory procedure for determining competency to stand trial established by this section. *State v. Tamayo*, 280 Neb. 836, 791 N.W.2d 152 (2010).

The means to be employed to determine competency or the substantial probability of competency within the foreseeable future are discretionary with the district court, and the court may cause such medical, psychiatric, or psychological examination of the accused to be made as the court deems necessary in order to make such a determination. *State v. Lassek*, 272 Neb. 523, 723 N.W.2d 320 (2006).

29-1904.

This section does not provide for the taking of depositions at county expense in advance of the trial. *State v. Kuehn*, 273 Neb. 219, 728 N.W.2d 589 (2007).

29-1912.

Pursuant to this section, upon a defendant's proper request through discovery procedure, the State must disclose information which is material to the preparation of a defense to the charge against the defendant. In order that the defendant receive a fair trial, requested and material information must be disclosed to the defendant. *State v. Gutierrez*, 272 Neb. 995, 726 N.W.2d 542 (2007).

A protective order limiting the defendant's and defense counsel's access to sensitive items in a sexual assault on a child case was properly granted. *State v. Lovette*, 15 Neb. App. 590, 733 N.W.2d 567 (2007).

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29-1914.

In a driving under the influence case, where the record clearly showed that a computer source code for a breath-testing machine was not in the State's possession and that the manufacturer of the machine considered the source code a trade secret and proprietary information, the source code was not discoverable under this section. *State v. Kuhl*, 16 Neb. App. 127, 741 N.W.2d 701 (2007).

29-1915.

A protective order limiting the defendant's and defense counsel's access to sensitive items in a sexual assault on a child case was properly granted. *State v. Lovette*, 15 Neb. App. 590, 733 N.W.2d 567 (2007).

29-1917.

The plain language of this section, by using the term "may," indicates that the granting of a deposition is within the trial court's discretion. A defendant is not entitled, as a matter of right, to a deposition under this section. *State v. Collins*, 283 Neb. 854, 812 N.W.2d 285 (2012).

29-1926.

In a jury trial, a large opaque screen in the courtroom, separating the child witness from the defendant, was a violation of the defendant's due process right to a fair trial. *State v. Parker*, 276 Neb. 661, 757 N.W.2d 7 (2008).

29-2002.

A defendant is not considered prejudiced by a joinder where the evidence relating to both offenses would be admissible in a trial of either offense separately. *State v. Schroeder*, 279 Neb. 199, 777 N.W.2d 793 (2010).

A motion to revoke probation is not a criminal proceeding, and this section is not applicable. *State v. Schreiner*, 276 Neb. 393, 754 N.W.2d 742 (2008).

29-2004.

Under this section, a court may discharge a regular juror because of sickness and replace him or her with an alternate juror. *State v. Hilding*, 278 Neb. 115, 769 N.W.2d 326 (2009).

Under this section, a trial court may replace a juror with an alternate juror after finding that the original juror could not be fair and impartial. *State v. Smith*, 13 Neb. App. 404, 693 N.W.2d 587 (2005).

29-2006.

A court cannot determine whether a juror should be challenged for cause in accordance with subsection (3) of this section without advising a juror of the possible punishments and asking the juror his or her opinion on capital punishment. *State v. Sandoval*, 280 Neb. 309, 788 N.W.2d 172 (2010).

Subsection (3) of this section allows courts to question jurors about their beliefs regarding the death penalty. *State v. Sandoval*, 280 Neb. 309, 788 N.W.2d 172 (2010).

Under subdivision (2) of this section, only if the juror's opinion was formed based upon conversations with witnesses of the transactions or reading reports of their testimony or hearing them testify is dismissal of the juror for cause mandatory. *State v. Galindo*, 278 Neb. 599, 774 N.W.2d 190 (2009).

Under subdivision (2) of this section, the mere fact that a prospective juror is personally acquainted with the victim or the victim's family does not automatically disqualify a person from sitting on a criminal jury. *State v. Galindo*, 278 Neb. 599, 774 N.W.2d 190 (2009).

The district court did not err in retaining jurors who expressed opinions of guilt, which were not founded on witness testimony, and who testified they could render an impartial verdict. *State v. Rodriguez*, 272 Neb. 930, 726 N.W.2d 157 (2007).

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29-2011.02.

Trial courts in Nebraska do not have inherent authority to confer immunity. In a criminal proceeding, a court's authority to grant immunity to a witness who refuses to testify on the basis of the privilege against self-incrimination comes from this section. *State v. Robinson*, 271 Neb. 698, 715 N.W.2d 531 (2006).

29-2022.

A defendant waives his or her right under this section to have the jury kept together by failing to object to the jury's separation, overruling *State v. Robbins*, 205 Neb. 226, 287 N.W.2d 55 (1980). *State v. Collins*, 281 Neb. 927, 799 N.W.2d 693 (2011).

The basic purpose of this section is to preserve the right to a fair trial by shielding the jury from improper contact by others and restricting the opportunities for improper conduct by jurors during the course of their deliberations. In the absence of express agreement or consent by the defendant, a failure to comply with this section by permitting the jurors to separate after submission of the case is erroneous, creates a rebuttable presumption of prejudice, and places the burden upon the prosecution to show that no injury resulted. *State v. Barranco*, 278 Neb. 165, 769 N.W.2d 343 (2009).

Under this section, the defendant has the right to have the jury kept together until the jury agrees on a verdict or is discharged by the court. *State v. Barranco*, 278 Neb. 165, 769 N.W.2d 343 (2009).

Although this section states that the bailiff, as the officer having the jury in his or her charge, shall not make "any communication" to jurors except to ask whether they have agreed upon a verdict, some incidental communication between the bailiff and jurors beyond that specified under this section will unavoidably occur. When such communication is limited to simple, practical matters of logistics, such as the location of the facilities used for deliberations, such communication is not likely to be prejudicial to the defendant or deny the defendant a fair trial. But while communications concerning administrative matters may not be prejudicial, when communications involve matters of law, the risk of prejudice is present and communication by the bailiff to jurors on such matters is improper. *State v. Floyd*, 272 Neb. 898, 725 N.W.2d 817 (2007).

29-2028.

An appellate court concluded that uncorroborated testimony would be sufficient to convict a defendant of sexual assault as defined in sections 28-319 to 28-320.01 in any case wherein the fact finder determined that such testimony was sufficient evidence of guilt beyond a reasonable doubt. *State v. Luff*, 18 Neb. App. 422, 783 N.W.2d 625 (2010).

A jury instruction was found to be a correct statement of the law under this section. The instructions, when taken together, advised the jury that while corroboration of the victim's testimony was not required, corroboration, or the lack thereof, could be considered by the jury in determining the weight to be given to the testimony, although the concurring opinion cautioned against routinely giving instruction at issue in this case. *State v. Schmidt*, 16 Neb. App. 741, 750 N.W.2d 390 (2008).

29-2101.

Ineffective assistance of counsel is not a ground upon which a defendant may move for a new trial under this section. *State v. Pieper*, 274 Neb. 768, 743 N.W.2d 360 (2008).

Pursuant to section 29-2103(4), a motion for new trial based on newly discovered evidence under subsection (5) of this section must be filed within 3 years of the date of the verdict. *State v. Luff*, 18 Neb. App. 422, 783 N.W.2d 625 (2010).

Pursuant to subsection (5) of this section, a new trial may be granted when a defendant produces newly discovered evidence which he or she could not with reasonable diligence have discovered and produced at trial. *State v. Luff*, 18 Neb. App. 422, 783 N.W.2d 625 (2010).

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29-2103.

Pursuant to subsection (4) of this section, a motion for new trial based on newly discovered evidence under section 29-2101(5) must be filed within 3 years of the date of the verdict. *State v. Luff*, 18 Neb. App. 422, 783 N.W.2d 625 (2010).

Pursuant to subsection (4) of this section, the appellate court was without jurisdiction to consider the assignment of error relating to the denial of a motion for new trial in a reinstated direct appeal, where only the direct appeal was reinstated and the defendant did not timely file a notice of appeal following the denial of his motion for new trial based on newly discovered evidence. *State v. Luff*, 18 Neb. App. 422, 783 N.W.2d 625 (2010).

29-2201.

Criminal defendant has a statutory right to allocution before sentencing, during which he is to be informed by court of verdict and asked whether he has anything to say why judgment should not be passed, providing an opportunity for defendant and counsel to contest any disputed factual basis for sentence. *State v. Dunn*, 14 Neb. App. 144, 705 N.W.2d 246 (2005).

29-2204.

Under subsection (1) of this section, to the extent there was any discrepancy between the minimum sentence imposed and statements of the trial court regarding when the defendant would become eligible for parole, the minimum sentence controlled. *State v. Kinsler*, 283 Neb. 560, 811 N.W.2d 227 (2012).

A life to life sentence for second degree murder is permissible under this section. *State v. Moore*, 277 Neb. 111, 759 N.W.2d 698 (2009).

There is no statutory requirement that the affirmatively stated minimum term for a Class IB felony sentence be less than the maximum term. *State v. Marrs*, 272 Neb. 573, 723 N.W.2d 499 (2006).

There is no statutory requirement that a sentence for either a Class II or a Class III felony have a minimum term less than the maximum term. *State v. Tucker*, 17 Neb. App. 487, 764 N.W.2d 137 (2009).

Where a court wholly fails to make truth in sentencing advisements, but no objection is made at the sentencing hearing when the defendant is provided an opportunity to do so, any claimed error in failing to pronounce the advisements is waived. *State v. Svoboda*, 13 Neb. App. 266, 690 N.W.2d 821 (2005).

29-2207.

Costs in criminal proceedings are the charges fixed by statute necessarily incurred in the prosecution of one charged with a public offense as compensation to the officers for their services. *State v. Smith*, 13 Neb. App. 477, 695 N.W.2d 440 (2005).

Expenses of extradition, in the amount fixed by section 29-752, are taxable costs. *State v. Smith*, 13 Neb. App. 477, 695 N.W.2d 440 (2005).

In determining what costs are actually, apparently, or probably necessary, the trial court is given discretion in determining those costs, and such determination will be reversed or modified only for an abuse of discretion. *State v. Smith*, 13 Neb. App. 477, 695 N.W.2d 440 (2005).

29-2221.

Enhancement under the habitual criminal statute did not constitute an impermissible double enhancement where the trigger offense of flight to avoid arrest was enhanced from a misdemeanor to a felony based on the defendant's willful, reckless operation of a motor vehicle, rather than prior criminal conduct. *State v. Kinsler*, 283 Neb. 560, 811 N.W.2d 227 (2012).

The use of a prior conviction to establish status as a felon and then enhance a sentence does not constitute impermissible double enhancement. *State v. Ramirez*, 274 Neb. 873, 745 N.W.2d 214 (2008).

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A Nebraska court may use a prior conviction from another state for sentence enhancement under this section even though the conviction may not be used for enhancement in that other state. *State v. Wabashaw*, 274 Neb. 394, 740 N.W.2d 583 (2007).

To prove a prior conviction for enhancement purposes, the State's evidence must establish with requisite trustworthiness, based upon a preponderance of the evidence, that (1) the defendant has been twice convicted of a crime, for which he or she was sentenced and committed to prison for not less than 1 year; (2) the trial court rendered a judgment of conviction for each crime; and (3) at the time of the prior conviction and sentencing, the defendant was represented by counsel or had knowingly and voluntarily waived representation for those proceedings. *State v. King*, 272 Neb. 638, 724 N.W.2d 80 (2006); *State v. Robinson*, 272 Neb. 582, 724 N.W.2d 35 (2006).

The existence of a prior conviction and the identity of the accused as the person convicted may be shown by any competent evidence, including the oral testimony of the accused and duly authenticated records maintained by the courts or penal and custodial authorities. Specifically, in a proceeding for an enhanced penalty, the State has the burden to show that the records of a defendant's prior felony convictions, based on pleas of guilty, affirmatively demonstrate that the defendant was represented by counsel or that the defendant, having been informed of the right to counsel, voluntarily, intelligently, and knowingly waived that right. *State v. Robinson*, 272 Neb. 582, 724 N.W.2d 35 (2006).

"Good time" under section 83-1,108 should not be applied against a mandatory minimum sentence imposed under subsection (1) of this section. *Hurbenca v. Nebraska Dept. of Corr. Servs.*, 16 Neb. App. 222, 742 N.W.2d 773 (2007).

29-2261.

Under the first sentence of subsection (6) of this section, a prosecutor is included in the category of "others entitled by law to receive" the information in the presentence investigation report, and therefore, the sentencing court is not required to make a determination of the defendant's best interests before allowing the prosecutor to review the presentence investigation report. *State v. Albers*, 276 Neb. 942, 758 N.W.2d 411 (2008).

29-2262.

A court may revoke a defendant's driver's license as a condition of probation if it is reasonably related to a defendant's rehabilitation. *State v. Becker*, 282 Neb. 449, 804 N.W.2d 27 (2011).

Pursuant to subsection (2)(b) of this section, the mandate of section 60-6,197.03(6) that an order of probation "shall also include" 60 days' confinement does not conflict with the provision that a trial court may require the offender to be confined for a period not to exceed 180 days; the minimum jail term for a period granted probation for an offense punishable under section 60-6,197.03(6) is 60 days, and the maximum is 180 days. *State v. Dinslage*, 280 Neb. 659, 789 N.W.2d 29 (2010).

A condition of probation requiring a defendant to pay child support toward arrearages when child support is unrelated to the defendant's conviction is authorized by subsection (2)(c) of this section. *State v. McCrimon*, 15 Neb. App. 452, 729 N.W.2d 682 (2007).

29-2263.

A trial court was not authorized to sentence a defendant for a "second offense misdemeanor" under subsection (1) of this section, even though the defendant, convicted of misdemeanor offense, had committed a number of prior misdemeanors, where the charge against the defendant did not specify "second offense." *State v. Mlynarik*, 16 Neb. App. 324, 743 N.W.2d 778 (2008).

29-2264.

Amendments to this section that allow a set-aside conviction to be used for purposes of determining risk under the Sex Offender Registration Act do not apply retroactively to a sex offender whose prior convictions for non-sex-offenses were set aside prior to the amendments, and thus, the offender's set-aside convictions could not be used for risk assessment under the act. Orders setting aside the offender's convictions vested him with the right to have the set-aside convictions used only for those purposes listed in this section at the time the orders were entered. *McCray v. Nebraska State Patrol*, 271 Neb. 1, 710 N.W.2d 300 (2006).

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An order setting aside a conviction is a final judgment which nullifies the conviction and removes all civil disabilities which were not exempted from restoration by this section as it existed on the date of the order. *McCray v. Nebraska State Patrol*, 271 Neb. 1, 710 N.W.2d 300 (2006).

The fact that use of a conviction that has been set aside under this section is logically consistent with other uses enumerated in this section does not permit a court to read such language into this section. *McCray v. Nebraska State Patrol*, 271 Neb. 1, 710 N.W.2d 300 (2006).

While the Legislature is free to expand the statutory list of civil disabilities which are not restored by a judgment setting aside and nullifying a conviction pursuant to this section, such amendments cannot impair rights vested by judgments entered under prior versions of this section. *McCray v. Nebraska State Patrol*, 271 Neb. 1, 710 N.W.2d 300 (2006).

29-2267.

The minimal standard of proof under the Due Process Clause in the case of violations of probation is a preponderance of the evidence. *State v. Shambley*, 281 Neb. 317, 795 N.W.2d 884 (2011).

If a court is to revoke probation for a violation occurring within the probationary period, it is sufficient if procedure to that end was instituted within the probationary period or within a reasonable time thereafter. *State v. Hernandez*, 273 Neb. 456, 730 N.W.2d 96 (2007).

If a defendant is incarcerated in another jurisdiction and the State wishes to charge the defendant with violating probation, it provides the defendant with reasonably "prompt consideration" of the charge if the State invokes the detainer process and notifies the defendant of the pending revocation proceedings. Absent unusual circumstances, the State is not required to extradite the defendant to revoke probation and sentence the defendant before the term of the defendant's foreign incarceration expires. *State v. Hernandez*, 273 Neb. 456, 730 N.W.2d 96 (2007).

In evaluating the reasonableness of a delay in probation revocation proceedings, a court should consider such factors as the length of the delay, the reasons for the delay, and the prejudice to the defendant resulting from the delay. *State v. Hernandez*, 273 Neb. 456, 730 N.W.2d 96 (2007).

29-2270.

This section does not authorize the detention of a juvenile placed on probation by a juvenile court. *In re Interest of Dakota M.*, 279 Neb. 802, 781 N.W.2d 612 (2010).

29-2280.

A sentencing court's factfinding in determining restitution does not expose the defendant to any greater punishment than this section authorizes, which is for the full amount of the victim's damages. *State v. Clapper*, 273 Neb. 750, 732 N.W.2d 657 (2007).

When a court orders restitution to a crime victim under this section, restitution is a criminal penalty imposed as punishment and is part of the criminal sentence imposed by the sentencing court. *State v. Clapper*, 273 Neb. 750, 732 N.W.2d 657 (2007).

The requirements of this section are inapplicable in juvenile proceedings. *In re Interest of Brandon M.*, 273 Neb. 47, 727 N.W.2d 230 (2007).

Restitution, ordered in an amount not exceeding the actual damage sustained by the victim, is not a penalty within the meaning of Neb. Const. art. VII, sec. 5, and is constitutional. *State v. Moyer*, 271 Neb. 776, 715 N.W.2d 565 (2006).

29-2308.

Whether an assigned error is prejudicial, requiring reversal, is at issue in every appeal. *State v. McKinney*, 279 Neb. 297, 777 N.W.2d 555 (2010).

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29-2315.01.

A judgment entered during the pendency of a criminal cause is final when no further action is required to completely dispose of the cause pending. *State v. Penado*, 282 Neb. 495, 804 N.W.2d 160 (2011).

In the absence of specific statutory authorization, the State, as a general rule, has no right to appeal an adverse ruling in a criminal case. *State v. Penado*, 282 Neb. 495, 804 N.W.2d 160 (2011).

The test of finality of an order or judgment for the purpose of appeal is whether the particular proceeding or action was terminated by the order or judgment. *State v. Penado*, 282 Neb. 495, 804 N.W.2d 160 (2011).

This section grants the State the right to seek appellate review of adverse criminal rulings and specifies the special procedure by which to obtain such review. *State v. Penado*, 282 Neb. 495, 804 N.W.2d 160 (2011).

The purpose of appellate review pursuant to this section is to provide an authoritative exposition of the law to serve as precedent in future cases. *State v. Figueroa*, 278 Neb 98, 767 N.W.2d 775 (2009).

This section allows the county attorney to request appellate review of an adverse decision or ruling in a criminal case in district court after a final order or judgment in the criminal case has been entered, but it does not allow an appellate court to review issues upon which no ruling was made. *State v. Figueroa*, 278 Neb 98, 767 N.W.2d 775 (2009).

The purpose of a prosecutorial appeal brought under this section is to provide an authoritative exposition of the law to serve as precedent in future cases. Thus, under this section, an appellate court determines whether authoritative exposition of the law is needed based upon the prosecuting attorney's application for leave to docket an appeal. And the scope of an appellate court's review under this section is limited to providing such an exposition. It is not the proper function of this section to have an appellate court render an advisory opinion on narrow factual issues regardless of whether the opinion may, or may not, have some marginal precedential value in the future. *State v. Larkins*, 276 Neb. 603, 755 N.W.2d 813 (2008).

A defendant cannot file a cross-appeal to an exception proceeding unless the general appeal provisions are complied with. *State v. Vasquez*, 271 Neb. 906, 716 N.W.2d 443 (2006).

An order to disqualify the county attorney's office was not a final, appealable order, and the exception in *Richardson v. Griffiths*, 251 Neb. 825, 560 N.W.2d 430 (1997), to the final order rule did not apply because the State's interest in prosecuting the defendant was protected by the appointment of a special counsel to prosecute the defendant on behalf of the State. *State v. Dunlap*, 271 Neb. 314, 710 N.W.2d 873 (2006).

The State's right to appeal in criminal cases is limited by this section, which provides that the State may appeal only after a final order has been filed in the case. *State v. Dunlap*, 271 Neb. 314, 710 N.W.2d 873 (2006).

This section grants to the State the right to seek appellate review of adverse criminal rulings and specifies the special procedure by which to obtain such review. *State v. Dunlap*, 271 Neb. 314, 710 N.W.2d 873 (2006).

This section must be read in pari material with section 25-1912 and mandates that when an appellate court grants the State leave to docket an appeal, the State must file a notice of appeal within 30 days in order to perfect jurisdiction in the appellate court. *State v. Kissell*, 13 Neb. App. 209, 690 N.W.2d 194 (2004).

29-2316.

Even though modifying a sentence on review does not violate constitutional principles of double jeopardy, because of the language of this section, a Nebraska appellate court does not have authority to modify a sentence in an error proceeding when the defendant has been "placed legally in jeopardy." *State v. Hense*, 276 Neb. 313, 753 N.W.2d 832 (2008).

The application of this section turns on whether the defendant has been placed in jeopardy by the trial court, not by whether the Double Jeopardy Clause bars further action. *State v. Vasquez*, 271 Neb. 906, 716 N.W.2d 443 (2006).

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29-2317.

The plain language of section 43-2,106.01(2)(d) carves out an exception for delinquency cases in which jeopardy has attached. In such cases, the county attorney is limited to taking exception pursuant to the procedures of this section and sections 29-2318 and 29-2319. In re Interest of Rebecca B., 280 Neb. 137, 783 N.W.2d 783 (2010).

This section requires exception to a county court judgment to be taken to the district court sitting as an appellate court. Specifically, the prosecuting attorney is to file a notice of appeal in the county court, then file the notice in the district court within 30 days. In re Interest of Rebecca B., 280 Neb. 137, 783 N.W.2d 783 (2010).

Under section 43-2,106.01(2)(d), when a county attorney files an appeal “in any case determining delinquency issues in which the juvenile has been placed legally in jeopardy,” the appeal must be taken by exception proceedings to the district court pursuant to this section and sections 29-2318 and 29-2319. In re Interest of Rebecca B., 280 Neb. 137, 783 N.W.2d 783 (2010).

Separate juvenile courts are treated as county courts under this section and sections 29-2318 and 29-2319 for the purpose of exception proceedings under subsection (2)(d) of section 43-2,106.01. In re Interest of Sean H., 271 Neb. 395, 711 N.W.2d 879 (2006).

29-2318.

The plain language of section 43-2,106.01(2)(d) carves out an exception for delinquency cases in which jeopardy has attached. In such cases, the county attorney is limited to taking exception pursuant to the procedures of this section and sections 29-2317 and 29-2319. In re Interest of Rebecca B., 280 Neb. 137, 783 N.W.2d 783 (2010).

Under section 43-2,106.01(2)(d), when a county attorney files an appeal “in any case determining delinquency issues in which the juvenile has been placed legally in jeopardy,” the appeal must be taken by exception proceedings to the district court pursuant to this section and sections 29-2317 and 29-2319. In re Interest of Rebecca B., 280 Neb. 137, 783 N.W.2d 783 (2010).

Separate juvenile courts are treated as county courts under this section and sections 29-2317 and 29-2319 for the purpose of exception proceedings under subsection (2)(d) of section 43-2,106.01. In re Interest of Sean H., 271 Neb. 395, 711 N.W.2d 879 (2006).

29-2319.

The plain language of section 43-2,106.01(2)(d) carves out an exception for delinquency cases in which jeopardy has attached. In such cases, the county attorney is limited to taking exception pursuant to the procedures of this section and sections 29-2317 and 29-2318. In re Interest of Rebecca B., 280 Neb. 137, 783 N.W.2d 783 (2010).

Under section 43-2,106.01(2)(d), when a county attorney files an appeal “in any case determining delinquency issues in which the juvenile has been placed legally in jeopardy,” the appeal must be taken by exception proceedings to the district court pursuant to this section and sections 29-2317 and 29-2318. In re Interest of Rebecca B., 280 Neb. 137, 783 N.W.2d 783 (2010).

Separate juvenile courts are treated as county courts under this section and sections 29-2317 and 29-2318 for the purpose of exception proceedings under subsection (2)(d) of section 43-2,106.01. In re Interest of Sean H., 271 Neb. 395, 711 N.W.2d 879 (2006).

29-2320.

A sentence that falls below the sentencing limits prescribed by law may be appealed by the State as excessively lenient. State v. Alford, 278 Neb. 818, 774 N.W.2d 394 (2009).

Under this section, a prosecuting attorney may appeal sentences imposed in felony cases when he or she reasonably believes the sentence is excessively lenient. Under this section, an appellate court lacks the authority to review a sentence imposed for a misdemeanor conviction. State v. Stafford, 278 Neb. 109, 767 N.W.2d 507 (2009).

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A sentence imposed in a revocation of probation proceeding is considered a sentence under this section and is subject to an appeal by the prosecutor challenging its leniency. *State v. Caniglia*, 272 Neb. 662, 724 N.W.2d 316 (2006).

The State, by agreeing to remain silent at a defendant's sentencing hearing as part of a plea bargain, does not waive its statutory right to appeal a sentence as excessively lenient. *State v. Thompson*, 15 Neb. App. 764, 735 N.W.2d 818 (2007).

Waiver of the right to appeal a sentence must be express and unambiguous. *State v. Thompson*, 15 Neb. App. 764, 735 N.W.2d 818 (2007).

29-2322.

This section provides that an appellate court, upon a review of the record, shall determine whether a sentence imposed is excessively lenient, having regard for (1) the nature and circumstances of the offense; (2) the history and characteristics of the defendant; (3) the need for the sentence imposed (a) to afford adequate deterrence to criminal conduct; (b) to protect the public from further crimes of the defendant; (c) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; and (d) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner; and (4) any other matters appearing in the record which the appellate court deems pertinent. *State v. Hatt*, 16 Neb. App. 397, 744 N.W.2d 493 (2008).

29-2323.

In a driving under the influence case, the appellate court found the sentence imposed by the trial court to be excessive, and, under this section, vacated the sentence and remanded the cause to the trial court for imposition of a greater sentence. *State v. Hatt*, 16 Neb. App. 397, 744 N.W.2d 493 (2008).

29-2519.

The U.S. Supreme Court's decision in *Ring v. Arizona*, 536 U.S. 584, 122 S. Ct. 2428, 153 L. Ed. 2d 556 (2002), which requires juries to find whether aggravating circumstances exist in death penalty cases, is not a substantive change in Sixth Amendment requirements that applies retroactively and did not make aggravating circumstances essential elements of capital murder. *State v. Mata*, 275 Neb. 1, 745 N.W.2d 229 (2008).

29-2520.

Resentencing necessitated by a new rule of procedure requiring the jury to find the existence of aggravating circumstances in death penalty cases did not expose the defendant to greater punishment and/or violate the prohibition against ex post facto legislation. *State v. Mata*, 275 Neb. 1, 745 N.W.2d 229 (2008).

The Eighth Amendment does not require jury sentencing in death penalty cases; Nebraska's capital sentencing scheme is not constitutionally defective, because it requires a jury, unless waived, to determine only the existence of aggravating circumstances and a three-judge panel to determine the existence of mitigating circumstances, weigh aggravating and mitigating circumstances, and determine the sentence. *State v. Mata*, 275 Neb. 1, 745 N.W.2d 229 (2008).

29-2521.

Subsection (2) of this section requires a sentencing panel to consider the trial record in imposing a sentence in a death penalty case. *State v. Torres*, 283 Neb. 142, 812 N.W.2d 213 (2012).

Under subsection (3) of this section, the aggravation hearing record is relevant to mitigation. *State v. Galindo*, 278 Neb. 599, 774 N.W.2d 190 (2009).

Because the defendant could not avoid the risk of death by waiving his right to a jury, this section did not unconstitutionally burden the exercise of that right by providing that if the defendant waives the right to a jury, then members of a three-judge panel must make unanimous and written findings of fact regarding the existence of aggravating circumstances, as distinguished from jurors, who are not required to unanimously agree on the State's alternate theories supporting an aggravating circumstance. *State v. Mata*, 275 Neb. 1, 745 N.W.2d 229 (2008).

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The Eighth Amendment does not require jury sentencing in death penalty cases; Nebraska's capital sentencing scheme is not constitutionally defective, because it requires a jury, unless waived, to determine only the existence of aggravating circumstances and a three-judge panel to determine the existence of mitigating circumstances, weigh aggravating and mitigating circumstances, and determine the sentence. *State v. Mata*, 275 Neb. 1, 745 N.W.2d 229 (2008).

29-2521.03.

A death sentence imposed for the first degree premeditated murder of a 3-year-old boy whose body was dismembered and disposed of in pieces was proportional to that imposed in cases involving gratuitous violence inflicted upon young children. *State v. Mata*, 275 Neb. 1, 745 N.W.2d 229 (2008).

29-2522.

The balancing of aggravating circumstances against mitigating circumstances in deciding whether to impose the death penalty is not merely a matter of number counting, but, rather, requires a careful weighing and examination of the various factors. *State v. Sandoval*, 280 Neb. 309, 788 N.W.2d 172 (2010).

29-2523.

For purposes of subsection (2)(c) of this section, "extreme" means that the mental or emotional disturbance must be existing in the highest or the greatest possible degree, very great, intense, or most severe. *State v. Ellis*, 281 Neb. 571, 799 N.W.2d 267 (2011).

The fact that a defendant has some sort of mental illness or defect does not by itself establish that the capacity of the defendant to appreciate the wrongfulness of his or her conduct or to conform his or her conduct to the requirements of law was impaired as a result of mental illness, mental defect, or intoxication. *State v. Ellis*, 281 Neb. 571, 799 N.W.2d 267 (2011).

"Mental anguish" is not a component of the aggravating circumstances included in subsection (1) of this section, and its use is disapproved. *State v. Sandoval*, 280 Neb. 309, 788 N.W.2d 172 (2010).

A jury instruction in a death penalty case that allowed the State to satisfy the "exceptional depravity" aggravator by proving that the defendant "apparently relished" the murder was not unconstitutionally vague; a juror would have clearly understood that the term "apparently relished" referred to his or her own perception of the defendant's conduct. *State v. Mata*, 275 Neb. 1, 745 N.W.2d 229 (2008).

In death penalty cases, an eligibility or selection factor is not unconstitutional if it has some commonsense core of meaning that a juror can understand. *State v. Mata*, 275 Neb. 1, 745 N.W.2d 229 (2008).

Jurors are not required to unanimously agree on the means by which a capital defendant manifests exceptional depravity under subsection (1)(d) of this section. *State v. Mata*, 275 Neb. 1, 745 N.W.2d 229 (2008).

The use of a prior offense to prove an aggravating circumstance under subsection (1)(a) of this section does not increase the penalty for the prior offense and does not expose the defendant to new jeopardy for such offense. Because the use of evidence of a prior offense to prove an aggravating circumstance under subsection (1)(a) of this section does not expose the defendant to new jeopardy for the prior offense, such use does not violate the Double Jeopardy Clause. *State v. Hessler*, 274 Neb. 478, 741 N.W.2d 406 (2007).

29-2801.

This section discusses the extent of a district or county court's subject matter jurisdiction over writs of habeas corpus; venue in habeas corpus actions is determined by *Gillard v. Clark*, 105 Neb. 84, 179 N.W. 396 (1920). *Anderson v. Houston*, 274 Neb. 916, 744 N.W.2d 410 (2008).

29-2823.

It is implicit in this section that a prisoner released by a trial court's writ of habeas corpus may be directed to return to custody if the writ is reversed on appeal. *Tyler v. Houston*, 273 Neb. 100, 728 N.W.2d 549 (2007).

ANNOTATIONS

The doctrine of credit for time erroneously at liberty, which holds that a prisoner is entitled to credit against his or her sentence for time spent erroneously at liberty due to the State's negligence, is not applicable to a release on bail pursuant to this section. *Tyler v. Houston*, 273 Neb. 100, 728 N.W.2d 549 (2007).

This section is intended to balance the interests of the State and the prisoner in a habeas action by allowing the prisoner to ask for immediate release, yet permitting the State to effectively seek appellate review of a trial court's decision to grant the writ. *Tyler v. Houston*, 273 Neb. 100, 728 N.W.2d 549 (2007).

29-3001.

Postconviction relief is not available to individuals who are no longer in custody but are subject to noncustodial registration requirements pursuant to the Sex Offender Registration Act. *State v. York*, 278 Neb. 306, 770 N.W.2d 614 (2009).

A district court need not conduct an evidentiary hearing in postconviction proceedings in the following circumstances: (1) When the prisoner alleges only conclusions of law or facts and (2) when the files and records of the case affirmatively show that the prisoner is entitled to no relief. *State v. Glover*, 276 Neb. 622, 756 N.W.2d 157 (2008).

A trial court abuses its discretion in postconviction proceedings when its decision incorrectly applies or fails to comply with specific procedural rules governing the action. *State v. Glover*, 276 Neb. 622, 756 N.W.2d 157 (2008).

In a postconviction proceeding, an appellate court reviews for an abuse of discretion the procedures a district court uses to determine whether the prisoner's allegations sufficiently establish a basis for relief and whether the files and records of the case affirmatively show that the prisoner is entitled to no relief. *State v. Glover*, 276 Neb. 622, 756 N.W.2d 157 (2008).

The trial court erred in denying a postconviction petition without an evidentiary hearing based on the trial counsel's deposition, because the deposition was not part of the case records and files; the phrase "files and records of the case" in this section refers to existing files and records of the case before the prisoner filed a postconviction proceeding, not to testimony taken for the postconviction proceeding. *State v. Glover*, 276 Neb. 622, 756 N.W.2d 157 (2008).

If the district court grants an evidentiary hearing in a postconviction proceeding, it is obligated to determine the issues and make findings of fact and conclusions of law with respect thereto. *State v. Epting*, 276 Neb. 37, 751 N.W.2d 166 (2008).

If the court grants an evidentiary hearing in a postconviction proceeding, it is obligated to determine the issues and make findings of fact and conclusions of law with respect thereto. *State v. Jim*, 275 Neb. 481, 747 N.W.2d 410 (2008).

It is reversible error for a district court to grant postconviction relief without first conducting an evidentiary hearing and making findings of fact and conclusions of law. *State v. Jim*, 275 Neb. 481, 747 N.W.2d 410 (2008).

The trial court did not abuse its discretion under the Nebraska Postconviction Act when it required the State to file a written response to the appellant's motion for postconviction relief. *State v. McLeod*, 274 Neb. 566, 741 N.W.2d 664 (2007).

The trial court did not err in declining to appoint the appellant counsel for the purpose of conducting further discovery on a postconviction motion, because under the Nebraska Postconviction Act, it is within the discretion of the trial court as to whether counsel shall be appointed. *State v. McLeod*, 274 Neb. 566, 741 N.W.2d 664 (2007).

A movant's subsequent postconviction claims are barred by his or her failure to raise available claims in a previous postconviction motion, even if the movant acted pro se in the first proceeding. *State v. Marshall*, 272 Neb. 924, 725 N.W.2d 834 (2007).

An appellate court will not entertain a successive motion for postconviction relief unless the motion affirmatively shows on its face that the basis relied upon for relief was not available at the time the movant filed the prior motion. *State v. Marshall*, 272 Neb. 924, 725 N.W.2d 834 (2007).

ANNOTATIONS

In an action under Nebraska's postconviction statute, an issue of constitutional dimension involving a sentence does not constitute grounds for postconviction relief unless it also constitutes grounds for finding the sentence void or voidable. *State v. Moore*, 272 Neb. 71, 718 N.W.2d 537 (2006).

The power to grant a new direct appeal is implicit in this section, and the district court has jurisdiction to exercise such a power where the evidence establishes a denial or infringement of the right to effective assistance of counsel at the direct appeal stage of the criminal proceedings. *State v. Murphy*, 15 Neb. App. 398, 727 N.W.2d 730 (2007).

For postconviction relief to be granted under the Nebraska Postconviction Act, the claimed infringement must be constitutional in dimension. *State v. Taylor*, 14 Neb. App. 849, 716 N.W.2d 771 (2006).

29-3002.

An order denying an evidentiary hearing on a postconviction claim is a final judgment as to such claim under this section. *State v. Poindexter*, 277 Neb. 936, 766 N.W.2d 391 (2009).

An order ruling on a motion filed in a pending postconviction case seeking to amend the postconviction motion to assert additional claims is not a final judgment and is not appealable under this section. *State v. Hudson*, 273 Neb. 42, 727 N.W.2d 219 (2007).

29-3003.

The phrase "any other remedy" encompasses a direct appeal when the issue raised in the postconviction proceeding can be raised in the direct appeal. Thus, a motion for postconviction relief cannot be used as a substitute for an appeal or to secure a further review of issues already litigated on direct appeal or which were known to the defendant and counsel at the time of the trial and which were capable of being raised, but were not raised, in the defendant's direct appeal. *State v. Molina*, 271 Neb. 488, 713 N.W.2d 412 (2006).

29-3304.

Under this section, law enforcement personnel must have probable cause to believe that the person whose DNA is sought committed the crime for which the DNA is sought. *State v. McKinney*, 273 Neb. 346, 730 N.W.2d 74 (2007).

29-3401.

A prisoner who was transferred to Nebraska pursuant to the Interstate Corrections Compact is subject to the jurisdiction of the sending state. *Leach v. Dahm*, 277 Neb. 452, 763 N.W.2d 83 (2009).

Pursuant to the Interstate Corrections Compact, the receiving state acts solely as an agent for the sending state. *Leach v. Dahm*, 277 Neb. 452, 763 N.W.2d 83 (2009).

Where a prisoner is sentenced in Florida and transferred to Nebraska pursuant to the Interstate Corrections Compact, hearings in Nebraska considering whether the sentence was unconstitutional may be held only if authorized by Florida and are governed by the laws of Florida. *Leach v. Dahm*, 277 Neb. 452, 763 N.W.2d 83 (2009).

29-3523.

Under subsection (2)(c) of this section, which requires that the notation of a person's arrest be removed from the record if the charges are later dismissed, the person arrested may file a petition seeking to enforce his or her right to have his or her record expunged. *State v. Blair*, 17 Neb. App. 611, 767 N.W.2d 143 (2009).

29-3703.

Under subsections (2) and (3) of this section, following the annual status review of a person committed to treatment in a regional center, the court may either order the person released unconditionally, order the person to remain committed to the regional center, or order the person discharged from the regional center and placed in a less restrictive treatment program. *State v. Schinzel*, 271 Neb. 281, 710 N.W.2d 634 (2006).

ANNOTATIONS

Under this section, a person cannot be placed in the “joint legal custody” of two separate agencies or treatment programs. *State v. Schinzel*, 271 Neb. 281, 710 N.W.2d 634 (2006).

29-3805.

Defense counsel’s implicit request for a continuance did not operate as a waiver of the defendant’s right to a disposition within the time limit imposed by the instate prisoner statutes; it merely extended the duration of the time period allowed for commencement of trial. *State v. Rouse*, 13 Neb. App. 90, 688 N.W.2d 889 (2004).

The law and decisions under the speedy trial statutes did not apply to the instate prisoner statutes, particularly this section; therefore, defendant’s various pretrial motions did not toll the time period allowed for the commencement of trial. *State v. Rouse*, 13 Neb. App. 90, 688 N.W.2d 889 (2004).

When defense counsel requested to schedule trial for a date after the conclusion of another trial in which defense counsel was involved, such request amounted to a request for continuance, and the district court’s accession to it established good cause to extend the period within which the defendant could be brought to trial. *State v. Rouse*, 13 Neb. App. 90, 688 N.W.2d 889 (2004).

29-4003.

Before determining that a defendant convicted of a crime not sexual in nature is subject to sex offender registration pursuant to subsection (1)(b)(i)(B) of this section, the court must provide notice and a hearing and must make the finding whether sexual penetration or sexual contact occurred in connection with the incident that gave rise to the conviction based on the record and the hearing. *State v. Norman*, 282 Neb. 990, 808 N.W.2d 48 (2012).

Subsection (1)(b)(i)(B) of this section provides that the court’s finding shall include consideration of the factual basis for a plea-based conviction and information contained in the presentence report. However, the statute does not limit the court’s consideration to such sources and, because a liberty interest is at stake, a meaningful hearing requires consideration of evidence at the hearing as well as the factual basis and the presentence report. *State v. Norman*, 282 Neb. 990, 808 N.W.2d 48 (2012).

The finding required under subsection (1)(b)(i)(B) of this section should be established by clear and convincing evidence. *State v. Norman*, 282 Neb. 990, 808 N.W.2d 48 (2012).

A sex offender registrant’s actual registration under another jurisdiction’s law is conclusive evidence that the registrant was “required” to register within the meaning of subsection (1)(a)(iv) of this section. *Skaggs v. Nebraska State Patrol*, 282 Neb. 154, 804 N.W.2d 611 (2011).

Subsection (1)(a)(iv) of this section has no residency requirement. *Skaggs v. Nebraska State Patrol*, 282 Neb. 154, 804 N.W.2d 611 (2011).

The Sex Offender Registration Act applies to an individual whose crime occurred prior to January 1, 1997, if the individual was incarcerated or on probation or parole for that crime on and after January 1, 1997. *In re Interest of D.H.*, 281 Neb. 554, 797 N.W.2d 263 (2011).

Incest of an adult is not a registrable offense under the Sex Offender Registration Act. *State v. Aguilar-Moreno*, 17 Neb. App. 623, 769 N.W.2d 784 (2009).

29-4005.

Under the Sex Offender Registration Act, pursuant to the former subsection (2) of this section, a convicted sex offender whose offense is determined to be an “aggravated offense” is subject to the lifetime registration requirement. *State v. Sinnick*, 279 Neb. 499, 779 N.W.2d 335 (2010).

A sentencing judge may determine whether an aggravated offense as formerly defined in subsection (4)(a) of this section has been committed based upon information contained in the record, including the factual basis for a plea-based conviction and information contained in the presentence report. *State v. Hamilton*, 277 Neb. 593, 763 N.W.2d 731 (2009).

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A defendant who had a prior conviction for a registrable offense under the Sex Offender Registration Act could challenge on direct appeal a lifetime registration requirement, because the sentencing court must make a finding of fact concerning lifetime registration as part of the sentencing order. *State v. Aguilar-Moreno*, 17 Neb. App. 623, 769 N.W.2d 784 (2009).

29-4013.

Amendments to the set-aside statute that allow a set-aside conviction to be used for purposes of determining risk under the Sex Offender Registration Act did not apply retroactively to a sex offender whose prior convictions for non-sex-offenses were set aside prior to the amendments, and thus the offender's set-aside convictions could not be used for risk assessment under the act. Orders setting aside the offender's convictions vested him with the right to have the set-aside convictions used only for those purposes listed in this section at the time the orders were entered. *McCray v. Nebraska State Patrol*, 271 Neb. 1, 710 N.W.2d 300 (2006).

For purposes of classifying a convicted sex offender under the Sex Offender Registration Act, unsworn victim statements obtained by police were not competent evidence to support scoring under the section of the risk assessment instrument concerning the nature of the offender's sexual assault behavior. Where the statements were not correlated to any offense for which the offender was charged or convicted, statements bore no other indicia of probative value, and nothing in the record established the truth of the statements. *McCray v. Nebraska State Patrol*, 271 Neb. 1, 710 N.W.2d 300 (2006).

The fact that orders setting aside a convicted sex offender's prior convictions for nonsexual offenses were issued after the offender's risk assessment instrument was scored did not preclude the hearing officer from considering those orders when resolving the offender's administrative challenge to his sex offender classification under the Sex Offender Registration Act; regulations existing at the time of the administrative review process indicated that the hearing officer could consider events occurring after the initial scoring of the risk assessment instrument. *McCray v. Nebraska State Patrol*, 271 Neb. 1, 710 N.W.2d 300 (2006).

29-4014.

This section does not violate the constitutional provisions relating to equal protection, special legislation, separation of powers, bills of attainder, ex post facto, or double jeopardy. *In re Interest of A.M.*, 281 Neb. 482, 797 N.W.2d 233 (2011).

29-4116.

In enacting the DNA Testing Act, the Legislature intended to provide (1) an extraordinary remedy—vacation of the judgment—for the compelling circumstance in which actual innocence is conclusively established by DNA testing and (2) an ordinary remedy—a new trial—for circumstances in which newly discovered DNA evidence would have, if available at the former trial, probably produced a substantially different result. *State v. Parmar*, 283 Neb. 247, 808 N.W.2d 623 (2012).

Postconviction DNA evidence probably would have produced a substantially different result at trial if the evidence (1) tends to create a reasonable doubt about the defendant's guilt and (2) does not merely impeach or contradict a key eyewitness' testimony, but is probative of a factual situation different from that to which the witness testified. *State v. Parmar*, 283 Neb. 247, 808 N.W.2d 623 (2012).

To warrant an order vacating a judgment of conviction under the DNA Testing Act, the movant must present DNA testing results that, when considered with the evidence presented at the trial leading to conviction, show a complete lack of evidence to establish an essential element of the crime charged. But to warrant an order for a new trial under the DNA Testing Act, the movant must present DNA testing results that probably would have produced a substantially different result if the evidence had been offered and admitted at the movant's trial. *State v. Parmar*, 283 Neb. 247, 808 N.W.2d 623 (2012).

An action under the DNA Testing Act is a collateral attack on a conviction and is therefore similar to a postconviction action and is not part of the criminal proceeding itself. *State v. Pratt*, 273 Neb. 817, 733 N.W.2d 868 (2007).

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29-4118.

The DNA Testing Act was not intended to be an alternative vehicle for raising claims of ineffective assistance of counsel. *State v. Haas*, 279 Neb. 812, 782 N.W.2d 584 (2010).

29-4120.

Evidence which was available but not pursued is not considered to have been unavailable at the time of trial. *State v. Haas*, 279 Neb. 812, 782 N.W.2d 584 (2010).

The DNA Testing Act does not exclude persons who were convicted and sentenced pursuant to pleas. *State v. Winslow*, 274 Neb. 427, 740 N.W.2d 794 (2007).

29-4122.

Decisions regarding appointment of counsel under the DNA Testing Act are reviewed for an abuse of discretion. *State v. Poe*, 271 Neb. 858, 717 N.W.2d 463 (2006).

There is not a constitutional right to appointment of counsel in an action under the DNA Testing Act. *State v. Poe*, 271 Neb. 858, 717 N.W.2d 463 (2006).

Under this section, the court has discretion to appoint counsel based on its determination of whether the person bringing the action has shown that DNA testing may be relevant to his or her claim of wrongful conviction. *State v. Poe*, 271 Neb. 858, 717 N.W.2d 463 (2006).

29-4123.

Unless an abuse of discretion is shown, the trial court's determination on a motion for new trial, based on the issue of whether DNA evidence was of such a nature that if it had been offered and admitted at the former trial, it probably would have produced a substantially different result, will not be disturbed on appellate review. *State v. Boppre*, 280 Neb. 774, 790 N.W.2d 417 (2010).

A motion to dismiss an action under the DNA Testing Act after testing has been completed is addressed to the discretion of the trial court, and unless an abuse of discretion is shown, the court's determination will not be disturbed. *State v. Poe*, 271 Neb. 858, 717 N.W.2d 463 (2006).

In order to bring an action under the DNA Testing Act to a conclusion, when the State receives DNA testing results that do not exonerate or exculpate the person, the State should file a motion to dismiss the action, the granting of which is an appealable order. *State v. Poe*, 271 Neb. 858, 717 N.W.2d 463 (2006).

29-4201.

This section demonstrates that the Legislature did not intend to allow written arraignments filed under section 29-4206 to supersede Nebraska's criminal procedure statutes. *State v. Liston*, 271 Neb. 468, 712 N.W.2d 264 (2006).

29-4206.

This section does not authorize district courts to accept pleas of not guilty on a conditional basis or alter the requirement under section 29-1812 that a defendant must withdraw his or her plea to the general issue before filing a motion to quash. *State v. Liston*, 271 Neb. 468, 712 N.W.2d 264 (2006).

30-810.

Under this section, the only possible purpose of an attorney-client agreement to pursue claims for wrongful death is to benefit those persons specifically designated as statutory beneficiaries. *Perez v. Stern*, 279 Neb. 187, 777 N.W.2d 545 (2010).

ANNOTATIONS

30-1601.

The supersedeas bond requirement contained in this section applies to will contests removed from county court and tried in the first instance in district court pursuant to section 30-2429.01. In re Estate of Sehi, 17 Neb. App. 697, 772 N.W.2d 103 (2009).

30-2201.

Appeals of matters arising under the Nebraska Probate Code are reviewed for error on the record. In re Guardianship of Brenda B. et al., 13 Neb. App. 618, 698 N.W.2d 228 (2005).

30-2207.

This section does not preclude the establishment of death by circumstantial evidence before the expiration of the 5-year statutory period. State v. Edwards, 278 Neb. 55, 767 N.W.2d 784 (2009).

This section sets forth the evidence that can be used to prove the fact of death in proceedings under the Nebraska Probate Code, not the Nebraska Criminal Code. State v. Edwards, 278 Neb. 55, 767 N.W.2d 784 (2009).

30-2209.

“Any person interested in the welfare” of a protected person has standing to intervene and is not limited to those persons more narrowly defined as “interested persons” in subsection (21) of this section. In re Guardianship & Conservatorship of Cordel, 274 Neb. 545, 741 N.W.2d 675 (2007).

30-2211.

In common-law and equity actions relating to decedents’ estates, the county courts have concurrent original jurisdiction with the district courts. When the jurisdiction of the county court and district court is concurrent, the basic principles of judicial administration require that the court which first acquires jurisdiction should retain it to the exclusion of the other court. Washington v. Conley, 273 Neb. 908, 734 N.W.2d 306 (2007).

30-2314.

Subdivision (a)(1)(i) of this section does not include the word “document” or even require a writing evidencing a transfer. In re Estate of Fries, 279 Neb. 887, 782 N.W.2d 596 (2010).

The dual purpose of the elective share provisions is to prevent a spouse from being denied a fair share of the decedent’s estate and also to prevent the surviving spouse from obtaining more than a fair share of the estate when he or she has already received a share of the estate through some other means. To achieve this purpose, the value of certain property transferred by the decedent during marriage is included in the decedent’s augmented estate under subdivision (a)(1) of this section. In re Estate of Fries, 279 Neb. 887, 782 N.W.2d 596 (2010).

Under subdivision (a)(1)(i) of this section, a transfer “under which the decedent retained at death the possession or enjoyment of, or right to income from, the property” does not require that the decedent’s right to possession of, enjoyment of, or income from the property be recorded in the instrument of transfer. A decedent retains possession or enjoyment of, or the right to income from, property when it is understood that the decedent will retain such an interest despite the transfer. And such an understanding need not be express; it can be implied from the circumstances surrounding the transfer. In re Estate of Fries, 279 Neb. 887, 782 N.W.2d 596 (2010).

Under subdivision (c)(2) of this section, if a spouse had agreed to a transfer, the value of the transferred property is not included in the transferring spouse’s augmented estate. In re Estate of Fries, 279 Neb. 887, 782 N.W.2d 596 (2010).

What is significant for purposes of subdivision (a)(1)(i) of this section is whether the parties to a transfer intended the decedent to functionally retain possession or enjoyment of, or the right to income from, the property—not whether the written instrument of transfer reflects that intent. In re Estate of Fries, 279 Neb. 887, 782 N.W.2d 596 (2010).

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The exclusion of premarital trusts from the augmented estate was intended to permit a person to provide for children by a prior marriage, as by a revocable living trust, without concern that such provisions will be upset by later marriage. In re Estate of Chrisp, 276 Neb. 966, 759 N.W.2d 87 (2009).

Under this section, only a decedent's transfers to others during his or her marriage to the surviving spouse are included in the augmented estate for calculating a surviving spouse's elective share. In re Estate of Chrisp, 276 Neb. 966, 759 N.W.2d 87 (2009).

Under this section, the probate estate is augmented by first reducing the estate by specified obligations and liabilities and then increasing the estate by the value of specified properties and transfers. In re Estate of Chrisp, 276 Neb. 966, 759 N.W.2d 87 (2009).

Whether premarital trust assets are part of the augmented estate for determining a surviving spouse's elective share is governed by this section, not section 30-3850 of the Nebraska Uniform Trust Code. In re Estate of Chrisp, 276 Neb. 966, 759 N.W.2d 87 (2009).

30-2328.

In determining the intent of the testator when he or she used controverted words in a holographic will, the court should place itself in the shoes of the testator, ascertain his or her intention, and enforce it, remembering at all times that the testator was unskilled in the field of will drafting. In re Estate of Matthews, 13 Neb. App. 812, 702 N.W.2d 821 (2005).

30-2351.

The only way to prove the existence of a contract to make a will or not to revoke a will or devise is by producing a will or signed writing in satisfaction of one of the three subsections of this section. Johnson v. Anderson, 278 Neb. 500, 771 N.W.2d 565 (2009).

30-2401.

In Nebraska, title to both real and personal property passes immediately upon death to the decedent's devisees or heirs, subject to administration, allowances, and a surviving spouse's elective share. Wilson v. Fieldgrove, 280 Neb. 548, 787 N.W.2d 707 (2010).

30-2403.

Under the Nebraska Probate Code, the right and duty to sue and recover assets for an estate reside in the estate's appointed personal representative, not the devisees. In re Estate of Hedke, 278 Neb. 727, 775 N.W.2d 13 (2009).

30-2404.

The mere filing of a claim with a probate court does not constitute commencement of a proceeding to enforce a claim. Lenners v. St. Paul Fire & Marine Ins. Co., 18 Neb. App. 772, 793 N.W.2d 357 (2010).

30-2408.

This section permits an informal appointment proceeding to be commenced more than 3 years after the decedent's death if no formal or informal proceeding for probate or proceeding concerning the succession or administration has occurred within the 3-year period. In re Estate of Nemetz, 273 Neb. 918, 735 N.W.2d 363 (2007).

30-2429.01.

An appeal from a will contest removed to a district court pursuant to this section must comply with the supersedeas bond requirement contained in section 30-1601. In re Estate of Sehi, 17 Neb. App. 697, 772 N.W.2d 103 (2009).

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30-2454.

Once a personal representative is prohibited from acting under this section, an interested party may thereafter move under section 30-2457 for the appointment of a special administrator, based on the facts that the personal representative has received notice under this section and cannot act and that the appointment of a special administrator would be appropriate to preserve the estate or to secure its proper administration. In re Estate of Cooper, 275 Neb. 322, 746 N.W.2d 663 (2008).

Taken together, this section and section 30-2457 set forth a procedure by which to suspend and remove a personal representative and appoint a special administrator. In re Estate of Cooper, 275 Neb. 322, 746 N.W.2d 663 (2008).

Under this section, once the personal representative receives notice of a petition seeking his or her removal, he or she “shall not act,” except in limited circumstances. Thus, notice to the personal representative under this section effectively suspends the personal representative. In re Estate of Cooper, 275 Neb. 322, 746 N.W.2d 663 (2008).

A proceeding under this section to remove a personal representative for cause is a special proceeding within the meaning of section 25-1902. In re Estate of Nemetz, 273 Neb. 918, 735 N.W.2d 363 (2007).

30-2457.

A probate court’s denial of an application for the appointment of a special administrator, brought pursuant to subsection (2) of this section, is a final, appealable order within the meaning of section 25-1902. In re Estate of Muncillo, 280 Neb. 669, 789 N.W.2d 37 (2010).

A special administrator is necessary to preserve an estate or secure its proper administration only when the personal representative is not lawfully fulfilling his or her duties under the Nebraska Probate Code, and at a minimum, requires an allegation that the personal representative is perpetrating fraud, has colluded with another to deprive the estate of a potential asset, is conflicted to properly administer the estate, or cannot act to preserve the estate, or the existence of some other equitable circumstance, plus some evidence of the personal representative’s alleged dereliction of duty. In re Estate of Muncillo, 280 Neb. 669, 789 N.W.2d 37 (2010).

When an estate lacks a personal representative, this section anticipates the problem by providing for the appointment of a special administrator to administer an estate when a personal representative cannot or should not act. Thus, devisees do not have standing to sue on behalf of an estate merely because the estate lacks a personal representative. In re Estate of Hedke, 278 Neb. 727, 775 N.W.2d 13 (2009).

In the absence of evidence, no emergency basis under this section can be established upon which a county court could base its suspension of a personal representative and the appointment of a temporary special administrator. In re Estate of Cooper, 275 Neb. 322, 746 N.W.2d 663 (2008).

Once a personal representative is prohibited from acting under section 30-2454, an interested party may thereafter move under this section for the appointment of a special administrator, based on the facts that the personal representative has received notice under section 30-2454 and cannot act and that the appointment of a special administrator would be appropriate to preserve the estate or to secure its proper administration. In re Estate of Cooper, 275 Neb. 322, 746 N.W.2d 663 (2008).

Taken together, section 30-2454 and this section set forth a procedure by which to suspend and remove a personal representative and appoint a special administrator. In re Estate of Cooper, 275 Neb. 322, 746 N.W.2d 663 (2008).

This section permits a special administrator to be appointed after notice when a personal representative cannot or should not act and also permits the appointment of a special administrator without notice when an emergency exists. In re Estate of Cooper, 275 Neb. 322, 746 N.W.2d 663 (2008).

30-2464.

Under the Nebraska Probate Code, the right and duty to sue and recover assets for an estate reside in the estate’s appointed personal representative, not the devisees. In re Estate of Hedke, 278 Neb. 727, 775 N.W.2d 13 (2009).

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A trust beneficiary's estate can seek to enforce the beneficiary's interests in the trust to the same extent that the beneficiary could have enforced his or her interests immediately before death, consistent with the standard provided in the Restatement (Third) of Trusts section 50, comment d(5). (2003). In re Trust Created by Hansen, 274 Neb. 199, 739 N.W.2d 170 (2007).

Section 24-517(1) confers upon the county court exclusive original jurisdiction of all matters relating to the decedents' estates, including the probate of wills and the construction thereof, except as provided in subsection (c) of this section and section 30-2486. *Lenners v. St. Paul Fire & Marine Ins. Co.*, 18 Neb. App. 772, 793 N.W.2d 357 (2010).

30-2470.

Under the Nebraska Probate Code, the right and duty to sue and recover assets for an estate reside in the estate's appointed personal representative, not the devisees. In re Estate of Hedke, 278 Neb. 727, 775 N.W.2d 13 (2009).

30-2476.

Under the Nebraska Probate Code, the right and duty to sue and recover assets for an estate reside in the estate's appointed personal representative, not the devisees. In re Estate of Hedke, 278 Neb. 727, 775 N.W.2d 13 (2009).

30-2481.

The Nebraska Probate Code does not authorize attorney fees for a surviving spouse. A surviving spouse also acting as the personal representative is not entitled to attorney fees for legal actions that she took while she was not the personal representative and that were directed at obtaining assets that did not benefit the estate or come under its administration. In re Estate of Chrisp, 276 Neb. 966, 759 N.W.2d 87 (2009).

30-2483.

The 3-year limitations period of section 30-2485(a)(2) applied to the Department of Health and Human Services' Medicaid estate recovery claim because the personal representative failed to send notice to the department within 5 days of the date on which notice to creditors was first published, as required by this section and section 25-520.01. In re Estate of Cushing, 283 Neb. 571, 810 N.W.2d 741 (2012).

This section requires notice to be sent to the Department of Health and Human Services under certain circumstances. To comply with this requirement, notice must be sent in accordance with section 25-520.01. In re Estate of Cushing, 283 Neb. 571, 810 N.W.2d 741 (2012).

30-2485.

An award of interest commencing approximately 7 months after the decedent's death was improper because under subsection (a)(2) of this section, the time for the original presentation of the Department of Health and Human Services' claim expired 3 years after the decedent's death, and interest would not commence until 60 days thereafter, pursuant to section 30-2488(e). In re Estate of Cushing, 283 Neb. 571, 810 N.W.2d 741 (2012).

The 3-year limitations period of subsection (a)(2) of this section applied to the Department of Health and Human Services' Medicaid estate recovery claim because the personal representative failed to send notice to the department within 5 days of the date on which notice to creditors was first published, as required by sections 30-2483 and 25-520.01. In re Estate of Cushing, 283 Neb. 571, 810 N.W.2d 741 (2012).

Time limitations set forth in subsection (a) of this section applied to the Department of Health and Human Services' Medicaid estate recovery claim, because under the section, under which the claim was made, section 68-919, the indebtedness to the department arose during the lifetime of the recipient. In re Estate of Cushing, 283 Neb. 571, 810 N.W.2d 741 (2012).

30-2486.

Mere notice to a representative of an estate regarding a possible claim against the estate does not constitute presenting or filing a claim under this section. *J.R. Simplot Co. v. Jelinek*, 275 Neb. 548, 748 N.W.2d 17 (2008).

ANNOTATIONS

Giving the language in this section a consistent, harmonious, and sensible construction, it is apparent that the filing of a claim is a separate and distinct act from the initiation of a legal proceeding to pursue payment of the claim. Therefore, the filing of a claim does not commence an action and does not in and of itself require the services of an attorney. In re Estate of Cooper, 275 Neb. 297, 746 N.W.2d 653 (2008).

The filing of a statement of claim is an administrative step by which the personal representative is advised, in accordance with the probate statutes, of the identities of the creditors and the amounts of their claims. In re Estate of Cooper, 275 Neb. 297, 746 N.W.2d 653 (2008).

For purposes of any statute of limitations, the proper presentation of a claim is equivalent to commencement of a proceeding on the claim. *Lenners v. St. Paul Fire & Marine Ins. Co.*, 18 Neb. App. 772, 793 N.W.2d 357 (2010).

Section 24-517(1) confers upon the county court exclusive original jurisdiction of all matters relating to the decedents' estates, including the probate of wills and the construction thereof, except as provided in section 30-2464(e) and this section. *Lenners v. St. Paul Fire & Marine Ins. Co.*, 18 Neb. App. 772, 793 N.W.2d 357 (2010).

30-2488.

An award of interest commencing approximately 7 months after the decedent's death was improper because under section 30-2485(a)(2), the time for the original presentation of the Department of Health and Human Services' claim expired 3 years after the decedent's death, and interest would not commence until 60 days thereafter, pursuant to subsection (e) of this section. In re Estate of Cushing, 283 Neb. 571, 810 N.W.2d 741 (2012).

The 60-day period set forth in subsection (a) of this section is a jurisdictional requirement. If, after being given notice of this time period, the claimant fails to act, the claim is barred. In re Estate of Hockemeier, 280 Neb. 420, 786 N.W.2d 680 (2010).

Subsection (a) of this section imposes a time limitation on a decision changing disallowance of a claim to allowance but does not impose a time limit on changing an allowance to a disallowance. *Lenners v. St. Paul Fire & Marine Ins. Co.*, 18 Neb. App. 772, 793 N.W.2d 357 (2010).

Subsection (a) of this section treats a failure to disallow a claim as an allowance of the claim, but also authorizes a personal representative to change his or her decision regarding allowance or disallowance of a claim. *Lenners v. St. Paul Fire & Marine Ins. Co.*, 18 Neb. App. 772, 793 N.W.2d 357 (2010).

30-24,109.

If a county court finds that certain property is subject to partition, it may direct the personal representative to sell the property. The personal representative is to perform the duties and responsibilities otherwise incumbent upon a referee. In re Estate of Failla, 278 Neb. 770, 773 N.W.2d 793 (2009).

30-2608.

Appeals of matters arising under the Nebraska Probate Code are reviewed for error on the record. In re Guardianship of Elizabeth H., 17 Neb. App. 752, 771 N.W.2d 185 (2009).

The "fitness" standard applied in a guardianship appointment pursuant to this section is analogous to a juvenile court's finding that it would be contrary to a juvenile's welfare to return home. In re Guardianship of Elizabeth H., 17 Neb. App. 752, 771 N.W.2d 185 (2009).

The parental preference principle applies to proceedings to initially determine whether to appoint a guardian over a parent's objection. In re Guardianship of Elizabeth H., 17 Neb. App. 752, 771 N.W.2d 185 (2009).

Under subsection (d) of this section, the determination of who shall be guardian and conservator is ultimately dependent upon the best interests of the children, although a testamentary nomination of a guardian or conservator may have statutory priority. In re Guardianship & Conservatorship of McDowell, 17 Neb. App. 340, 762 N.W.2d 615 (2009).

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Pursuant to subsection (e) of this section and section 43-247(10), guardianship was properly docketed in the county court and heard by a separate juvenile court judge. In re Guardianship of Brenda B. et al., 13 Neb. App. 618, 698 N.W.2d 228 (2005).

The “fitness” standard applied in a guardianship appointment under this section is analogous to a juvenile court finding that it would be contrary to a juvenile’s health, safety, and welfare to return home. In re Guardianship of Brenda B. et al., 13 Neb. App. 618, 698 N.W.2d 228 (2005).

30-2620.

Pursuant to this section, a full guardianship may be established if the probate court finds by clear and convincing evidence that a full guardianship is necessary for the care of the incapacitated person. In re Guardianship & Conservatorship of Karin P., 271 Neb. 917, 716 N.W.2d 681 (2006).

30-2627.

When two persons have equal priority, the Nebraska Probate Code directs the court to appoint the person “best qualified to serve” as guardian. In re Guardianship & Conservatorship of Karin P., 271 Neb. 917, 716 N.W.2d 681 (2006).

30-2628.

Placing the establishment of a visitation schedule in the guardian is anticipated by the statutory duties assigned to a guardian with full powers. In re Guardianship & Conservatorship of Karin P., 271 Neb. 917, 716 N.W.2d 681 (2006).

In a guardianship proceeding, where no conservator for the estate of the ward had been appointed, the coguardians who had made payments to third-party retailers from the assets of the ward did not violate subdivision (a)(4)(ii) of this section by not obtaining prior judicial approval, because no such requirement exists for payments to third-party retailers. The coguardians who made unapproved payments to themselves from the assets of the ward for the ward’s room and board violated subdivision (a)(4)(ii) of this section. In re Guardianship of Gaube, 14 Neb. App. 259, 707 N.W.2d 16 (2005).

30-2645.

“Any person interested in the welfare” of a protected person has standing to intervene and is not limited to those persons more narrowly defined as “interested persons” in subsection (21) of section 30-2209. In re Guardianship & Conservatorship of Cordel, 274 Neb. 545, 741 N.W.2d 675 (2007).

30-2648.

There is no final adjudication of an intermediate account without an evidentiary hearing. In re Guardianship & Conservatorship of Cordel, 274 Neb. 545, 741 N.W.2d 675 (2007).

30-2715.

If an instrument executed by the parties is intended by them as security for a debt, whatever may be its form or name, it is in equity a mortgage. Clark v. Clark, 275 Neb. 276, 746 N.W.2d 132 (2008).

30-2719.

This section provides that extrinsic evidence of the depositor’s intent as to what type of account was created is relevant only when the contract of deposit is not in substantially the form provided in subsection (a) of this section. When the contract of deposit for an account is substantially in such form, the account will be treated as being the type of account designated on the form; if the contract of deposit is not in such form, then the depositor’s intent is relevant to determine the type of account pursuant to subsection (b) of this section. Eggleston v. Kovacich, 274 Neb. 579, 742 N.W.2d 471 (2007).

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30-2722.

A gift by the owner from a payable-on-death account does not create a right of reimbursement in the payable-on-death beneficiary. In re Trust of Rosenberg, 273 Neb. 59, 727 N.W.2d 430 (2007).

30-2723.

Under subsection (b)(2) of this section, a payable-on-death beneficiary may be named in either an individual or a representative capacity. In re Trust of Rosenberg, 273 Neb. 59, 727 N.W.2d 430 (2007).

30-3802.

It is clear from the plain language of this section that resulting and constructive trusts are not governed by the Nebraska Uniform Trust Code. Washington v. Conley, 273 Neb. 908, 734 N.W.2d 306 (2007).

30-3803.

When the parties do not claim that the terms are unclear or contrary to the settlor's actual intent pursuant to subsection (19) of this section, the interpretation of a trust's terms is a question of law. In re Trust Created by Hansen, 274 Neb. 199, 739 N.W.2d 170 (2007).

30-3806.

The right of retainer of a distribution is a valid, equitable remedy available to trustees of trusts. In re Trust of Hrnicek, 280 Neb. 898, 792 N.W.2d 143 (2010).

30-3812.

A beneficiary of property left to a trust has standing to raise the trustee's self-dealing and to seek damages, an accounting, and a constructive trust. In re Estate of Hedke, 278 Neb. 727, 775 N.W.2d 13 (2009).

A trust beneficiary's estate can seek to enforce the beneficiary's interests in the trust to the same extent that the beneficiary could have enforced his or her interests immediately before death, consistent with the standard provided in the Restatement (Third) of Trusts section 50, comment d(5). (2003). In re Trust Created by Hansen, 274 Neb. 199, 739 N.W.2d 170 (2007).

The remainder beneficiaries' motion for a declaration of rights was construed as a request for the court to instruct the trustee on its duties and powers when they asked the county court to decide whether the trustee could pay the billings for the beneficiary's last-illness expenses and, if so, what standards should be applied. In re Trust Created by Hansen, 274 Neb. 199, 739 N.W.2d 170 (2007).

This section does not limit to trustees the right to seek instructions from the court. In re Trust Created by Hansen, 274 Neb. 199, 739 N.W.2d 170 (2007).

30-3819.

The act of registering a trust gives the county court jurisdiction over the interests of all notified beneficiaries to decide issues related to any matter involving the trust's administration, including a request for instructions or an action to declare rights. In re Trust Created by Hansen, 274 Neb. 199, 739 N.W.2d 170 (2007).

30-3827.

Under subsection (1) of this section, a trust may be created in life insurance death benefits. In re Trust of Rosenberg, 273 Neb. 59, 727 N.W.2d 430 (2007).

30-3828.

The provision in subsection (b) of this section that a "beneficiary is definite if the beneficiary can be ascertained now or in the future" did not change the common-law rule that the beneficiary must be ascertainable from the trust instrument. Newman v. Liebig, 282 Neb. 609, 810 N.W.2d 408 (2011).

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30-3836.

When a trust does not contain a termination clause, its termination date is implied from its terms. In re Estate of Hedke, 278 Neb. 727, 775 N.W.2d 13 (2009).

Where a trust did not contain a termination clause, the trust impliedly terminated with the settlor's death, because the settlor's beneficial interests in the trust ended upon her death when providing for her care and support was the only purpose for the trust. The trustee's payments for a settlor's outstanding debts, taxes, and expenses upon the settlor's death are part of the trustee's winding-up duties after a trust terminates. In re Estate of Hedke, 278 Neb. 727, 775 N.W.2d 13 (2009).

30-3841.

A document by which a settlor purports to revoke a revocable trust is a term of that trust. In re Trust Created by Isvik, 274 Neb. 525, 741 N.W.2d 638 (2007).

Absent clear and convincing evidence that a settlor's stated intent to revoke her trust was a product of mistake, the trust was revoked and ceased to exist. In re Trust Created by Isvik, 274 Neb. 525, 741 N.W.2d 638 (2007).

30-3850.

A creditor does not fail to comply with the notice provisions contained in subsection (a)(3) of this section merely because the amount requested by the creditor does not match the amount ultimately recovered after trial. Hastings State Bank v. Misle, 282 Neb. 1, 804 N.W.2d 805 (2011).

Under subsection (a)(3) of this section, a surviving spouse's elective share is neither a statutory allowance nor a claim against the estate. In re Estate of Chrisp, 276 Neb. 966, 759 N.W.2d 87 (2009).

Under this section, a personal representative has no interest in the decedent's validly created nontestamentary trust except to assert the trust's liability for this section's specified claims against the estate and statutory allowances that the decedent's estate is inadequate to satisfy. In re Estate of Chrisp, 276 Neb. 966, 759 N.W.2d 87 (2009).

Whether premarital trust assets are part of the augmented estate for determining a surviving spouse's elective share is governed by section 30-2314 of the Nebraska Probate Code, not this section. In re Estate of Chrisp, 276 Neb. 966, 759 N.W.2d 87 (2009).

30-3862.

The court has the authority to remove a trustee if the trustee has engaged in self-dealing. Sherman v. Sherman, 16 Neb. App. 766, 751 N.W.2d 168 (2008).

The trial court did not refer to language of this section in finding that the cotrustee should be removed but made several factual findings supporting removal under this section, and the appellate court concluded that the cotrustee's actions when considered together justified removal of the cotrustee under this section. In re Charles C. Wells Revocable Trust, 15 Neb. App. 624, 734 N.W.2d 323 (2007).

30-3867.

Unless an exception under this section applies, a trust beneficiary establishes a prima facie case of fraud by showing that a trustee's transaction benefited the trustee at the beneficiary's expense. The burden of going forward with evidence then shifts to the trustee to establish the following by clear and convincing evidence: The transaction was made under a power expressly granted in the trust and the clear intent of the settlor and the transaction was in the beneficiary's best interests. In re Estate of Hedke, 278 Neb. 727, 775 N.W.2d 13 (2009).

30-3868.

A trustee's duty of impartiality in administering trust property plays particular importance in distributing assets. In re Estate of Hedke, 278 Neb. 727, 775 N.W.2d 13 (2009).

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In conjunction with this section and section 8-2207, a trustee has a statutory duty of impartiality. In re Trust of Rosenberg, 273 Neb. 59, 727 N.W.2d 430 (2007).

30-3875.

A trustee's failure to keep required records is reason, among other things, for a court reviewing a judicial accounting to resolve doubts against the trustee. In re Estate of Hedke, 278 Neb. 727, 775 N.W.2d 13 (2009).

30-3881.

A trustee's duty of impartiality in administering trust property plays particular importance in distributing assets. In re Estate of Hedke, 278 Neb. 727, 775 N.W.2d 13 (2009).

After a trust terminates, a trustee continues to have a nonbeneficial interest in the trust for timely winding up the trust and distributing its assets. But after a trust terminates, a trustee's property management powers are limited to those that are reasonable and appropriate in preserving the trust property, pending the winding up and distribution of assets. In re Estate of Hedke, 278 Neb. 727, 775 N.W.2d 13 (2009).

30-3882.

Under this section, a trustee's duty to pay the settlor's debts, expenses, and taxes does not normally justify a trustee's failure to make distributions. An unduly delayed distribution is a breach of the duty of care unless the trustee shows that some realistic complication prevented the trustee from determining in a timely manner a reasonable sum to reserve for winding-up costs. In re Estate of Hedke, 278 Neb. 727, 775 N.W.2d 13 (2009).

30-3890.

A beneficiary of property left to a trust has standing to raise the trustee's self-dealing and to seek damages, an accounting, and a constructive trust. In re Estate of Hedke, 278 Neb. 727, 775 N.W.2d 13 (2009).

30-3891.

A beneficiary of property left to a trust has standing to raise the trustee's self-dealing and to seek damages, an accounting, and a constructive trust. In re Estate of Hedke, 278 Neb. 727, 775 N.W.2d 13 (2009).

30-3893.

Whether attorney fees and expenses are awarded is addressed to the discretion of the trial court. In re Trust of Rosenberg, 273 Neb. 59, 727 N.W.2d 430 (2007).

30-3894.

The court viewed this section as recognition of the general rule that a cause of action for breach of trust, including a request for accounting, does not accrue until termination of the trust, with an exception if a potential claim for breach of trust is disclosed to the beneficiary. In re Charles C. Wells Revocable Trust, 15 Neb. App. 624, 734 N.W.2d 323 (2007).

30-38,110.

Because a statutory duty of impartiality existed under either section 8-2207 or section 30-3868, application of the Nebraska Uniform Trust Code would not substantially prejudice the rights of the parties in determining trustee impartiality. In re Trust of Rosenberg, 273 Neb. 59, 727 N.W.2d 430 (2007).

Because no prejudice to the parties appeared, court applied Nebraska Uniform Trust Code to judicial proceeding commenced prior to operative date of code. In re Charles C. Wells Revocable Trust, 15 Neb. App. 624, 734 N.W.2d 323 (2007).

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31-766.

Pursuant to this section, where there is evidence that a partially annexed fire district has assets, those assets should be considered in determining a proper adjustment of those matters growing out of the annexation. *Papillion Rural Fire Prot. Dist. v. City of Bellevue*, 274 Neb. 214, 739 N.W.2d 162 (2007).

31-1019.

This section does not create a duty giving rise to civil tort liability. *Stonacek v. City of Lincoln*, 279 Neb. 869, 782 N.W.2d 900 (2010).

32-624.

An order by any court made after the time period specified in this section violates the section, and no relief may be afforded to the party from such order after the 55th day. *Nebraska Republican Party v. Gale*, 283 Neb. 596, 812 N.W.2d 273 (2012).

32-801.

The Nebraska Supreme Court has no authority to grant relief where the Legislature has established by statute strict deadlines which must be met in order to guarantee that the state's election process is safeguarded against uncertainty and disruption. *Nebraska Republican Party v. Gale*, 283 Neb. 596, 812 N.W.2d 273 (2012).

32-1101.

Once an election takes place, a challenge under the Open Meetings Act to preliminary stages leading up to the election is effectively subsumed by the election contest provisions of sections 32-1101 through 32-1117. An election contest is the exclusive remedy under such circumstances, and a separate challenge under the Open Meetings Act does not exist once the issue is voted upon by the public. *Pierce v. Drobny*, 279 Neb. 251, 777 N.W.2d 322 (2010).

32-1409.

Pursuant to subsection (3) of this section, the Secretary of State is required to determine if constitutional requirements have been met before placing a measure on the ballot. *State ex rel. Lemon v. Gale*, 272 Neb. 295, 721 N.W.2d 347 (2006).

32-1412.

Pursuant to subsection (2) of this section, the issue of whether a measure complies with the requirements of Neb. Const. art. III, sec. 2, is a question of legal sufficiency and is justiciable by a court before the measure is submitted to the voters. *State ex rel. Lemon v. Gale*, 272 Neb. 295, 721 N.W.2d 347 (2006).

32-1604.

Abiding candidates agree to spend no more than 50 percent of the total campaign spending limit during the primary. For the office of university regent, the total campaign spending limit, excluding specified unrestricted spending, is \$50,000. Therefore, the spending limit for the primary is \$25,000. *Nebraska Legislature on behalf of State v. Hergert*, 271 Neb. 976, 720 N.W.2d 372 (2006).

Candidates for certain elective state offices, including the office of university regent, are required to file an affidavit stating whether they intend to abide by the voluntary campaign spending limits for the office under the Campaign Finance Limitation Act. *Nebraska Legislature on behalf of State v. Hergert*, 271 Neb. 976, 720 N.W.2d 372 (2006).

For both the primary and general election periods, when the nonabiding candidate expends 40 percent of his or her estimated maximum expenditures, he or she must notify the Nebraska Accountability and Disclosure Commission via the 40-percent affidavit "no later than five days after the forty percent has been expended." *Nebraska Legislature on behalf of State v. Hergert*, 271 Neb. 976, 720 N.W.2d 372 (2006).

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If a candidate for a covered office files an affidavit stating an intent not to abide by the voluntary spending limit, then the candidate must include in the affidavit a reasonable estimate of his or her maximum expenditures for the primary election, which estimate may be amended up to 30 days before the primary election. The nonabiding candidate must also file an estimate for the general election by the 40th day following the primary election, which estimate may be amended up to 60 days before the general election. A candidate is free to estimate expenditures at an amount greatly above or below the voluntary spending limit. *Nebraska Legislature on behalf of State v. Hergert*, 271 Neb. 976, 720 N.W.2d 372 (2006).

34-301.

Even though the neighboring landowners recognized their boundary line by markers which were an approximation of the real boundary, a boundary by mutual recognition and acquiescence may be established if the approximation was recognized by the acquiescing parties as their actual boundary and the location of this boundary can be proved by the parties. *Sila v. Saunders*, 274 Neb. 809, 743 N.W.2d 641 (2008).

The filial relationship rule has no bearing on a mutual recognition and acquiescence analysis. *Sila v. Saunders*, 274 Neb. 809, 743 N.W.2d 641 (2008).

When neighboring landowners recognized for 10 years a boundary which they believed corresponded to the metes and bounds legal descriptions of their properties, the doctrine of mutual recognition and acquiescence will apply even though an accurate survey, had they obtained one, could have accurately established a division line corresponding to the legal description. *Sila v. Saunders*, 274 Neb. 809, 743 N.W.2d 641 (2008).

35-302.

This section provides firefighters with statutory rights and permits firefighters to waive those rights by voluntary agreement, but does not alter the well-established principle that such a waiver must be clearly and expressly established. *Hogelin v. City of Columbus*, 274 Neb. 453, 741 N.W.2d 617 (2007).

36-701.

A person seeking to set aside a transfer under the Uniform Fraudulent Transfer Act must first prove that he or she is a "creditor" and that the party against whom relief is sought is a "debtor." *Reed v. Reed*, 275 Neb. 418, 747 N.W.2d 18 (2008).

36-702.

Pursuant to subsection (3) of this section, a spouse's right to an equitable distribution of the marital estate is not a "right to payment" under the Uniform Fraudulent Transfer Act. *Reed v. Reed*, 275 Neb. 418, 747 N.W.2d 18 (2008).

36-706.

A debtor-creditor relationship is created not by a judgment, but by the wrong which produces the injury; and it is the date of the wrongful act, not the date of the filing of the suit or of the judgment, which fixes the status and rights of the parties. *Dominguez v. Eppley Transp. Servs.*, 277 Neb. 531, 763 N.W.2d 696 (2009).

36-708.

Pursuant to subsection (a)(1) of this section, the Uniform Fraudulent Transfer Act requires some nexus between the claim upon which an individual's creditor status depends and the purpose for which that individual seeks to set aside a fraudulent transfer. *Reed v. Reed*, 275 Neb. 418, 747 N.W.2d 18 (2008).

36-709.

In all actions brought by creditors to subject property which it is claimed was fraudulently transferred, the person to whom the property has been transferred is a necessary party. *Reed v. Reed*, 277 Neb. 391, 763 N.W.2d 686 (2009).

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37-706.

This section neither includes nor excludes man-made waterways from the “banks of the river.” Instead, the Department of Natural Resources has the responsibility to determine whether any particular waterway should be considered part of the banks of the river. *Scofield v. State*, 276 Neb. 215, 753 N.W.2d 345 (2008).

37-729.

Plaintiff’s actions in eating a meal with her family on the courthouse lawn during annual historic celebration constituted picnicking and thus recreational purposes within the meaning of subdivision (3) of this section. *Bronsen v. Dawes County*, 14 Neb. App. 82, 704 N.W.2d 273 (2005).

38-179.

Under the former law, the general definition in the introductory paragraph of this section does not include as unprofessional conduct a single act of ordinary negligence. *Mahnke v. State*, 276 Neb. 57, 751 N.W.2d 635 (2008).

38-1,106.

The evidentiary privilege under this section belongs to the Department of Health and Human Services, not the credential holder, and is limited to protecting the department’s incident reports, complaints, and investigatory records when they are not included in a contested hearing. It does not preclude discovery of information available independent of the department’s investigation. *Stetson v. Silverman*, 278 Neb. 389, 770 N.W.2d 632 (2009).

38-3131.

This section does not nullify the rule set forth in section 27-504(2)(a). *In re Interest of Dennis W.*, 14 Neb. App. 827, 717 N.W.2d 488 (2006).

39-1722.

The discretion exercised by a county board of commissioners under this section and section 39-1725 is not judicial in nature, and as such, the trial court did not have jurisdiction to hear a petition in error under section 25-1901. *Camp Clarke Ranch v. Morrill Cty. Bd. of Comrs.*, 17 Neb. App. 76, 758 N.W.2d 653 (2008).

39-1725.

The discretion exercised by a county board of commissioners under section 39-1722 and this section is not judicial in nature, and as such, the trial court did not have jurisdiction to hear a petition in error under section 25-1901. *Camp Clarke Ranch v. Morrill Cty. Bd. of Comrs.*, 17 Neb. App. 76, 758 N.W.2d 653 (2008).

42-349.

The inference that residency in Nebraska has been with the intent to make it one’s permanent home is negated where he or she is a nonimmigrant alien residing in Nebraska on a visitor’s visa. *Rozsnyai v. Svacek*, 272 Neb. 567, 723 N.W.2d 329 (2006).

42-351.

Pursuant to subsection (1) of this section, jurisdiction over a child custody proceeding is governed exclusively by the Uniform Child Custody Jurisdiction and Enforcement Act. *Carter v. Carter*, 276 Neb. 840, 758 N.W.2d 1 (2008).

42-356.

This section does not prohibit a trial court from allowing one of the parties, who is imprisoned and not permitted to personally attend, to appear by telephone during a final hearing held in open court upon the oral testimony of witnesses. *Conn v. Conn*, 13 Neb. App. 472, 695 N.W.2d 674 (2005).

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42-357.

Section 42-1004(1)(d) is more specific than this section on the issue of modification or elimination of temporary spousal support. *Edwards v. Edwards*, 16 Neb. App. 297, 744 N.W.2d 243 (2008).

42-358.

Because subsection (1) of this section designates guardian ad litem fees as “costs,” they must be determined by the time of the entry of a final, appealable order. *McCaul v. McCaul*, 17 Neb. App. 801, 771 N.W.2d 222 (2009).

42-362.

Where the evidence does not clearly and affirmatively establish that a spouse is suffering from a mental illness or that such mental illness affects the spouse’s ability to work, it is not an abuse of discretion to deny support and maintenance for a mentally ill spouse. *Ginn v. Ginn*, 17 Neb. App. 451, 764 N.W.2d 889 (2009).

42-364.

Proceedings regarding modification of a marital dissolution, which are controlled by this section, are special proceedings as defined by section 25-1902. *Steven S. v. Mary S.*, 277 Neb. 124, 760 N.W.2d 28 (2009).

A court is required to devise a parenting plan and to consider joint legal and physical custody, but the court is not required to grant equal parenting time to the parents if such is not in the child’s best interests. *Kamal v. Imroz*, 277 Neb. 116, 759 N.W.2d 914 (2009).

A district court abuses its discretion to order joint custody when it fails to specifically find that joint physical custody is in the child’s best interests as required by this section. *Zahl v. Zahl*, 273 Neb. 1043, 736 N.W.2d 365 (2007).

A trial court’s authority under subsection (5) of this section to order joint physical custody when the parties have not requested it must be exercised in a manner consistent with due process requirements. *Zahl v. Zahl*, 273 Neb. 1043, 736 N.W.2d 365 (2007).

The factual inquiry necessary to impose joint physical custody is substantially different from that required for making a sole custody determination. *Zahl v. Zahl*, 273 Neb. 1043, 736 N.W.2d 365 (2007).

When a trial court determines at a general custody hearing that joint physical custody is, or may be, in a child’s best interests, but neither party has requested this custody arrangement, the court must give the parties an opportunity to present evidence on the issue before imposing joint custody. *Zahl v. Zahl*, 273 Neb. 1043, 736 N.W.2d 365 (2007).

Fundamental fairness requires that when a trial court determines at a general custody hearing that joint legal custody is, or may be, in a child’s best interests, but neither party has requested this custody arrangement, the court must give the parties an opportunity to present evidence on the issue before imposing joint legal custody. *Jessen v. Line*, 16 Neb. App. 197, 742 N.W.2d 30 (2007).

In cases of termination of parental rights under this section, the standard of proof must be by clear and convincing evidence. *Timothy T. v. Shireen T.*, 16 Neb. App. 142, 741 N.W.2d 452 (2007).

Child support is equitable relief, which can be awarded by the court under this section. *Johnson v. Johnson*, 15 Neb. App. 292, 726 N.W.2d 194 (2006).

There is no presumption in favor of joint custody, and joint custody remains disfavored to the extent that if both parties do not agree, the court can award joint custody only if it holds a hearing and makes the required finding. *Spence v. Bush*, 13 Neb. App. 890, 703 N.W.2d 606 (2005).

Regarding custody arrangements, the preference of a mature, responsible, intelligent minor child regarding his or her custody is a factor to be given consideration, but it is not controlling. *Adams v. Adams*, 13 Neb. App. 276, 691 N.W.2d 541 (2005).

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42-365.

A trial court does not have discretion to compel parties seeking marital dissolution to file a joint income tax return. *Bock v. Dalbey*, 283 Neb. 994, 815 N.W.2d 530 (2012).

Under this section, a trial court may adjust its equitable division of the marital estate to account for the tax consequences of the parties' filing of separate income tax returns. If a party seeking an equitable adjustment presents the court with the tax disadvantages of filing separate returns, a trial court may consider whether the other party unreasonably refused to file a joint return. Evidence of a tax disadvantage would normally include the parties' calculated joint and separate returns for comparison. *Bock v. Dalbey*, 283 Neb. 994, 815 N.W.2d 530 (2012).

An alimony award which drives an obligor's net income below the basic subsistence limitation of Neb. Ct. R. section 4-218 of the Nebraska Child Support Guidelines is presumptively an abuse of judicial discretion unless the court specifically finds that conformity with section 4-218 would work an "unjust or inappropriate" result in that particular case. *Gress v. Gress*, 274 Neb. 686, 743 N.W.2d 67 (2007).

In an action to modify a decree of dissolution, it is the decree that was affirmed as modified, from the time it was originally entered, that provides the appropriate frame of reference for the subsequent application to modify. *Finney v. Finney*, 273 Neb. 436, 730 N.W.2d 351 (2007).

To determine whether there has been a material and substantial change in circumstances warranting modification of a divorce decree, a trial court should compare the financial circumstances of the parties at the time of the divorce decree, or last modification of the decree, with their circumstances at the time the modification at issue was sought, and an intervening appellate decision has no bearing on the analysis. *Finney v. Finney*, 273 Neb. 436, 730 N.W.2d 351 (2007).

No matter which party has the larger pension, the value acquired during the marriage should be divided relatively equally, and it would be incongruous to reduce one party's equitable share simply because one has elected to retire early, while the other continues to work. *Webster v. Webster*, 271 Neb. 788, 716 N.W.2d 47 (2006).

The antiassignment clause of the Social Security Act and the Supremacy Clause of the U.S. Constitution prohibit a direct offset to adjust for disproportionate Social Security benefits in the property division of a dissolution decree. *Webster v. Webster*, 271 Neb. 788, 716 N.W.2d 47 (2006).

The purpose of property division is to equitably distribute the marital assets between the parties, and the polestar for such distribution is fairness and reasonableness as determined by the facts of each case. *Shuck v. Shuck*, 18 Neb. App. 867, 806 N.W.2d 580 (2011).

The equitable division of property pursuant to this section is a three-step process. The first step is to classify the parties' property as marital or nonmarital. The second step is to value the marital assets and marital liabilities of the parties. The third step is to calculate and divide the net marital estate between the parties in accordance with the principles contained in this section. *Ging v. Ging*, 18 Neb. App. 145, 775 N.W.2d 479 (2009).

The purpose of a property division is to distribute the marital assets equitably between the parties. *Ging v. Ging*, 18 Neb. App. 145, 775 N.W.2d 479 (2009).

Alimony orders may be modified or revoked for good cause shown. Good cause means a material and substantial change in circumstances and depends on the circumstances of each case. *Metcalf v. Metcalf*, 17 Neb. App. 138, 757 N.W.2d 124 (2008).

42-366.

Pursuant to this section, the court has an independent duty to evaluate the terms of an agreement and ensure that they are not unconscionable before incorporating them into a decree. *Marcovitz v. Rogers*, 276 Neb. 199, 752 N.W.2d 605 (2008).

The parties to a marriage may enter into a written settlement agreement to settle disputes attendant upon separation of their marriage, including a dispute over modification of a previous decree. *Marcovitz v. Rogers*, 276 Neb. 199, 752 N.W.2d 605 (2008).

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Pursuant to subsection (8) of this section, retirement plans earned during the marriage are to be included in the division of the marital estate. *Sitz v. Sitz*, 275 Neb. 832, 749 N.W.2d 470 (2008).

In a dissolution of marriage proceeding, if the parties fail to agree on a property settlement, pursuant to subsection (8) of this section, the court shall order an equitable division of the marital estate. *Ging v. Ging*, 18 Neb. App. 145, 775 N.W.2d 479 (2009).

Pursuant to subsection (8) of this section, for purposes of property division, the marital estate includes any pension and retirement plans owned by either party. *Ging v. Ging*, 18 Neb. App. 145, 775 N.W.2d 479 (2009).

Pursuant to subsection (8) of this section, early retirement incentives that result from employment during the marriage are included in the marital estate. *Simon v. Simon*, 17 Neb. App. 834, 770 N.W.2d 683 (2009).

42-369.

Subsection (4) of this section applied in a situation where the decree is silent with respect to accrued, unpaid temporary child support. *Dartmann v. Dartmann*, 14 Neb. App. 864, 717 N.W.2d 519 (2006).

42-371.

An income withholding notice issued by the Nebraska Department of Health and Human Services pursuant to the Income Withholding for Child Support Act is not an "execution" within the meaning of subsection (5) of this section. *Fox v. Whitbeck*, 280 Neb. 75, 783 N.W.2d 774 (2010).

Child support judgments do not become dormant by lapse of time, and the fact that a child support judgment ceases to be a lien by operation of subsection (5) of this section does not extinguish the judgment itself or cause it to become dormant. *Fox v. Whitbeck*, 280 Neb. 75, 783 N.W.2d 774 (2010).

Under subsection (6) of this section, a court has discretion to require reasonable security for an obligor's current or delinquent support obligations when compelling circumstances require it. *Davis v. Davis*, 275 Neb. 944, 750 N.W.2d 696 (2008).

42-371.01.

The filing of a deficient application under this section will not trigger a duty on the part of the obligee to file a corresponding objection. *Cain v. Cain*, 16 Neb. App. 117, 741 N.W.2d 448 (2007).

This section permits the district court, under specified circumstances, to enter a summary order of termination of child support in the absence of an objection by the obligee. *Cain v. Cain*, 16 Neb. App. 117, 741 N.W.2d 448 (2007).

42-742.

Pursuant to section 42-743, a litigant is precluded from raising an equitable estoppel defense to challenge the enforcement or modification of a foreign support order once the foreign order has been confirmed pursuant to this section. *Trogdon v. Trogdon*, 18 Neb. App. 313, 780 N.W.2d 45 (2010).

42-743.

Pursuant to this section, a litigant is precluded from raising an equitable estoppel defense to challenge the enforcement or modification of a foreign support order once the foreign order has been confirmed pursuant to section 42-742. *Trogdon v. Trogdon*, 18 Neb. App. 313, 780 N.W.2d 45 (2010).

42-744.

A party seeking to modify a child support order issued in another state shall register that order in Nebraska in accordance with the Uniform Interstate Family Support Act if the order has not been previously registered. *Lamb v. Lamb*, 14 Neb. App. 337, 707 N.W.2d 423 (2005).

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42-746.

Where the parties' marriage was dissolved in New Mexico when both parties resided there, and after both parties and the subject children moved to Nebraska, the law of New Mexico, as the state which issued the initial controlling child support order, governed the duration of the child support obligation in a Nebraska modification proceeding. *Wills v. Wills*, 16 Neb. App. 559, 745 N.W.2d 924 (2008).

The first predicate for a Nebraska court to have subject matter jurisdiction to modify another state's child support order is registration in Nebraska of such order. *Lamb v. Lamb*, 14 Neb. App. 337, 707 N.W.2d 423 (2005).

42-747.01.

Under this section, the provisions of section 42-746(c) and (d) are applied to a modification proceeding and govern the duration of the obligation of support. *Wills v. Wills*, 16 Neb. App. 559, 745 N.W.2d 924 (2008).

42-903.

Text messages cannot be construed to be within the meaning of physical menace, because words alone are not a physical threat or act within the purview of subsection (1)(b) of this section. *Cloeter v. Cloeter*, 17 Neb. App. 741, 770 N.W.2d 660 (2009).

The phrase "imminent bodily injury" within the context of subsection (1)(b) of this section means a certain, immediate, and real threat to one's safety which places one in immediate danger of bodily injury; that is, bodily injury is likely to occur at any moment. *Cloeter v. Cloeter*, 17 Neb. App. 741, 770 N.W.2d 660 (2009).

The term "physical menace" as used in subsection (1)(b) of this section means a physical threat or act and requires more than mere words. *Cloeter v. Cloeter*, 17 Neb. App. 741, 770 N.W.2d 660 (2009).

42-924.

A domestic abuse protection order did not violate the defendant's constitutional rights to free speech because the defendant's conduct in contacting the victim violated the protection order and the protection order itself did not burden more speech than necessary to serve a significant government interest. *State v. Doyle*, 18 Neb. App. 495, 787 N.W.2d 254 (2010).

A protection order pursuant to this section is analogous to an injunction. *Cloeter v. Cloeter*, 17 Neb. App. 741, 770 N.W.2d 660 (2009).

The Protection from Domestic Abuse Act allows any victim of domestic abuse to file a petition and affidavit for a protection order. *Cloeter v. Cloeter*, 17 Neb. App. 741, 770 N.W.2d 660 (2009).

42-1004.

Subsection (1)(d) of this section applies to both permanent and temporary spousal support. *Edwards v. Edwards*, 16 Neb. App. 297, 744 N.W.2d 243 (2008).

Subsection (1)(d) of this section is more specific than section 42-357 on the issue of modification or elimination of temporary spousal support. *Edwards v. Edwards*, 16 Neb. App. 297, 744 N.W.2d 243 (2008).

42-1006.

The following factors may be used to determine whether a premarital agreement was entered into voluntarily: (1) coercion that may arise from the proximity of execution of the agreement to the wedding, or from surprise in the presentation of the agreement; (2) the presence or absence of independent counsel or of an opportunity to consult independent counsel; (3) inequality of bargaining power—in some cases indicated by the relative age and sophistication of the parties; (4) whether there was full disclosure of assets; and (5) the parties' understanding of the rights being waived under the agreement or at least their awareness of the intent of the agreement. *Mamot v. Mamot*, 283 Neb. 659, 813 N.W.2d 440 (2012).

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The party opposing enforcement of a premarital agreement has the burden to prove that the agreement is not enforceable. *Mamot v. Mamot*, 283 Neb. 659, 813 N.W.2d 440 (2012).

Evidence of lack of capacity, duress, fraud, and undue influence, as demonstrated by a number of factors uniquely probative of coercion in the premarital context, would be relevant in establishing the involuntariness of a premarital agreement. *Edwards v. Edwards*, 16 Neb. App. 297, 744 N.W.2d 243 (2008).

That a party was not provided a fair and reasonable disclosure of the property or financial obligations of the other party is not alone sufficient to make the agreement unenforceable. *Edwards v. Edwards*, 16 Neb. App. 297, 744 N.W.2d 243 (2008).

The party opposing enforcement of a premarital agreement has the burden of proving that the agreement is not enforceable. *Edwards v. Edwards*, 16 Neb. App. 297, 744 N.W.2d 243 (2008).

The provisions of this section do not in any way suggest that if any part of a premarital agreement is unconscionable, the entire agreement is unenforceable. *Edwards v. Edwards*, 16 Neb. App. 297, 744 N.W.2d 243 (2008).

When considering whether a party executed a premarital agreement voluntarily, courts should consider whether the evidence demonstrates coercion or lack of knowledge, the presence or absence of independent counsel, inequality of bargaining power, disclosure of assets, and the parties' understanding of the rights being waived or the intent of the agreement. *Edwards v. Edwards*, 16 Neb. App. 297, 744 N.W.2d 243 (2008).

43-101.

Adoption proceedings are special proceedings. *In re Adoption of David C.*, 280 Neb. 719, 790 N.W.2d 205 (2010).

43-104.

Pursuant to subsection (3) of this section, for an adoption to proceed, the consent of the biological father who has established a familial relationship with his child is required unless, under subsection (2) of this section, the party seeking adoption has established that the biological parent: (1) has relinquished the child for adoption by a written instrument, (2) has abandoned the child for at least six months next preceding the filing of the adoption petition, (3) has been deprived of his or her parental rights to such child by the order of any court of competent jurisdiction, or (4) is incapable of consenting. *In re Adoption of Corbin J.*, 278 Neb. 1057, 775 N.W.2d 404 (2009).

The putative father provisions of this section do not apply to a previously adjudicated father. *In re Adoption of Jaden M.*, 272 Neb. 789, 725 N.W.2d 410 (2006).

43-104.02.

A putative father who intends to claim paternity and obtain custody of a child born out of wedlock must file notice with the biological father registry and adjudicate his claim within 30 days. *In re Adoption of Jaden M.*, 272 Neb. 789, 725 N.W.2d 410 (2006).

Section 43-102.05 requires a "claimant-father" to petition the county court where the child was born to adjudicate his claim of paternity and right to custody within 30 days of filing notice under this section. *In re Adoption of Jaden M.*, 272 Neb. 789, 725 N.W.2d 410 (2006).

This section and section 43-104.05 do not apply to a putative father who has been previously determined to be the biological father. *In re Adoption of Jaden M.*, 272 Neb. 789, 725 N.W.2d 410 (2006).

This section, by its very terms, has no application in a dispute between the biological father and mother of a child born out of wedlock. *In re Adoption of Jaden M.*, 272 Neb. 789, 725 N.W.2d 410 (2006).

This section does not apply to a biological father opposing the adoption of his child who is no longer a newborn when the father had acknowledged and supported his child and established strong familial ties. *In re Adoption of Jaden M.*, 272 Neb. 789, 725 N.W.2d 410 (2006).

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This section requires “a person claiming to be the father of the child” to file notice of his intent to claim paternity and obtain custody with the biological father registry within 5 business days of the child’s birth or published notification. In re Adoption of Jaden M., 272 Neb. 789, 725 N.W.2d 410 (2006).

43-104.04.

For an adoption to proceed, the consent of the biological father who has established a familial relationship with his child is required unless, under section 43-104(2), the party seeking adoption has established that the biological parent: (1) has relinquished the child for adoption by a written instrument, (2) has abandoned the child for at least six months next preceding the filing of the adoption petition, (3) has been deprived of his or her parental rights to such child by the order of any court of competent jurisdiction, or (4) is incapable of consenting. In re Adoption of Corbin J., 278 Neb. 1057, 775 N.W.2d 404 (2009).

43-104.05.

A putative father who intends to claim paternity and obtain custody of a child born out of wedlock must file notice with the biological father registry and adjudicate his claim within 30 days. In re Adoption of Jaden M., 272 Neb. 789, 725 N.W.2d 410 (2006).

Section 43-104.02 and this section do not apply to a putative father who has been previously determined to be the biological father. In re Adoption of Jaden M., 272 Neb. 789, 725 N.W.2d 410 (2006).

This section requires a “claimant-father” to petition the county court where the child was born to adjudicate his claim of paternity and right to custody within 30 days of filing notice under section 43-104.02. In re Adoption of Jaden M., 272 Neb. 789, 725 N.W.2d 410 (2006).

Although under this section a father who fails to petition for an adjudication of paternity in county court within 30 days after filing his notice of intent to claim paternity would be precluded from claiming paternity in an adoption proceeding, such father would not be precluded from seeking to establish paternity under the paternity statutes in district court where there is no consent or relinquishment by the mother and no adoption proceeding is pending. Bohaboj v. Rausch, 272 Neb. 394, 721 N.W.2d 655 (2006).

43-104.11.

Other than the exceptions to the notification requirements, unless the biological father has executed “a valid relinquishment and consent . . . or . . . a denial of paternity and waiver of rights,” the court may not enter a decree of adoption without determining that proper notification of parental rights has been provided. In re Adoption of Jaden M., 272 Neb. 789, 725 N.W.2d 410 (2006).

43-104.15.

This section permits the State to approve out-of-state placement with prospective adoptive parents without the biological father’s consent or notification if the prospective adoptive parents have signed an at-risk placement form. Ashby v. State, 279 Neb. 509, 779 N.W.2d 343 (2010).

43-104.18.

The county is not obligated to pay the fee of a guardian ad litem appointed for a biological parent in a private adoption proceeding to which the county is not a party. In re Adoption of Kailynn D., 273 Neb. 849, 733 N.W.2d 856 (2007).

The fact that the Legislature expressly obligated counties to pay guardian ad litem fees in some statutes, but not in this section, reflects a legislative intent that the county cannot be ordered to pay the fees of a guardian ad litem appointed for a biological father in a private adoption case. In re Adoption of Kailynn D., 273 Neb. 849, 733 N.W.2d 856 (2007).

43-104.22.

The effect of a finding of abandonment is that the putative biological father has no further standing to raise objections in the matter of the adoption. In re Adoption of David C., 280 Neb. 719, 790 N.W.2d 205 (2010).

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Pursuant to subdivision (7) of this section, for an adoption to proceed, the consent of the biological father who has established a familial relationship with his child is required unless, under section 43-104(2), the party seeking adoption has established that the biological parent: (1) has relinquished the child for adoption by a written instrument, (2) has abandoned the child for at least six months next preceding the filing of the adoption petition, (3) has been deprived of his or her parental rights to such child by the order of any court of competent jurisdiction, or (4) is incapable of consenting. In re Adoption of Corbin J., 278 Neb. 1057, 775 N.W.2d 404 (2009).

Subsection (7) of this section does not apply to a father who has been adjudicated the child's father in a paternity action. In re Adoption of Jaden M., 272 Neb. 789, 725 N.W.2d 410 (2006).

43-106.01.

A court cannot accept a voluntary relinquishment of a child prior to an adjudication and an adoption of a permanency plan. In re Interest of Cornelius K., 280 Neb. 291, 785 N.W.2d 849 (2010).

A juvenile court may order the Department of Health and Human Services to accept a voluntary relinquishment of parental rights when a child has been adjudicated and adoption is the permanency objective. In re Interest of Gabriela H., 280 Neb. 284, 785 N.W.2d 843 (2010).

43-245.

A custodial parent's live-in boyfriend or girlfriend is not a "parent." In re Interest of Ethan M., 15 Neb. App. 148, 723 N.W.2d 363 (2006).

43-247.

Under section 43-285(2), once a child has been adjudicated under subsection (3) of this section, the juvenile court ultimately decides where a child should be placed. In re Interest of Karlie D., 283 Neb. 581, 811 N.W.2d 214 (2012).

Where a juvenile has been adjudicated pursuant to subsection (3)(a) of this section and a permanency objective of adoption has been established, a juvenile court has authority under the juvenile code to order the Nebraska Department of Health and Human Services to accept a tendered relinquishment of parental rights. In re Interest of Elizabeth S., 282 Neb. 1015, 809 N.W.2d 495 (2012).

Under this section, when a juvenile has been charged with a felony, the district court and the juvenile court have concurrent jurisdiction, but the jurisdiction of the juvenile court ends when the individual reaches the age of majority, while the district court's jurisdiction continues. State v. Parks, 282 Neb. 454, 803 N.W.2d 761 (2011).

Although the Legislature did not specify a standard of proof under subsection (3)(c) of this section, the section does reference the Mental Health Commitment Act. Mental health commitments have been made under a clear and convincing evidence standard in Nebraska for approximately the last 30 years, and the Nebraska Supreme Court finds no reason to apply a different standard of proof in a juvenile case. In re Interest of Christopher T., 281 Neb. 1008, 801 N.W.2d 243 (2011).

Absent any provision affirmatively stating otherwise, it is within the juvenile court's discretion to issue whatever combination of statutorily authorized dispositions as the court deems necessary to protect the juvenile's best interests. In re Interest of Katrina R., 281 Neb. 907, 799 N.W.2d 673 (2011).

It is within the juvenile court's statutory power to issue a dispositional order for juveniles adjudicated under subsection (3)(b) of this section, which includes both legal custody with the Department of Health and Human Services and supervision by a probation officer. In re Interest of Katrina R., 281 Neb. 907, 799 N.W.2d 673 (2011).

Under this section and section 43-408(2), a juvenile court has jurisdiction over an adjudicated juvenile whom the court has placed at a youth rehabilitation and treatment center. But despite that jurisdiction, section 43-408(2) prohibits a juvenile court from reviewing the progress of a juvenile whom the court has placed at a youth rehabilitation and treatment center. In re Interest of Trey H., 281 Neb. 760, 798 N.W.2d 607 (2011).

When a court adjudicates a juvenile under both subsections (2) and (3) of this section and commits the juvenile to the Office of Juvenile Services with a placement at a youth rehabilitation and treatment center, it has

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determined that the subsection (2) adjudication will control the juvenile's disposition. The disposition determination controls which review hearing statute applies, and the requirement in section 43-278 for 6-month review hearings does not authorize the court to conduct review hearings. In re Interest of Trey H., 281 Neb. 760, 798 N.W.2d 607 (2011).

Pursuant to subdivision (1) of this section, a juvenile court does not have the statutory authority to order detention while a juvenile remains on probation. In re Interest of Dakota M., 279 Neb. 802, 781 N.W.2d 612 (2010).

To obtain jurisdiction over a juvenile, the court's only concern is whether the conditions in which the juvenile presently finds himself or herself fit within the asserted subsection of this section. In re Interest of Angelica L. & Daniel L., 277 Neb. 984, 767 N.W.2d 74 (2009).

Where a juvenile is adjudicated solely on the basis of habitual truancy from school under subsection (3)(b) of this section and the status of truancy is subsequently terminated by the lawful execution of a parental release authorizing discontinuation of school pursuant to subsection (3)(d) of section 79-201, a juvenile court may terminate its jurisdiction without a finding that such termination is in the best interests of the juvenile. In re Interest of Kevin K., 274 Neb. 678, 742 N.W.2d 767 (2007).

Section 43-274(1) authorizes a county attorney with knowledge of a juvenile in his or her county falling within the purview of subsection (3)(a) of this section to file a petition in that county's juvenile court. In re Interest of Tegan V., 18 Neb. App. 857, 794 N.W.2d 190 (2011).

Subsection (3)(a) of this section provides that the juvenile court in each county shall have jurisdiction over any juvenile who lacks proper parental care by reason of the fault or habits of the child's parent, guardian, or custodian. In re Interest of Tegan V., 18 Neb. App. 857, 794 N.W.2d 190 (2011).

This section gives the juvenile courts exclusive original jurisdiction as to any juvenile defined in subsection (3) of this section. In re Interest of Tegan V., 18 Neb. App. 857, 794 N.W.2d 190 (2011).

Subsection (3)(a) of this section requires that the State prove the allegations in the petition by a preponderance of the evidence in cases involving both non-Indian and Indian children. In re Interest of Emma J., 18 Neb. App. 389, 782 N.W.2d 330 (2010).

Pursuant to subsection (3)(a) of this section, a mother was not properly placed on notice that her mental health would be the basis for seeking to prove an allegation that her child lacked proper parental care and was at risk of harm through the mother's fault when the allegations in a termination of parental rights petition concerned only the condition of her house and the lack of appropriate food for her child and did not mention the mother's mental health. In re Interest of Christian L., 18 Neb. App. 276, 780 N.W.2d 39 (2010).

In the exercise of its jurisdiction over a custody modification proceeding, a county court sitting as a juvenile court cannot permanently modify child custody through the mere adoption of a case plan pursuant to section 43-285(2). In re Interest of Ethan M., 18 Neb. App. 63, 774 N.W.2d 766 (2009).

This section, combined with sections 24-517 and 25-2740, vests juvenile courts and county courts sitting as juvenile courts with jurisdiction over a custody modification proceeding if the court already has jurisdiction over the juvenile under a separate provision of this section. In re Interest of Ethan M., 18 Neb. App. 63, 774 N.W.2d 766 (2009).

A juvenile case brought under subsection (3)(a) of this section fits the definition of a "child custody proceeding" under section 43-1227(4) of the Uniform Child Custody Jurisdiction and Enforcement Act. In re Interest of Maxwell T., 15 Neb. App. 47, 721 N.W.2d 676 (2006).

Pursuant to subdivision (10) of this section and section 30-2608(e), guardianship was properly docketed in the county court and heard by a separate juvenile court judge. In re Guardianship of Brenda B. et al., 13 Neb. App. 618, 698 N.W.2d 228 (2005).

Pursuant to subdivision (5) of this section, the juvenile court does not obtain jurisdiction over a juvenile's parent, guardian, or custodian until a finding of adjudication. In re Interest of Meley P., 13 Neb. App. 195, 689 N.W.2d 875 (2004).

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43-251.01.

Neither subsection (2) of this section nor section 43-278 prohibits a juvenile court from placing a juvenile at a youth rehabilitation and treatment center when the court has adjudicated a juvenile under section 43-247(2) and (3). *In re Interest of Trey H.*, 281 Neb. 760, 798 N.W.2d 607 (2011).

43-274.

Subsection (1) of this section authorizes a county attorney with knowledge of a juvenile in his or her county falling within the purview of section 43-247(3)(a) to file a petition in that county's juvenile court. *In re Interest of Tegan V.*, 18 Neb. App. 857, 794 N.W.2d 190 (2011).

43-276.

When a court's basis for retaining jurisdiction over a juvenile is supported by appropriate evidence, it cannot be said that the court abused its discretion in refusing to transfer the case to the juvenile court. *State v. Goodwin*, 278 Neb. 945, 774 N.W.2d 733 (2009).

43-278.

Neither this section nor section 43-251.01(2) prohibits a juvenile court from placing a juvenile at a youth rehabilitation and treatment center when the court has adjudicated a juvenile under section 43-247(2) and (3). *In re Interest of Trey H.*, 281 Neb. 760, 798 N.W.2d 607 (2011).

When a court adjudicates a juvenile under section 43-247(2) and (3) and commits the juvenile to the Office of Juvenile Services with a placement at a youth rehabilitation and treatment center, it has determined that the subsection (2) adjudication will control the juvenile's disposition. The disposition determination controls which review hearing statute applies, and this section's requirement for 6-month review hearings does not authorize the court to conduct review hearings. Instead, the prohibition in section 43-408(2) of review hearings for juveniles placed at a youth rehabilitation and treatment center controls. *In re Interest of Trey H.*, 281 Neb. 760, 798 N.W.2d 607 (2011).

The statutory provision requiring that an adjudication hearing be held within 90 days after a juvenile petition is filed is directory, not mandatory. *In re Interest of Maxwell T.*, 15 Neb. App. 47, 721 N.W.2d 676 (2006).

43-279.

Courts should take special care in scrutinizing a purported confession or waiver by a child. *In re Interest of Dalton S.*, 273 Neb. 504, 730 N.W.2d 816 (2007).

Where a juvenile waives his or her right to counsel, the burden lies with the State, by a preponderance of the evidence, to show that the waiver was knowingly, intelligently, and voluntarily made. *In re Interest of Dalton S.*, 273 Neb. 504, 730 N.W.2d 816 (2007).

Whether a juvenile has knowingly, voluntarily, and intelligently waived the right to counsel is to be determined by the totality of the circumstances, including the age, intelligence, and education of the juvenile; the juvenile's background and experience; the presence of the juvenile's parents; the language used by the court in describing the juvenile's rights; the juvenile's conduct; the juvenile's emotional stability; and the intricacy of the offense. *In re Interest of Dalton S.*, 273 Neb. 504, 730 N.W.2d 816 (2007).

43-281.

The juvenile court cannot order a specific placement of a juvenile for the purposes of the evaluation authorized by this section. *In re Interest of Taylor W.*, 276 Neb. 679, 757 N.W.2d 1 (2008).

43-282.

Because venue is immaterial in juvenile proceedings, a court should not grant a motion to dismiss based on an allegation of improper venue. Pursuant to the statutory language, a juvenile court should first hold an adjudication hearing, and after the adjudication hearing, it should determine whether it would be proper to transfer the

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proceedings to a court in the county where the juvenile resides. In re Interest of Breana M., 18 Neb. App. 910, 795 N.W.2d 660 (2011).

This section allows an adjudication proceeding to be filed in any county and allows for discretionary transfer, after adjudication, to the county where the juvenile is living or domiciled. In re Interest of Tegan V., 18 Neb. App. 857, 794 N.W.2d 190 (2011).

This section makes venue immaterial in addition to setting up a procedure for discretionary transfer. In re Interest of Tegan V., 18 Neb. App. 857, 794 N.W.2d 190 (2011).

43-283.01.

A “parent of the juvenile” means a biological parent or a stepparent when such stepparent is married to the custodial parent as of the filing of the petition; a custodial parent’s live-in boyfriend or girlfriend is not a “parent of the juvenile” for purposes of this section. In re Interest of Ethan M., 15 Neb. App. 148, 723 N.W.2d 363 (2006).

The term “aggravated circumstances” embodies the concept that the nature of the abuse or neglect must have been so severe or repetitive that to attempt reunification would jeopardize and compromise the safety of the child and would place the child in a position of an unreasonable risk to be reabused. In re Interest of Ethan M., 15 Neb. App. 148, 723 N.W.2d 363 (2006).

43-285.

Under subsection (2) of this section, once a child has been adjudicated under section 43-247(3), the juvenile court ultimately decides where a child should be placed. In re Interest of Karlie D., 283 Neb. 581, 811 N.W.2d 214 (2012).

With the passage of 2011 Neb. Laws, L.B. 648, the Nebraska Legislature shifted the burden of proof to the State to show that the Department of Health and Human Services’ proposed plan for a juvenile’s care was in the juvenile’s best interests. In re Interest of Karlie D., 283 Neb. 581, 811 N.W.2d 214 (2012).

Pursuant to this section, the juvenile court has the authority to order the Department of Health and Human Services to remove a case manager if the facts and circumstances require a change for the best interests of the juvenile. In re Interest of Veronica H., 272 Neb. 370, 721 N.W.2d 651 (2006).

The phrase, “by and with the assent of the court,” implicitly gives the juvenile court the authority to dissent from a determination made by the Department of Health and Human Services. In re Interest of Veronica H., 272 Neb. 370, 721 N.W.2d 651 (2006).

In the exercise of its jurisdiction over a custody modification proceeding, a county court sitting as a juvenile court cannot permanently modify child custody through the mere adoption of a case plan pursuant to subsection (2) of this section. In re Interest of Ethan M., 18 Neb. App. 63, 774 N.W.2d 766 (2009).

In order for a court to disapprove of a plan proposed by the Department of Health and Human Services under this section, a party must prove by a preponderance of the evidence that the department’s plan is not in the child’s best interests. In re Interest of A.W. et al., 16 Neb. App. 210, 742 N.W.2d 250 (2007).

Subsection (1) of this section gives the court the power to assent and, by implication, to dissent from the placement and other decisions of the Nebraska Department of Health and Human Services, as well as of other entities to whom the court might commit the care of a minor. In re Interest of Veronica H., 14 Neb. App. 316, 707 N.W.2d 29 (2005).

43-286.

A juvenile court retains the authority to place a juvenile on probation under this section even if that juvenile has been previously placed with the Office of Juvenile Services. In re Interest of Charlicia H., 283 Neb. 362, 809 N.W.2d 274 (2012).

This section does not authorize the juvenile court to impose confinement as a part of an order of probation. In re Interest of Dustin S., 276 Neb. 635, 756 N.W.2d 277 (2008).

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Juvenile court may not place a juvenile on probation or exercise any of its other options for disposition and at the same time continue the dispositional hearing. In re Interest of Markice M., 275 Neb. 908, 750 N.W.2d 345 (2008).

A juvenile court may use any rational method of fixing the amount of restitution, so long as the amount is rationally related to the proofs offered at the dispositional hearing, and the amount is consistent with the purposes of education, treatment, rehabilitation, and the juvenile's ability to pay. In re Interest of Laurance S., 274 Neb. 620, 742 N.W.2d 484 (2007).

When a juvenile court enters an order of restitution under subsection (1)(a) of this section, the court should consider, among other factors, the juvenile's earning ability, employment status, financial resources, and other obligations. In re Interest of Laurance S., 274 Neb. 620, 742 N.W.2d 484 (2007).

43-287.01.

A two-part test must be applied to determine whether an expedited review is required under this section and sections 43-287.02 to 43-287.06. First, the order must implement a different plan than that proposed by the Department of Health and Human Services. Second, there must exist a belief that the court-ordered plan is not in the best interests of the juvenile. In re Interest of Markice M., 275 Neb. 908, 750 N.W.2d 345 (2008).

This section and sections 43-287.02 to 43-287.06 provide the sole method of reviewing juvenile court dispositional orders falling within the ambit of the expedited appeal process specified therein. In re Interest of Markice M., 275 Neb. 908, 750 N.W.2d 345 (2008).

43-287.02.

A two-part test must be applied to determine whether an expedited review is required under this section, section 43-287.01, and sections 43-287.03 to 43-287.06. First, the order must implement a different plan than that proposed by the Department of Health and Human Services. Second, there must exist a belief that the court-ordered plan is not in the best interests of the juvenile. In re Interest of Markice M., 275 Neb. 908, 750 N.W.2d 345 (2008).

This section, section 43-287.01, and sections 43-287.03 to 43-287.06 provide the sole method of reviewing juvenile court dispositional orders falling within the ambit of the expedited appeal process specified therein. In re Interest of Markice M., 275 Neb. 908, 750 N.W.2d 345 (2008).

43-287.03.

A two-part test must be applied to determine whether an expedited review is required under this section, sections 43-287.01 and 43-287.02, and sections 43-287.04 to 43-287.06. First, the order must implement a different plan than that proposed by the Department of Health and Human Services. Second, there must exist a belief that the court-ordered plan is not in the best interests of the juvenile. In re Interest of Markice M., 275 Neb. 908, 750 N.W.2d 345 (2008).

This section, sections 43-287.01 and 43-287.02, and sections 43-287.04 to 43-287.06 provide the sole method of reviewing juvenile court dispositional orders falling within the ambit of the expedited appeal process specified therein. In re Interest of Markice M., 275 Neb. 908, 750 N.W.2d 345 (2008).

43-287.04.

A two-part test must be applied to determine whether an expedited review is required under this section, sections 43-287.01 to 43-287.03, and sections 43-287.05 and 43-287.06. First, the order must implement a different plan than that proposed by the Department of Health and Human Services. Second, there must exist a belief that the court-ordered plan is not in the best interests of the juvenile. In re Interest of Markice M., 275 Neb. 908, 750 N.W.2d 345 (2008).

This section, sections 43-287.01 to 43-287.03, and sections 43-287.05 and 43-287.06 provide the sole method of reviewing juvenile court dispositional orders falling within the ambit of the expedited appeal process specified therein. In re Interest of Markice M., 275 Neb. 908, 750 N.W.2d 345 (2008).

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43-287.05.

A two-part test must be applied to determine whether an expedited review is required under this section, sections 43-287.01 to 43-287.04, and 43-287.06. First, the order must implement a different plan than that proposed by the Department of Health and Human Services. Second, there must exist a belief that the court-ordered plan is not in the best interests of the juvenile. In re Interest of Markice M., 275 Neb. 908, 750 N.W.2d 345 (2008).

This section, sections 43-287.01 to 43-287.04, and 43-287.06 provide the sole method of reviewing juvenile court dispositional orders falling within the ambit of the expedited appeal process specified therein. In re Interest of Markice M., 275 Neb. 908, 750 N.W.2d 345 (2008).

43-287.06.

A two-part test must be applied to determine whether an expedited review is required under this section and sections 43-287.01 to 43-287.05. First, the order must implement a different plan than that proposed by the Department of Health and Human Services. Second, there must exist a belief that the court-ordered plan is not in the best interests of the juvenile. In re Interest of Markice M., 275 Neb. 908, 750 N.W.2d 345 (2008).

This section and sections 43-287.01 to 43-287.05 provide the sole method of reviewing juvenile court dispositional orders falling within the ambit of the expedited appeal process specified therein. In re Interest of Markice M., 275 Neb. 908, 750 N.W.2d 345 (2008).

43-292.

Termination of a mother's parental rights was in her children's best interests where there was evidence of years of instability and neglect, which could not be overcome by the mother's recent period of stability. In re Interest of Kendra M. et al., 283 Neb. 1014, 814 N.W.2d 747 (2012).

Time spent by juveniles in a guardianship placement counted toward time spent in an out-of-home placement under subsection (7) of this section. In re Interest of Kendra M. et al., 283 Neb. 1014, 814 N.W.2d 747 (2012).

The examples provided under subsection (9) of this section are not an exhaustive list. Aggravated circumstances also exist when a child suffers severe, intentional physical abuse. In re Interest of Ryder J., 283 Neb. 318, 809 N.W.2d 255 (2012).

Past neglect, along with facts relating to current family circumstances which go to best interests, are all properly considered in a parental rights termination case under subdivision (2) of this section. In re Interest of Sir Messiah T. et al., 279 Neb. 900, 782 N.W.2d 320 (2010).

For purposes of subdivision (1) of this section, "abandonment" is a parent's intentionally withholding from a child, without just cause or excuse, the parent's presence, care, love, protection, maintenance, and the opportunity for the display of parental affection for the child. In re Interest of Chance J., 279 Neb. 81, 776 N.W.2d 519 (2009).

Reasonable efforts to preserve and reunify a family are required when the State seeks to terminate parental rights under subdivision (6) of this section. But reasonable efforts to reunify the family are required under the juvenile code only when termination is sought under subdivision (6) of this section, not when termination is based on other grounds. In re Interest of Chance J., 279 Neb. 81, 776 N.W.2d 519 (2009).

Whether a parent has abandoned a child within the meaning of subdivision (1) of this section is a question of fact and depends upon parental intent, which may be determined by circumstantial evidence. In re Interest of Chance J., 279 Neb. 81, 776 N.W.2d 519 (2009).

Reasonable efforts to reunify a family are required under the juvenile code only when termination of parental rights is sought under subsection (6) of this section. In re Interest of Hope L. et al., 278 Neb. 869, 775 N.W.2d 384 (2009).

Before the State attempts to force a breakup of a natural family, over the objections of the parents and their children, the State must prove parental unfitness. In re Interest of Angelica L. & Daniel L., 277 Neb. 984, 767 N.W.2d 74 (2009).

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Regardless of the length of time a child is placed outside the home, it is always the State's burden to prove by clear and convincing evidence that the parent is unfit and that the child's best interests are served by his or her continued removal from parental custody. In re Interest of Angelica L. & Daniel L., 277 Neb. 984, 767 N.W.2d 74 (2009).

The fact that a child has been placed outside the home for 15 or more of the most recent 22 months does not demonstrate parental unfitness. The placement of a child outside the home for 15 or more of the most recent 22 months under subsection (7) of this section merely provides a guideline for what would be a reasonable time for parents to rehabilitate themselves to a minimum level of fitness. In re Interest of Angelica L. & Daniel L., 277 Neb. 984, 767 N.W.2d 74 (2009).

The interest of the parents in the care, custody, and control of their children is perhaps the oldest of the fundamental liberty interests recognized by the U.S. Supreme Court. In re Interest of Angelica L. & Daniel L., 277 Neb. 984, 767 N.W.2d 74 (2009).

Under this section, in order to terminate parental rights, the State must prove, by clear and convincing evidence, that one or more of the statutory grounds listed in this section have been satisfied and that termination is in the child's best interests. In re Interest of Angelica L. & Daniel L., 277 Neb. 984, 767 N.W.2d 74 (2009).

The "beyond a reasonable doubt" standard in subsection (6) of section 43-1505 does not extend to this section's best interests element. Instead, the State must prove by clear and convincing evidence that terminating parental rights is in the child's best interests; this need not include testimony of a qualified expert witness. In re Interest of Walter W., 274 Neb. 859, 744 N.W.2d 55 (2008).

For the purpose of a petition to terminate parental rights, the placement of a child outside the home for 15 or more of the most recent 22 months under subsection (7) of this section merely provides a guideline for what would be a reasonable time for parents to rehabilitate themselves to a minimum level of fitness. In re Interest of Xavier H., 274 Neb. 331, 740 N.W.2d 13 (2007).

The fact that a child has been placed outside the home for 15 or more of the most recent 22 months under subsection (7) of this section does not demonstrate parental unfitness for the purpose of a termination of parental rights. In re Interest of Xavier H., 274 Neb. 331, 740 N.W.2d 13 (2007).

The presumption that the best interests of a child are served by reuniting the child with his or her parent is overcome only when the parent has been proved unfit. In re Interest of Xavier H., 274 Neb. 331, 740 N.W.2d 13 (2007).

Whether termination of parental rights is in a child's best interests is subject to the overriding recognition that the relationship between parent and child is constitutionally protected. In re Interest of Xavier H., 274 Neb. 331, 740 N.W.2d 13 (2007).

The Indian Child Welfare Act's requirement of "active efforts" is separate and distinct from the "reasonable efforts" provision of subsection (6) of this section and therefore requires the State to plead active efforts by the State to prevent the breakup of the family. In re Interest of Shayla H. et al., 17 Neb. App. 436, 764 N.W.2d 119 (2009).

Evidence supported the juvenile court's finding that the father did not abandon the child when (1) the father actively sought custody and paid child support within the crucial 6-month period and (2) the father's delay in seeking intervention was due to just cause. In re Interest of Deztiny C., 15 Neb. App. 179, 723 N.W.2d 652 (2007).

Evidence supported the juvenile court's finding that the father did not neglect the child when (1) 5 years prior to the termination hearing, the father was sentenced to a jail term of 3 months and (2) throughout the child's life, the father provided continuing care for the child, did not refuse parental care, and worked to improve parenting skills. In re Interest of Deztiny C., 15 Neb. App. 179, 723 N.W.2d 652 (2007).

In regard to subdivision (10) of this section, conviction and sentence are not considered final judgments until after appeal, if there is indeed an appeal. In re Interest of Jamie M., 14 Neb. App. 763, 714 N.W.2d 780 (2006).

In regard to subdivision (2) of this section, a finding of abuse or neglect may be supported where the record shows a parent's conduct over the child during the period when the abuse or neglect occurred and multiple

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injuries or other serious impairment of health has occurred which ordinarily would not occur in the absence of abuse or neglect. In re Interest of Chloe L. and Ethan L., 14 Neb. App. 663, 712 N.W.2d 289 (2006).

Appellate courts must be particularly diligent in the de novo review of whether termination of parental rights is in the juvenile's best interests in cases where termination is sought only pursuant to subdivision (7) of this section, and the record must contain clear and convincing evidence to support the best interests determination. In re Interest of Skye W. & McKenzie W., 14 Neb. App. 74, 704 N.W.2d 1 (2006).

43-292.01.

Appointment of a guardian ad litem for a parent who is allegedly incompetent because of mental illness or mental deficiency is mandatory, and the failure to appoint a guardian ad litem is plain error which requires reversal of an order terminating the parent's rights. In re Interest of Presten O., 18 Neb. App. 259, 778 N.W.2d 759 (2010).

43-292.02.

Pursuant to the second sentence in subsection (2) of this section, a juvenile court, when deciding whether to terminate parental rights, should not consider that an adoptive family has been identified. In re Interest of Destiny A. et al., 274 Neb. 713, 742 N.W.2d 758 (2007).

43-295.

A juvenile court, except where an adjudicated child has been legally adopted, may always order a change in the juvenile's custody or care when the change is in the best interests of the juvenile. In re Interest of Karlie D., 283 Neb. 581, 811 N.W.2d 214 (2012).

43-2,106.01.

Unadjudicated siblings have no cognizable interest in the sibling relationship separate and distinct from a child adjudicated under section 43-247(3)(a). Thus, unadjudicated siblings lack standing to appeal from a final order or judgment of a juvenile court. In re Interest of Meridian H., 281 Neb. 465, 798 N.W.2d 96 (2011).

Application of subsection (2)(d) of this section turns on whether the juvenile has been placed in jeopardy by the juvenile court, not by whether the Double Jeopardy Clause bars further action. In re Interest of Rebecca B., 280 Neb. 137, 783 N.W.2d 783 (2010).

The plain language of subsection (2)(d) of this section carves out an exception for delinquency cases in which jeopardy has attached. In such cases, the county attorney is limited to taking exception pursuant to the procedures of sections 29-2317 to 29-2319. In re Interest of Rebecca B., 280 Neb. 137, 783 N.W.2d 783 (2010).

Under subsection (2)(d) of this section, when a county attorney files an appeal "in any case determining delinquency issues in which the juvenile has been placed legally in jeopardy," the appeal must be taken by exception proceedings to the district court pursuant to sections 29-2317 to 29-2319. In re Interest of Rebecca B., 280 Neb. 137, 783 N.W.2d 783 (2010).

Separate juvenile courts are treated as county courts under sections 29-2317 to 29-2319 for the purpose of exception proceedings under subsection (2)(d) of this section. In re Interest of Sean H., 271 Neb. 395, 711 N.W.2d 879 (2006).

Under this section, an appeal taken in the same manner as an appeal from the district court includes the appeal bond requirement set forth in section 25-1914. In re Interest of Kayla F. et al., 13 Neb. App. 679, 698 N.W.2d 468 (2005).

43-408.

Under subsection (2) of this section and section 43-247, a juvenile court has jurisdiction over an adjudicated juvenile whom the court has placed at a youth rehabilitation and treatment center. But despite that jurisdiction, subsection (2) of this section prohibits a juvenile court from reviewing the progress of a juvenile whom the court has placed at a youth rehabilitation and treatment center. In re Interest of Trey H., 281 Neb. 760, 798 N.W.2d 607 (2011).

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When a court adjudicates a juvenile under section 43-247(2) and (3) and commits the juvenile to the Office of Juvenile Services with a placement at a youth rehabilitation and treatment center, it has determined that the subsection (2) adjudication will control the juvenile's disposition. The disposition determination controls which review hearing statute applies, and the requirement in section 43-278 for 6-month review hearings does not authorize the court to conduct review hearings. Instead, the prohibition in subsection (2) of this section of review hearings for juveniles placed at a youth rehabilitation and treatment center controls. In re Interest of Trey H., 281 Neb. 760, 798 N.W.2d 607 (2011).

A juvenile court does not have the authority to enter an order prohibiting any change without prior court approval in the placement of a juvenile committed to the custody of the Office of Juvenile Services. In re Interest of Chelsey D., 14 Neb. App. 392, 707 N.W.2d 798 (2005).

43-413.

The juvenile court cannot order a specific placement of a juvenile for the purposes of the evaluation authorized by this section. In re Interest of Taylor W., 276 Neb. 679, 757 N.W.2d 1 (2008).

Although the juvenile court did not err in placing the juvenile's custody with the Office of Juvenile Services for purposes only of an evaluation, the juvenile court exceeded its statutory authority in ordering that office to pay for all costs associated with its order which were not covered by insurance. Under the plain language of subsection (4)(b), the county is responsible for the cost of the first 10 days of detention after the court ordered the evaluation. Under subsection (4)(a), the county is also responsible for all detention costs incurred after an evaluation period prior to disposition, the cost of delivering the child to the facility or institution for an evaluation, and the cost of returning the child to the court for disposition. In re Interest of Michael S., 16 Neb. App. 240, 742 N.W.2d 791 (2007).

Pursuant to subsection (3) of this section, a juvenile may not be committed to the Office of Juvenile Services without a prior evaluation, nor may the court commit a juvenile to the temporary custody of the Office of Juvenile Services prior to disposition. In re Interest of Teneko P., 15 Neb. App. 463, 730 N.W.2d 128 (2007).

43-416.

Only the Office of Juvenile Services has the authority to revoke a juvenile's parole. In re Interest of Sylvester L., 17 Neb. App. 791, 770 N.W.2d 669 (2009).

43-423.

If a juvenile court revokes a juvenile's parole, rather than the Office of Juvenile Services, a juvenile is not granted all of the rights to which he or she was entitled. In re Interest of Sylvester L., 17 Neb. App. 791, 770 N.W.2d 669 (2009).

43-512.05.

To the extent that a county board has already appropriated sufficient funding to pay the necessary salaries and expenses for performing child support enforcement duties, the board is entitled to deposit federal reimbursement funds into its general fund. But for any reimbursement funds that the county is not entitled to keep, subsection (3) of this section plainly requires such funds to be carried over from year to year in the county attorney's budget when his or her office is performing all of the child support enforcement duties. Wetovick v. County of Nance, 279 Neb. 773, 782 N.W.2d 298 (2010).

43-512.15.

An individual who has been incarcerated for the minimum period of time specified in this section may file a complaint seeking modification of his or her child support obligation upon the basis that his or her incarceration is an involuntary reduction of income, unless the circumstances contained in subsection (1)(b) of this section are met. Rouse v. Rouse, 18 Neb. App. 128, 775 N.W.2d 457 (2009).

The statutory minimum period of incarceration is not limited to that occurring after sentencing, because a person continuously jailed while awaiting trial faces the same reduction in income as a person continuously incarcerated after sentencing. Rouse v. Rouse, 18 Neb. App. 128, 775 N.W.2d 457 (2009).

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A child support obligor's incarceration is considered an involuntary reduction in income for purposes of modification when the obligor has been incarcerated for the statutorily specified minimum period of time, unless the circumstances contained in subsection (1)(b) of this section are met. *Hopkins v. Stauffer*, 18 Neb. App. 116, 775 N.W.2d 462 (2009).

43-1227.

Regardless of where a child was born, if the child and his or her parents have been living in another state for the 6 months immediately preceding the commencement of a custody proceeding, then the state in which the child was born is not the child's home state. *Carter v. Carter*, 276 Neb. 840, 758 N.W.2d 1 (2008).

The clause contained in subsection (7) of this section was meant to provide a home state for a child when a custody proceeding is commenced at a time when the child has not lived in a state for the requisite 6-month period – because the child has not been alive for that period of time. It is not meant to say that a child's state of birth is that child's home state. *Carter v. Carter*, 276 Neb. 840, 758 N.W.2d 1 (2008).

The Uniform Child Custody Jurisdiction and Enforcement Act does not specifically address the meaning of "temporary absence" as used in this section. But it is clear that time spent living in another state or country due to a permanent military duty assignment is not considered a "temporary absence" simply because it was motivated by such assignment. *Carter v. Carter*, 276 Neb. 840, 758 N.W.2d 1 (2008).

A child custody proceeding for purposes of the Uniform Child Custody Jurisdiction and Enforcement Act is a proceeding in which legal custody, physical custody, or visitation with respect to a child is an issue. *Watson v. Watson*, 272 Neb. 647, 724 N.W.2d 24 (2006).

A juvenile case brought under section 43-247(3)(a) fits the definition of a "child custody proceeding" under subsection (4) of this section of the Uniform Child Custody Jurisdiction and Enforcement Act. *In re Interest of Maxwell T.*, 15 Neb. App. 47, 721 N.W.2d 676 (2006).

For purposes of the Nebraska Child Custody Jurisdiction Act, "home state" is defined as the state in which the child immediately preceding the time involved lived with his or her parents, a parent, or a person acting as parent, for at least 6 consecutive months. Periods of temporary absence of any of the named persons shall be counted as part of the 6-month or other period. *Lamb v. Lamb*, 14 Neb. App. 337, 707 N.W.2d 423 (2005).

43-1238.

In order for a state to exercise jurisdiction over a child custody dispute, that state must be the home state as defined by the Uniform Child Custody Jurisdiction and Enforcement Act or fall under limited exceptions to the home state requirement specified by the act. *Carter v. Carter*, 276 Neb. 840, 758 N.W.2d 1 (2008).

43-1239.

Subsection (a) of this section provides the rules for continuing jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act. *Watson v. Watson*, 272 Neb. 647, 724 N.W.2d 24 (2006).

Under subsection (a)(1) of this section, whether a court's exclusive and continuing jurisdiction has been lost is a determination to be made by a court of this state. *Watson v. Watson*, 272 Neb. 647, 724 N.W.2d 24 (2006).

43-1244.

Overruling a motion to decline jurisdiction under this section as an inconvenient forum does not affect a substantial right and is not a final, appealable order. *Meadows v. Meadows*, 18 Neb. App. 333, 789 N.W.2d 519 (2010).

43-1303.

The Foster Care Review Act permits but does not require the State Foster Care Review Board to promulgate regulations. *OMNI v. Nebraska Foster Care Review Bd.*, 277 Neb. 641, 764 N.W.2d 398 (2009).

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43-1312.

Because subsection (3) of this section requires a permanency hearing for every child in foster care, the court is required to have a permanency hearing even if the child is in foster care because of his or her delinquent behavior, instead of parental abuse or neglect. *In re Interest of Spencer O.*, 277 Neb. 776, 765 N.W.2d 443 (2009).

An order changing the permanency plan from reunification to adoption but otherwise continuing all of the same terms from prior dispositional orders, from which no appeal was taken and which provided the parent with an opportunity for reunification by complying with the terms of the rehabilitation plan, does not affect a substantial right of the parent and is not a final order. *In re Interest of Tayla R.*, 17 Neb. App. 595, 767 N.W.2d 127 (2009).

43-1402.

An out-of-wedlock child has the statutory right to be supported to the same extent and in the same manner as a child born in lawful wedlock; the resulting duty of a parent to provide such support may, under appropriate circumstances, require the award of retroactive child support. *Henke v. Guerrero*, 13 Neb. App. 337, 692 N.W.2d 762 (2005).

43-1409.

The provision in this section that the acknowledgment of paternity is a “legal finding” means that it legally establishes paternity in the person named in the acknowledgment as the father. *Cesar C. v. Alicia L.*, 281 Neb. 979, 800 N.W.2d 249 (2011).

43-1412.

Attorney fees and costs are statutorily allowed in paternity and child support cases. *Coleman v. Kahler*, 17 Neb. App. 518, 766 N.W.2d 142 (2009).

If the mother brings the paternity action within 4 years of the child’s birth, she need not bring such action on behalf of the child and the court may award retroactive support. *Henke v. Guerrero*, 13 Neb. App. 337, 692 N.W.2d 762 (2005).

43-1412.01.

The question of whether a paternity decree should be set aside must be determined under this section, applicable to setting aside a judgment of paternity, and not under the provisions of section 25-2001, applicable to vacating judgments in general. *Jeffrey B. v. Amy L.*, 283 Neb. 940, 814 N.W.2d 737 (2012).

This section gives the court discretion to determine whether disestablishment of paternity is appropriate in light of both the adjudicated father’s interests and the best interests of the child, and should weigh factors such as (1) the child’s age, (2) the length of time since the establishment of paternity, (3) the previous relationship between the child and the established father, and (4) the possibility that the child could benefit from establishing the child’s actual paternity. *Alisha C. v. Jeremy C.*, 283 Neb. 340, 808 N.W.2d 875 (2012).

This section is applicable to both adjudicated fathers who were married to the child’s mother and those who were not. *Alisha C. v. Jeremy C.*, 283 Neb. 340, 808 N.W.2d 875 (2012).

This section overrides *res judicata* principles and allows, in limited circumstances, an adjudicated father to disestablish a prior, final paternity determination based on genetic evidence that the adjudicated father is not the biological father. *Alisha C. v. Jeremy C.*, 283 Neb. 340, 808 N.W.2d 875 (2012).

43-1418.

It is within the discretion of the trial judge in a paternity action to determine costs if the disputing party loses. *Henke v. Guerrero*, 13 Neb. App. 337, 692 N.W.2d 762 (2005).

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43-1503.

The provisions of the Nebraska Indian Child Welfare Act apply prospectively from the date Indian child status is established on the record. In re Adoption of Kenten H., 272 Neb. 846, 725 N.W.2d 548 (2007).

43-1504.

Under subsection (2) of this section, a motion to transfer a case to a tribal court was properly denied for good cause where the proceeding was at an advanced stage and the fact that cases involving some of the children were to remain in juvenile court was essentially a forum non conveniens matter. In re Interest of Leslie S. et al., 17 Neb. App. 828, 770 N.W.2d 678 (2009).

Pursuant to subsection (2) of this section, if the tribe or either parent of an Indian child petitions for transfer of the proceeding to the tribal court, the state court cannot proceed with the placement of the Indian child living outside a reservation without first determining whether jurisdiction of the matter should be transferred to the tribe. In re Interest of Lawrence H., 16 Neb. App. 246, 743 N.W.2d 91 (2007).

Absent conclusive evidence that an Indian child is a ward of a tribal court or residing within the reservation of a tribe, a juvenile court may properly exercise jurisdiction over an Indian child under this section. In re Interest of Dakota L. et al., 14 Neb. App. 559, 712 N.W.2d 583 (2006).

That a state court may take jurisdiction under the Nebraska Indian Child Welfare Act does not necessarily mean that it should do so, because the court should consider the rights of the child, the rights of the tribe, and the conflict of law principles, and should balance the interests of the state and the tribe. In re Interest of Brittany C. et al., 13 Neb. App. 411, 693 N.W.2d 592 (2005).

The denial of a motion to transfer jurisdiction of a juvenile court proceeding to tribal court is an order made in a special proceeding that affects a substantial right and is a final, appealable order. In re Interest of Brittany C. et al., 13 Neb. App. 411, 693 N.W.2d 592 (2005).

The denial of a transfer of jurisdiction to the tribal courts is reviewed for an abuse of discretion. In re Interest of Brittany C. et al., 13 Neb. App. 411, 693 N.W.2d 592 (2005).

The party opposing a transfer of jurisdiction to the tribal courts has the burden of establishing that good cause not to transfer the matter exists. In re Interest of Brittany C. et al., 13 Neb. App. 411, 693 N.W.2d 592 (2005).

43-1505.

A judicial determination in an adjudication order that the State satisfied the active efforts requirement contained in subsection (4) of this section affects the substantial right of parents to raise their children, and is therefore a final, appealable order. In re Interest of Jamya M., 281 Neb. 964, 800 N.W.2d 259 (2011).

The “active efforts” standard in subsection (4) of this section requires more than the “reasonable efforts” standard that applies in cases not involving the Indian Child Welfare Act. In re Interest of Walter W., 274 Neb. 859, 744 N.W.2d 55 (2008).

The “active efforts” standard in subsection (4) of this section requires proof by clear and convincing evidence in parental rights termination cases. In re Interest of Walter W., 274 Neb. 859, 744 N.W.2d 55 (2008).

The “beyond a reasonable doubt” standard in subsection (6) of this section does not extend to the best interests element in section 43-292. Instead, the State must prove by clear and convincing evidence that terminating parental rights is in the child’s best interests; this need not include testimony of a qualified expert witness. In re Interest of Walter W., 274 Neb. 859, 744 N.W.2d 55 (2008).

There is no precise formula for the “active efforts” standard in subsection (4) of this section; instead, the standard requires a case-by-case analysis. In re Interest of Walter W., 274 Neb. 859, 744 N.W.2d 55 (2008).

An Indian child’s parent does not qualify as an expert witness under the Nebraska Indian Child Welfare Act based solely on the parent’s membership in the Indian tribe and status as the child’s parent. In re Interest of Ramon N., 18 Neb. App. 574, 789 N.W.2d 272 (2010).

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Pursuant to subsection (4) of this section, although the State should make active efforts in a termination of parental rights proceeding under the Indian Child Welfare Act, if further efforts would be futile, the requirement of active efforts is satisfied. In re Interest of Louis S. et al., 17 Neb. App. 867, 774 N.W.2d 416 (2009).

Pursuant to subsection (4) of this section, in a termination of parental rights proceeding under the Indian Child Welfare Act, the notion of culturally relevant active efforts applies to the parents, to the children, and to the family. In re Interest of Louis S. et al., 17 Neb. App. 867, 774 N.W.2d 416 (2009).

Pursuant to subsection (4) of this section, the Indian Child Welfare Act's requirement of "active efforts" requires more than the "reasonable efforts" standard applicable in non-Indian Child Welfare Act cases and at least some efforts should be culturally relevant. In re Interest of Louis S. et al., 17 Neb. App. 867, 774 N.W.2d 416 (2009).

A father's motion to dismiss the State's temporary custody petition due to the lack of Indian Child Welfare Act allegations by the State could be made during the course of closing arguments. In re Interest of Shayla H. et al., 17 Neb. App. 436, 764 N.W.2d 119 (2009).

Evidence that serious emotional harm or physical damage to an Indian child is likely to occur if the child is not removed from the home must be established by qualified expert testimony provided by a professional person having substantial education and experience in the area of his or her specialty, pursuant to the Indian Child Welfare Act. In re Interest of Shayla H. et al., 17 Neb. App. 436, 764 N.W.2d 119 (2009).

Evidence was insufficient to establish that a caseworker was sufficiently qualified to testify as an expert witness under the requirements of the Indian Child Welfare Act in an action seeking to adjudicate Indian children, where the caseworker had neither substantial experience in the delivery of child and family services to Indians or extensive knowledge of social and cultural standards in childrearing practices within the tribe, nor was she a professional person with substantial education and experience in the area of her specialty. In re Interest of Shayla H. et al., 17 Neb. App. 436, 764 N.W.2d 119 (2009).

The State was required to allege facts with regard to Indian Child Welfare Act requirements that set forth guidelines for courts to follow in involuntary proceedings, although the court knew that an Indian child was involved in the State's petition and motion for temporary custody of children and made Indian Child Welfare Act findings. In re Interest of Shayla H. et al., 17 Neb. App. 436, 764 N.W.2d 119 (2009).

The stated purposes of the Indian Child Welfare Act are best served by allowing parents to raise, in their direct appeal from a termination of parental rights, the issue of the State's failure to notify the child's Indian tribe of the termination of parental rights proceedings as required by subsection (1) of this section. In re Interest of Walter W., 14 Neb. App. 891, 719 N.W.2d 304 (2006).

An adjudication petition involving an Indian child must include sufficient allegations of the requirements of this section. In re Interest of Dakota L. et al., 14 Neb. App. 559, 712 N.W.2d 583 (2006).

This section provides specific statutory requirements with which notice to an Indian child's tribe of state proceedings involving a foster care placement of an Indian child must comply. In re Interest of Dakota L. et al., 14 Neb. App. 559, 712 N.W.2d 583 (2006).

Pursuant to subsection (4) of this section, in a foster care placement determination involving an Indian child, the failure to make an "active efforts" finding is harmless error where a de novo review indicates that clear and convincing evidence supports this finding. In re Interest of Enrique P. et al., 14 Neb. App. 453, 709 N.W.2d 676 (2006).

Pursuant to subsection (5) of this section, in a foster care placement determination involving an Indian child, the failure to make a finding, supported by the testimony of a qualified expert, that the continued custody of the child by the parent was likely to result in serious emotional or physical damage to the child is harmless error where a de novo review indicates that the evidence supports this finding of harm. In re Interest of Enrique P. et al., 14 Neb. App. 453, 709 N.W.2d 676 (2006).

43-1506.

The 2-year time limitation in this section is a statute of limitations; an action to invalidate an adoption must be filed within 2 years of the date of the adoption decree. In re Adoption of Kenten H., 272 Neb. 846, 725 N.W.2d 548 (2007).

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43-1507.

A juvenile court's having jurisdiction over the parties and the subject matter constitutes a court of competent jurisdiction within the meaning of this section. *In re Interest of Ramon N.*, 18 Neb. App. 574, 789 N.W.2d 272 (2010).

The absence of language in the petition implicating the Nebraska Indian Child Welfare Act did not support invalidating the adjudication where there was no appeal from the adjudication order. *In re Interest of Ramon N.*, 18 Neb. App. 574, 789 N.W.2d 272 (2010).

An order denying a petition to invalidate pursuant to this section and motion to dismiss is a final order for purposes of section 25-1902. *In re Interest of Enrique P. et al.*, 14 Neb. App. 453, 709 N.W.2d 676 (2006).

Juvenile court's denial of motion to invalidate affirmed under harmless error analysis. *In re Interest of Enrique P. et al.*, 14 Neb. App. 453, 709 N.W.2d 676 (2006).

43-1801.

Although the Nebraska grandparent visitation statutes recognize the interests of the child in the continuation of the grandparent relationship, under Nebraska's grandparent visitation statutes as a whole, the best interests of the child consideration does not deprive the parent of sufficient protection, because visitation will not be awarded where such visitation would adversely interfere with the parent-child relationship. *Hamit v. Hamit*, 271 Neb. 659, 715 N.W.2d 512 (2006).

Nebraska's grandparent visitation statutes are not unconstitutional on their face. *Hamit v. Hamit*, 271 Neb. 659, 715 N.W.2d 512 (2006).

43-1802.

Nebraska's grandparent visitation statutes are narrowly drawn and explicitly protect parental rights while taking the child's best interests into consideration. *Hamit v. Hamit*, 271 Neb. 659, 715 N.W.2d 512 (2006).

Under the Nebraska grandparent visitation statutes, a court is without authority to order grandparent visitation unless a petitioning grandparent can prove by clear and convincing evidence that (1) there is, or has been, a significant beneficial relationship between the grandparent and the child; (2) it is in the best interests of the child that such relationship continue; and (3) such visitation will not adversely interfere with the parent-child relationship. *Hamit v. Hamit*, 271 Neb. 659, 715 N.W.2d 512 (2006).

43-2923.

A court is required to devise a parenting plan and to consider joint legal and physical custody, but the court is not required to grant equal parenting time to the parents if such is not in the child's best interests. *Kamal v. Imroz*, 277 Neb. 116, 759 N.W.2d 914 (2009).

43-2924.

In a paternity case subject to the Parenting Act where neither party has requested joint custody, if the court determines that joint custody is, or may be, in the best interests of the child, the court shall give the parties notice and an opportunity to be heard by holding an evidentiary hearing on the issue of joint custody. *State ex rel. Amanda M. v. Justin T.*, 279 Neb. 273, 777 N.W.2d 565 (2010).

43-2929.

This section requires that a parenting plan be developed and approved by the court in any dissolution proceeding where the custody of a minor child is at issue. Where a decree fails to do so, the decree is not a final, appealable order. *Bhuller v. Bhuller*, 17 Neb. App. 607, 767 N.W.2d 813 (2009).

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43-3804.

This section does not create a jurisdictional prerequisite to a juvenile court's exercise of jurisdiction. In re Interest of Angelica L. & Daniel L., 277 Neb. 984, 767 N.W.2d 74 (2009).

The State's failure to comply with the notice requirements of subsection (2) of this section does not result in a denial of due process when a father whose parental rights have been terminated had notice of the proceedings and did not show that he was prejudiced by the lack of notification to the foreign consulate. In re Interest of Antonio O. & Gisela O., 18 Neb. App. 449, 784 N.W.2d 457 (2010).

44-358.

Maintaining proof of an insured's qualification to perform a covered activity is the type of condition subsequent that this section was intended to address. Devese v. Transguard Ins. Co., 281 Neb. 733, 798 N.W.2d 614 (2011).

The contribute-to-the-loss standard in this section applies to breaches of preloss conditions subsequent and continuing warranties that function as conditions subsequent. Regardless of an insurer's labeling, a clause in an insurance policy that requires an insured to avoid an increased hazard is a preloss condition subsequent for coverage. D & S Realty v. Markel Ins. Co., 280 Neb. 567, 789 N.W.2d 1 (2010).

This section was intended to limit an insurer's ability to avoid liability for breach of increased hazard conditions which are so broad that an insured's violation of them is not causally relevant to the loss. D & S Realty v. Markel Ins. Co., 280 Neb. 567, 789 N.W.2d 1 (2010).

44-359.

When read in conjunction with section 25-901, this section prohibits an award of attorney fees to a plaintiff, in a suit against the plaintiff's insurer, who rejects an offer of judgment and later fails to recover more than the amount offered. Dutton-Lainson Co. v. Continental Ins. Co., 279 Neb. 365, 778 N.W.2d 433 (2010).

44-2828.

The Nebraska Hospital-Medical Liability Act provides a 2-year statute of limitations for medical malpractice claims unless the cause of action could not have been reasonably discovered within the 2 years, and then the action may be brought within 1 year from the date of discovery. Hampton v. Shaw, 14 Neb. App. 499, 710 N.W.2d 341 (2006).

44-4821.

The liquidator did not seek to enforce the arbitration agreements in question but disavowed them according to the express powers granted under subsection (1)(m) of this section. State ex rel. Wagner v. Kay, 15 Neb. App. 85, 722 N.W.2d 348 (2006).

44-6407.

A "regular use" exclusion in an automobile insurance policy, which mirrors the statutory exclusion, reflects the public policy of this state and is not void as against public policy. Alsidez v. American Family Mut. Ins. Co., 282 Neb. 890, 807 N.W.2d 184 (2011).

44-6411.

Stacking of uninsured motorist coverages is prohibited, and an insured's maximum recovery of uninsured motorist benefits is limited to the highest limit of any one applicable policy. Weston v. Continental Western Ins. Co., 14 Neb. App. 956, 720 N.W.2d 904 (2006).

44-7532.

The language in this section referring to notice to "all interested parties" contemplates notice by the Nebraska Department of Insurance to both the insured and the insurer regarding the adversarial proceeding to come. It would not be a sensible reading of the statutes to require notice to only one of the parties, where both parties are

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active in the proceeding but seek different outcomes. *Travelers Indem. Co. v. Gridiron Mgmt. Group*, 281 Neb. 113, 794 N.W.2d 143 (2011).

45-103.

Judgment interest accrues on the judgment, even if that judgment is made up in part of interest already accrued. *Heritage Bank v. Bruha*, 283 Neb. 263, 812 N.W.2d 260 (2012).

Interest under this section shall accrue on decrees and judgments for the payment of money from the date of entry of judgment until satisfaction of judgment. *Valley Cty. Sch. Dist. 88-0005 v. Ericson State Bank*, 18 Neb. App. 624, 790 N.W.2d 462 (2010).

45-103.01.

Judgment interest accrues on the judgment, even if that judgment is made up in part of interest already accrued. *Heritage Bank v. Bruha*, 283 Neb. 263, 812 N.W.2d 260 (2012).

The court did not err in awarding postjudgment interest on the wife's fixed dollar amount share of her husband's profit-sharing plan from the date of entry of the decree, even though the qualified domestic relations order called for by the decree was not entered for over 2 years. *Fry v. Fry*, 18 Neb. App. 75, 775 N.W.2d 438 (2009).

45-103.02.

Under subsection (1) of this section, where the claim is unliquidated and the plaintiff's offer of settlement is exceeded by the judgment, prejudgment interest accrues on the full amount of the judgment starting on the date of the plaintiff's first offer of settlement, which offer is exceeded by the judgment. *Martensen v. Rejda Bros.*, 283 Neb. 279, 808 N.W.2d 855 (2012).

Prejudgment interest is recoverable only when the claim is liquidated, that is, when there is no reasonable controversy as to the plaintiff's right to recover and the amount of such recovery. This determination requires a two-pronged inquiry. There must be no dispute as to the amount due and to the plaintiff's right to recover. *Dutton-Lainson Co. v. Continental Ins. Co.*, 279 Neb. 365, 778 N.W.2d 433 (2010).

Prejudgment interest may be awarded only as provided in subsection (2) of this section. *Dutton-Lainson Co. v. Continental Ins. Co.*, 279 Neb. 365, 778 N.W.2d 433 (2010).

This section provides the sole means for recovery of interest costs. Interest is not otherwise recoverable as a separate element of damages. *R & D Properties v. Altech Constr. Co.*, 279 Neb. 74, 776 N.W.2d 493 (2009).

45-103.04.

Subsection (2) of this section prohibits prejudgment interest for (1) any action involving the state, (2) any action involving a political subdivision of the state, or (3) any action involving an employee of the state or political subdivision for any negligent or wrongful act or omission accruing within the scope of such employee's office or employment. *Eikmeier v. City of Omaha*, 280 Neb. 173, 783 N.W.2d 795 (2010).

45-104.

Generally, prejudgment interest accrues on the unpaid balance of liquidated claims arising from an instrument in writing from the date the cause of action arose until the entry of judgment. *Valley Cty. Sch. Dist. 88-0005 v. Ericson State Bank*, 18 Neb. App. 624, 790 N.W.2d 462 (2010).

This section provides the interest rate for prejudgment interest upon the happening of events outlined in this section. *Valley Cty. Sch. Dist. 88-0005 v. Ericson State Bank*, 18 Neb. App. 624, 790 N.W.2d 462 (2010).

46-713.

As an exception to the requirement that a litigant assert its own rights and interests to have standing, a natural resources district has standing under this section to challenge a state action that requires it to spend the public

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funds that it is charged with raising and controlling. *Middle Niobrara NRD v. Department of Nat. Resources*, 281 Neb. 634, 799 N.W.2d 305 (2011).

Because the director of the Department of Natural Resources cannot resolve a challenge to a senior appropriator's call before the Department of Natural Resources issues its annual report on January 1, the department cannot base its annual evaluations upon a senior appropriator's call. *Middle Niobrara NRD v. Department of Nat. Resources*, 281 Neb. 634, 799 N.W.2d 305 (2011).

Generally, to be an "interested person" under subsection (2) of this section, a litigant challenging a fully appropriated determination by the Department of Natural Resources must be asserting its own rights and interests, not those of a third party, and must demonstrate an injury in fact sufficient to confer common-law standing. *Middle Niobrara NRD v. Department of Nat. Resources*, 281 Neb. 634, 799 N.W.2d 305 (2011).

Subsection (3)(a) of this section permits the Department of Natural Resources to designate a river basin or subpart as fully appropriated by focusing solely on whether surface water appropriations are sustainable. *Middle Niobrara NRD v. Department of Nat. Resources*, 281 Neb. 634, 799 N.W.2d 305 (2011).

The Department of Natural Resources' promulgated methodologies under this section for determining whether a river basin or subpart is fully appropriated must be followed and applied in a consistent manner. Additionally, under subsection (1)(d) of this section, an independent party must be able to replicate and assess its methodologies and conclusions. *Middle Niobrara NRD v. Department of Nat. Resources*, 281 Neb. 634, 799 N.W.2d 305 (2011).

The Department of Natural Resources' 2006 regulations do not permit an independent party to replicate or assess the department's findings or methodologies, as required under subsection (1)(d) of this section. *Middle Niobrara NRD v. Department of Nat. Resources*, 281 Neb. 634, 799 N.W.2d 305 (2011).

The Department of Natural Resources' 2006 regulations promulgated under this section do not permit the department to determine that a river basin is fully appropriated by comparing a senior appropriation right to the streamflow values at a specific diversion point or streamflow gauge. *Middle Niobrara NRD v. Department of Nat. Resources*, 281 Neb. 634, 799 N.W.2d 305 (2011).

To petition for a contested hearing challenging a fully appropriated determination of the Department of Natural Resources for a river basin, the challenger must have standing as an interested person under subsection (2) of this section. *Middle Niobrara NRD v. Department of Nat. Resources*, 281 Neb. 634, 799 N.W.2d 305 (2011).

47-503.

Pursuant to this section, a sentencing court is required to separately determine, state, and grant credit for time served. *State v. Clark*, 278 Neb. 557, 772 N.W.2d 559 (2009).

The court has no discretion to grant a defendant more or less credit than is established by the record. *State v. Clark*, 278 Neb. 557, 772 N.W.2d 559 (2009).

When a court grants a defendant more or less credit for time served than the defendant actually served, that portion of the pronouncement of sentence is erroneous and may be corrected to reflect the accurate amount of credit as verified objectively by the record. *State v. Clark*, 278 Neb. 557, 772 N.W.2d 559 (2009).

Under subsection (1) of this section, a defendant is not entitled to credit against a jail sentence for time spent in a residential substance abuse treatment facility. *State v. Anderson*, 18 Neb. App. 329, 779 N.W.2d 623 (2010).

Pursuant to subsection (2) of this section, the court had the authority to revise the sentence when the defendant was inadvertently given 361 days' credit for time served rather than the 61 days actually served. *State v. Clark*, 17 Neb. App. 361, 762 N.W.2d 64 (2009).

Pursuant to subsection (2) of this section, the giving of credit for time served is part of the sentence. *State v. Clark*, 17 Neb. App. 361, 762 N.W.2d 64 (2009).

Pursuant to subsection (2) of this section, where a portion of a sentence is valid and a portion is invalid or erroneous, the court has the authority to modify or revise the sentence by removing the invalid or erroneous portion of the sentence if the remaining portion of the sentence constitutes a complete valid sentence. *State v. Clark*, 17 Neb. App. 361, 762 N.W.2d 64 (2009).

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48-101.

A common-law misrepresentation defense to govern when an applicant's misrepresentation will bar recovery of workers' compensation benefits is incompatible with the Nebraska Workers' Compensation Act, overruling *Hilt Truck Lines, Inc. v. Jones*, 204 Neb. 115, 281 N.W.2d 399 (1979). *Bassinger v. Nebraska Heart Hosp.*, 282 Neb. 835, 806 N.W.2d 395 (2011).

An employee's deliberate or intentional defiance of a reasonable rule will disqualify that employee from receiving benefits if (1) the employer has a reasonable rule designed to protect the health and safety of the employee, (2) the employee has actual notice of the rule, (3) the employee has an understanding of the danger involved in the violation of the rule, (4) the rule is kept alive by bona fide enforcement by the employer, and (5) the employee does not have a bona fide excuse for the rule violation. These factors need not be met when an employee has accidentally violated a safety rule. *Spaulding v. Alliant Foodservice*, 13 Neb. App. 99, 689 N.W.2d 593 (2004).

An employee's violation of an employer's safety rule must be intentional in order for that employee to be held willfully negligent under this section. *Spaulding v. Alliant Foodservice*, 13 Neb. App. 99, 689 N.W.2d 593 (2004).

48-102.

A common-law misrepresentation defense to govern when an applicant's misrepresentation will bar recovery of workers' compensation benefits is incompatible with the Nebraska Workers' Compensation Act, overruling *Hilt Truck Lines, Inc. v. Jones*, 204 Neb. 115, 281 N.W.2d 399 (1979). *Bassinger v. Nebraska Heart Hosp.*, 282 Neb. 835, 806 N.W.2d 395 (2011).

The statutory defense under this section applies to employees, not applicants. *Bassinger v. Nebraska Heart Hosp.*, 282 Neb. 835, 806 N.W.2d 395 (2011).

48-106.

Pursuant to subdivision (2) of section 48-114, employers subject to the Nebraska Workers' Compensation Act include every person, firm, or corporation who is engaged in any trade, occupation, business, or profession as described in this section, and who has any person in service under any contract of hire, express or implied, oral or written. *Morin v. Industrial Manpower*, 13 Neb. App. 1, 687 N.W.2d 704 (2004).

Pursuant to subdivision (2) of section 48-115, under the Nebraska Workers' Compensation Act, an "employee" or "worker" is defined as every person in the service of an employer who is engaged in any trade, occupation, business, or profession as described in this section under any contract of hire, expressed or implied, oral or written. *Morin v. Industrial Manpower*, 13 Neb. App. 1, 687 N.W.2d 704 (2004).

Pursuant to subsection (1) of this section, the Nebraska Workers' Compensation Act applies to every employer in this state, including nonresident employers performing work in this state, employing one or more employees, in the regular trade, business, profession, or vocation of such employer. *Morin v. Industrial Manpower*, 13 Neb. App. 1, 687 N.W.2d 704 (2004).

48-111.

Where a surviving husband's deceased wife's employer was immune under section 48-148 from the surviving husband's suit against it for bystander negligent infliction of emotional distress, a fellow employee of the deceased wife was also immune from the surviving husband's suit because under this section, the employer's immunity extended to the deceased wife's fellow employee. *Pittman v. Western Engineering Co.*, 283 Neb. 913, 813 N.W.2d 487 (2012).

48-114.

Pursuant to subdivision (2) of this section, employers subject to the Nebraska Workers' Compensation Act include every person, firm, or corporation who is engaged in any trade, occupation, business, or profession as described in section 48-106, and who has any person in service under any contract of hire, express or implied, oral or written. *Morin v. Industrial Manpower*, 13 Neb. App. 1, 687 N.W.2d 704 (2004).

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48-115.

Pursuant to subsection (2) of this section, illegal aliens are included in the definition of employees or workers. *Visoso v. Cargill Meat Solutions*, 18 Neb. App. 202, 778 N.W.2d 504 (2009).

The record contained sufficient evidence to support the trial judge's conclusion that the worker was self-employed and that the worker did not comply with subsection (10) of this section. *Nerison v. National Fire Ins. Co. of Hartford*, 17 Neb. App. 161, 757 N.W.2d 21 (2008).

Pursuant to subdivision (2) of this section, the terms "employee" and "worker" do not include any person whose employment is not in the usual course of the trade, business, profession, or occupation of his or her employer. *Morin v. Industrial Manpower*, 13 Neb. App. 1, 687 N.W.2d 704 (2004).

Pursuant to subdivision (2) of this section, under the Nebraska Workers' Compensation Act, an "employee" or "worker" is defined as every person in the service of an employer who is engaged in any trade, occupation, business, or profession as described in section 48-106 under any contract of hire, expressed or implied, oral or written. *Morin v. Industrial Manpower*, 13 Neb. App. 1, 687 N.W.2d 704 (2004).

48-120.

Once it has been determined that the need for future medical care is probable, the employer is liable for any future care shown to be reasonably necessary under this section. *Sellers v. Reefer Systems*, 283 Neb. 760, 811 N.W.2d 293 (2012).

Under subsection (b) of this section, the fee schedule is applicable to payments made by third-party payors. *Pearson v. Archer-Daniels-Midland Milling Co.*, 282 Neb. 400, 803 N.W.2d 489 (2011).

An employee's injury which occurs en route to a required medical appointment that is related to a compensable injury is also compensable, as long as the chosen route is reasonable and practical. *Straub v. City of Scottsbluff*, 280 Neb. 163, 784 N.W.2d 886 (2010).

Before an order for future medical benefits may be entered pursuant to subsection (1)(a) of this section, there must be explicit evidence that future medical treatment is reasonably necessary to relieve the injured worker from the effects of the work-related injury. *Adams v. Cargill Meat Solutions*, 17 Neb. App. 708, 774 N.W.2d 761 (2009).

The trial judge did not err in ordering the employer to pay for medication, because the judge's determination that the medication was necessary to treat both the work-related side effects of pain medication and the unrelated condition of sleep apnea was not clearly wrong. *Zitterkopf v. Aulick Indus.*, 16 Neb. App. 829, 753 N.W.2d 370 (2008).

The meaning of subsection (4) of this section is plain and unambiguous. When an injured worker is seeking compensation for an injury from his employer and the employer seeks relevant information from the injured worker's treating physician regarding that injury, that information is not privileged. *Scott v. Drivers Mgmt., Inc.*, 14 Neb. App. 630, 714 N.W.2d 23 (2006).

Medical expenses incurred before the date of an employee's accident in a repetitive trauma case may be compensable if they are reasonably necessary and related to the compensable injury. *Tomlin v. Densberger Drywall*, 14 Neb. App. 288, 706 N.W.2d 595 (2005).

48-121.

The 300-week limitation found in subsection (2) of this section does not apply to benefits for temporary total disability awarded under subsection (1) of this section. *Heppler v. Omaha Cable*, 16 Neb. App. 267, 743 N.W.2d 383 (2007).

Pursuant to subdivision (2) of this section, where a trial court is not called upon to make a determination of loss of earning power until after completion of vocational rehabilitation, the court is not required to retroactively look to the extent of loss of earning power as of the date of maximum medical improvement and disregard the documented change in loss of earning power flowing from completion of vocational rehabilitation. *Grandt v. Douglas County*, 14 Neb. App. 219, 705 N.W.2d 600 (2005).

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48-125.

A workers' compensation trial judge has continuing jurisdiction to enforce an employer's obligation to pay benefits pending the employer's appeal of the judge's previous order imposing a penalty and costs for a delayed payment. *Russell v. Kerry, Inc.*, 278 Neb. 981, 775 N.W.2d 420 (2009).

An employer's appeal from a postjudgment proceeding to enforce a workers' compensation award does not disturb the finality of an award imposing a continuing obligation on the employer to pay benefits. *Russell v. Kerry, Inc.*, 278 Neb. 981, 775 N.W.2d 420 (2009).

Interest that is assessed when a claimant is awarded attorney fees on an enforcement motion is calculated from the time each installment of benefits became due to the date of payment, rather than being assessed on the full amount of benefits owed from the first date that compensation was payable. *Russell v. Kerry, Inc.*, 278 Neb. 981, 775 N.W.2d 420 (2009).

Preaward interest, as assessed by an enforcement order in a workers' compensation proceeding, is not a penalty but a means of fully compensating the claimant for not having use of the money that the employer owed. *Russell v. Kerry, Inc.*, 278 Neb. 981, 775 N.W.2d 420 (2009).

A reasonable controversy under this section may exist (1) if there is a question of law previously unanswered by the appellate courts, which question must be answered to determine a right or liability for disposition of a claim under the Nebraska Workers' Compensation Act, or (2) if the properly adduced evidence would support reasonable but opposite conclusions by the Nebraska Workers' Compensation Court concerning an aspect of an employee's claim for workers' compensation, which conclusions affect allowance or rejection of an employee's claim, in whole or in part. *Davis v. Crete Carrier Corp.*, 15 Neb. App. 241, 725 N.W.2d 562 (2006).

An award of attorney fees is a prerequisite before interest on the compensation amount due to a claimant may be awarded under this section. *Davis v. Crete Carrier Corp.*, 15 Neb. App. 241, 725 N.W.2d 562 (2006).

This section authorizes a 50-percent penalty payment for waiting time involving delinquent payment of compensation and an attorney fee, where there is no reasonable controversy regarding an employee's claim for workers' compensation benefits. *Davis v. Crete Carrier Corp.*, 15 Neb. App. 241, 725 N.W.2d 562 (2006).

To avoid the penalty provided for in this section, an employer need not prevail in the employee's claim, but must have an actual basis in law or fact for disputing the claim and refusing compensation. *Davis v. Crete Carrier Corp.*, 15 Neb. App. 241, 725 N.W.2d 562 (2006).

Where there is no reasonable controversy, this section authorizes the award of attorney fees. *Davis v. Crete Carrier Corp.*, 15 Neb. App. 241, 725 N.W.2d 562 (2006).

Whether a reasonable controversy exists under this section is a question of fact. *Davis v. Crete Carrier Corp.*, 15 Neb. App. 241, 725 N.W.2d 562 (2006).

A 50-percent waiting-time penalty cannot be awarded on the basis of an award of delinquent medical payments; a waiting-time penalty is available only on awards of delinquent payments of disability or indemnity benefits. *Bronzynski v. Model Electric*, 14 Neb. App. 355, 707 N.W.2d 46 (2005).

When an attorney fee is allowed pursuant to this section, interest shall be assessed on the final award of weekly compensation benefits, not "medical payments." *Bronzynski v. Model Electric*, 14 Neb. App. 355, 707 N.W.2d 46 (2005).

A reasonable controversy under this section may exist (1) if there is a question of law previously unanswered by the appellate courts, which question must be answered to determine a right or liability for disposition of a claim under the Nebraska Workers' Compensation Act, or (2) if the properly adduced evidence would support reasonable but opposite conclusions by the Nebraska Workers' Compensation Court concerning an aspect of an employee's claim for workers' compensation, which conclusions affect allowance or rejection of an employee's claim, in whole or in part. *Milliken v. Premier Indus.*, 13 Neb. App. 330, 691 N.W.2d 855 (2005).

The purpose of the 30-day waiting-time penalty and the provision for attorney fees, as provided in this section, is to encourage prompt payment by making delay costly if the award has been finally established. *Milliken v. Premier Indus.*, 13 Neb. App. 330, 691 N.W.2d 855 (2005).

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This section authorizes a 50-percent penalty payment for waiting time involving delinquent payment of compensation and an attorney fee, where there is no reasonable controversy regarding an employee's claim for workers' compensation. *Milliken v. Premier Indus.*, 13 Neb. App. 330, 691 N.W.2d 855 (2005).

To avoid the penalty provided for in this section, an employer need not prevail in the employee's claim, but must have an actual basis in law or fact for disputing the claim and refusing compensation. *Milliken v. Premier Indus.*, 13 Neb. App. 330, 691 N.W.2d 855 (2005).

48-126.

The language "ordinarily constituting his or her week's work" precludes an automatic mathematical calculation based on the past 6 months' work; the goal of any average income test is to produce an honest approximation of the claimant's probable future earning capacity. *Mueller v. Lincoln Public Schools*, 282 Neb. 25, 803 N.W.2d 408 (2011).

In this section, the Legislature dealt with the possible inequity that could result from abnormally high work weeks in the context of average weekly wage calculations. *Arbtin v. Puritan Mfg. Co.*, 13 Neb. App. 540, 696 N.W.2d 905 (2005).

48-128.

In order for the employer to qualify under subsection (1)(b) of this section, the employer must establish by written records that the employer had knowledge of the preexisting permanent partial disability at the time that the employee was hired or at the time the employee was retained in employment after the employer acquired such knowledge. *Ashland-Greenwood Public Schools v. Thorell*, 15 Neb. App. 114, 723 N.W.2d 506 (2006).

The purpose of the written records requirement of this section is to put in place a strictly limited method of proving a predicate fact before liability for benefits may be shifted to the Workers' Compensation Trust Fund. *Ashland-Greenwood Public Schools v. Thorell*, 15 Neb. App. 114, 723 N.W.2d 506 (2006).

The purpose of this section is to provide employers with an incentive to hire those who suffer from permanent disability, but the statute restricts the benefits to those employers who consciously hire those they know to be suffering from prior permanent disabilities. *Ashland-Greenwood Public Schools v. Thorell*, 15 Neb. App. 114, 723 N.W.2d 506 (2006).

The written records requirement of this section is merely evidentiary, and must be sensibly construed so as not to defeat the statute's larger remedial purpose. *Ashland-Greenwood Public Schools v. Thorell*, 15 Neb. App. 114, 723 N.W.2d 506 (2006).

This section does not require possession of the written records by the employer at the time of the subsequent injury or at the time the claim for contribution from the Workers' Compensation Trust Fund is made. *Ashland-Greenwood Public Schools v. Thorell*, 15 Neb. App. 114, 723 N.W.2d 506 (2006).

48-133.

For purposes of notice or knowledge under this section, the employer equates to the insurer, and vice versa. *Snowden v. Helget Gas Products*, 15 Neb. App. 33, 721 N.W.2d 362 (2006).

Knowledge of an employee's injury gained by the employee's foreman, supervisor, or superintendent in a representative capacity for an employer is knowledge imputed to the employer and notice to an employer sufficient for the notice requirement of this section. *Snowden v. Helget Gas Products*, 15 Neb. App. 33, 721 N.W.2d 362 (2006).

This section provides an exception to the written notice rule if it can be shown that the employer had notice or knowledge of the injury sufficient to lead a reasonable person to conclude that an employee's injury is potentially compensable, which in turn would create a responsibility of the employer to investigate the matter. *Snowden v. Helget Gas Products*, 15 Neb. App. 33, 721 N.W.2d 362 (2006).

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48-134.01.

Pursuant to subsection (3) of this section, the “reasonableness and necessity” of medical treatment and “causality and relatedness of the medical condition to the employment” are separate and distinct questions upon which an independent examiner may be asked to opine. *Miller v. Regional West Med. Ctr.*, 278 Neb. 676, 722 N.W.2d 872 (2009).

48-139.

In order to achieve a modification of a lump-sum payment that has been approved by court order pursuant to this section on the ground of increased or decreased incapacity, a party must make an application on the ground of increase or decrease of incapacity due solely to the injury. *Hubbart v. Hormel Foods Corp.*, 15 Neb. App. 129, 723 N.W.2d 350 (2006).

48-141.

Where the original award of benefits did not award vocational rehabilitation services, the applicant needed to comply with the requirements of this section and allege and prove that he had suffered an increase in incapacity since the entry of the original award in order to obtain the requested vocational rehabilitation services. *McKay v. Hershey Food Corp.*, 16 Neb. App. 79, 740 N.W.2d 378 (2007).

In order to achieve a modification of a lump-sum payment that has been approved by court order pursuant to section 48-139 on the ground of increased or decreased incapacity, a party must make an application on the ground of increase or decrease of incapacity due solely to the injury. *Hubbart v. Hormel Foods Corp.*, 15 Neb. App. 129, 723 N.W.2d 350 (2006).

In the context of body as a whole injuries, an applicant for modification who must fulfill the requirements set forth in this section by demonstrating a change in incapacity must establish both a change in the employee’s physical condition, or impairment, and a change in the employee’s disability. *Bronzynski v. Model Electric*, 14 Neb. App. 355, 707 N.W.2d 46 (2005).

48-146.

The requirement contained in this section that each workers’ compensation insurance policy covers all employees within the purview of the Nebraska Workers’ Compensation Act overrides an insurance policy provision which excludes any such employee from coverage. *Kruid v. Farm Bureau Mut. Ins. Co.*, 17 Neb. App. 687, 770 N.W.2d 652 (2009).

Notice to the insured-employer is binding on the insurer. *Snowden v. Helget Gas Products*, 15 Neb. App. 33, 721 N.W.2d 362 (2006).

48-148.

Under this section, a surviving husband’s claim for bystander negligent infliction of emotional distress against his deceased wife’s employer was barred by the employer immunity provisions of the Nebraska Workers’ Compensation Act because he accepted compensation from the employer as his deceased wife’s dependent, he settled with and released the employer, and his claim arose from his deceased wife’s injury as the phrase “arise from such injury” is used in this section. *Pittman v. Western Engineering Co.*, 283 Neb. 913, 813 N.W.2d 487 (2012).

48-151.

A “deliberate act” as referenced in subdivision (7) of this section refers to an employee’s deliberate injury of himself or herself. *Spaulding v. Alliant Foodservice*, 13 Neb. App. 99, 689 N.W.2d 593 (2004).

Pursuant to subdivision (7) of this section, an employee’s violation of an employer’s safety rule must be intentional in order for that employee to be held willfully negligent. *Spaulding v. Alliant Foodservice*, 13 Neb. App. 99, 689 N.W.2d 593 (2004).

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48-161.

Ancillary jurisdiction does not include the power to enforce an award. *Burnham v. Pacesetter Corp.*, 280 Neb. 707, 789 N.W.2d 913 (2010).

Ancillary jurisdiction is the power of a court to adjudicate and determine matters incidental to the exercise of its primary jurisdiction of an action. *Midwest PMS v. Olsen*, 279 Neb. 492, 778 N.W.2d 727 (2010).

The final resolution of an employee's right to workers' compensation benefits does not preclude an issue from being ancillary to the resolution of the employee's right to benefits within the meaning of this section. *Midwest PMS v. Olsen*, 279 Neb. 492, 778 N.W.2d 727 (2010).

Even though this section vests the Nebraska Workers' Compensation Court with jurisdiction to decide issues ancillary to an employee's right to workers' compensation benefits, such jurisdiction is not exclusive and a district court has jurisdiction to hear a declaratory judgment action regarding a workers' compensation insurance policy coverage dispute. *Kruid v. Farm Bureau Mut. Ins. Co.*, 17 Neb. App. 687, 770 N.W.2d 652 (2009).

Although, as a statutorily created court, the Workers' Compensation Court is a tribunal of limited and special jurisdiction and has only such authority as has been conferred on it by statute, under this section, the compensation court has jurisdiction to decide any issue ancillary to the resolution of an employee's right to workers' compensation benefits. *Nerison v. National Fire Ins. Co. of Hartford*, 17 Neb. App. 161, 757 N.W.2d 21 (2008).

48-162.01.

Subsection (7) of this section cannot be used solely to punish or coerce an injured worker. There must be evidence to support a finding that the worker's disability would have been reduced had the worker cooperated with medical treatment or vocational rehabilitation. *Hofferber v. Hastings Utilities*, 282 Neb. 215, 803 N.W.2d 1 (2011).

Subsection (7) of this section is intended to permit the compensation court to modify rehabilitation plans in response to changed circumstances following the entry of the initial plan. It does not apply to situations in which a worker has refused to cooperate with treatment or rehabilitation. *Hofferber v. Hastings Utilities*, 282 Neb. 215, 803 N.W.2d 1 (2011).

Subsection (7) of this section is intended to prevent an employee's refusal to improve his or her medical condition or earning capacity from causing an employer to pay more workers' compensation benefits than it should. It only authorizes the complete termination of a claimant's right to benefits under the Nebraska Workers' Compensation Act if evidence is presented to support a finding that had the employee availed himself or herself of the benefits offered, the employee would no longer be disabled. *Hofferber v. Hastings Utilities*, 282 Neb. 215, 803 N.W.2d 1 (2011).

The plain language of the last sentence of subsection (7) of this section contemplates a modification of services previously granted and does not provide for a modification of a final order to grant entirely new services or benefits. *McKay v. Hershey Food Corp.*, 16 Neb. App. 79, 740 N.W.2d 378 (2007).

Pursuant to subsection (3) of this section, when a vocational rehabilitation counselor submits multiple reports that are determined to be written not because a process of recovery was incomplete from the time a prior report was written, but, rather, because a counselor gives differing opinions each based on a different factual scenario, it is up to the trial court to make factual findings to determine which report should be given the rebuttable presumption of correctness. *Ladd v. Complete Concrete*, 13 Neb. App. 200, 690 N.W.2d 416 (2004).

48-177.

This section is not jurisdictional; it simply specifies the venue for hearing the cause. *Hofferber v. Hastings Utilities*, 282 Neb. 215, 803 N.W.2d 1 (2011).

48-185.

An appellate court may modify, reverse, or set aside a Workers' Compensation Court decision only when (1) the compensation court acted without or in excess of its powers; (2) the judgment, order, or award was procured

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by fraud; (3) there is no sufficient competent evidence in the record to warrant the making of the order, judgment, or award; or (4) the findings of fact by the compensation court do not support the order or award. *Nerison v. National Fire Ins. Co. of Hartford*, 17 Neb. App. 161, 757 N.W.2d 21 (2008).

An appellate court may not substitute its view of the facts for that of the Workers' Compensation Court if the record contains sufficient evidence to substantiate the factual conclusions reached by the Workers' Compensation Court. *Nerison v. National Fire Ins. Co. of Hartford*, 17 Neb. App. 161, 757 N.W.2d 21 (2008).

Under this section, an appellate court may modify, reverse, or set aside a Workers' Compensation Court decision only when (1) the compensation court acted without or in excess of its powers; (2) the judgment, order, or award was procured by fraud; (3) there is not sufficient competent evidence in the record to warrant the making of the order, judgment, or award; or (4) the findings of fact by the compensation court do not support the order or award. *McKay v. Hershey Food Corp.*, 16 Neb. App. 79, 740 N.W.2d 378 (2007).

This section precludes an appellate court's substitution of its view of the facts for that of the Workers' Compensation Court if the record contains sufficient evidence to substantiate the factual conclusions reached by the Workers' Compensation Court. *Godsey v. Casey's General Stores*, 15 Neb. App. 854, 738 N.W.2d 863 (2007).

Pursuant to this section, an appellate court may modify, reverse, or set aside a Workers' Compensation Court decision only when (1) the compensation court acted without or in excess of its powers; (2) the judgment, order, or award was procured by fraud; (3) there is not sufficient competent evidence in the record to warrant the making of the order, judgment, or award; or (4) the findings of fact by the compensation court do not support the order or award. *Davis v. Crete Carrier Corp.*, 15 Neb. App. 241, 725 N.W.2d 562 (2006).

48-188.

The date on which a workers' compensation court award is filed in a district court pursuant to this section is the date of the judgment for purposes of computing when the judgment becomes dormant under section 25-1515. *Weber v. Gas 'N Shop*, 278 Neb. 49, 767 N.W.2d 746 (2009).

The dormancy provisions of section 25-1515 apply to an award of the Nebraska Workers' Compensation Court which is filed in the district court pursuant to this section, and the date on which a workers' compensation award is filed in district court is the date of judgment for purposes of computing when the judgment becomes dormant. *Allen v. Immanuel Med. Ctr.*, 278 Neb. 41, 767 N.W.2d 502 (2009).

48-191.

The plain language of this section is broad enough to include not only transactions between a party and the court, but also transactions between the parties. *Herrington v. P.R. Ventures*, 279 Neb. 754, 781 N.W.2d 196 (2010).

48-627.

For purposes of section 48-628(7), a student is not "registered for full attendance" and therefore disqualified from receiving unemployment benefits if the student's educational program allows him or her to remain "available for work" pursuant to subdivision (3) of this section. *Lecuona v. Cramer*, 14 Neb. App. 770, 714 N.W.2d 786 (2006).

48-628.

An employee's actions do not rise to the level of misconduct if the individual is merely unable to perform the duties of the job. *Meyers v. Nebraska State Penitentiary*, 280 Neb. 958, 791 N.W.2d 607 (2010).

Under subsection (2) of this section, an individual shall be disqualified for unemployment benefits for misconduct related to his work. *Meyers v. Nebraska State Penitentiary*, 280 Neb. 958, 791 N.W.2d 607 (2010).

The degree of damage caused should not be a determining factor in whether an employee engaged in misconduct under subsection (2) of this section. Instead, the focus should be on the employee's culpability as demonstrated by his or her conduct and intentions. *NEBCO, Inc. v. Murphy*, 280 Neb. 145, 784 N.W.2d 447 (2010).

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For purposes of subdivision (7) of this section, a student is not “registered for full attendance” and therefore disqualified from receiving unemployment benefits if the student’s educational program allows him or her to remain “available for work” pursuant to section 48-627(3). *Lecuona v. Cramer*, 14 Neb. App. 770, 714 N.W.2d 786 (2006).

48-810.01.

A contract continuation clause is not a contract for a future contract year in violation of this section. *Central City Ed. Assn. v. Merrick Cty. Sch. Dist.*, 280 Neb. 27, 783 N.W.2d 600 (2010).

48-816.

Good faith bargaining includes the execution of a written contract incorporating the terms of an agreement reached pursuant to subsection (1) of this section. *Scottsbluff Police Off. Assn. v. City of Scottsbluff*, 282 Neb. 676, 805 N.W.2d 320 (2011).

Health insurance coverage and related benefits are mandatory subjects of bargaining under the Industrial Relations Act. *Scottsbluff Police Off. Assn. v. City of Scottsbluff*, 282 Neb. 676, 805 N.W.2d 320 (2011).

Status quo orders issued by the Commission of Industrial Relations pursuant to subsection (1) of this section are limited to the pendency of the industrial dispute between the parties and are binding on the parties only until the dispute has been resolved. *Professional Firefighters Assn. v. City of Omaha*, 282 Neb. 200, 803 N.W.2d 17 (2011).

Deputy assessor, deputy clerk, and deputy treasurer are considered statutory supervisors due to authority granted to those positions by state law. *IBEW Local Union No. 1597 v. Sack*, 280 Neb. 858, 793 N.W.2d 147 (2010).

48-818.

A contract continuation clause deals with hours, wages, or terms and conditions of employment as set forth in this section and thus is mandatorily bargainable. *Central City Ed. Assn. v. Merrick Cty. Sch. Dist.*, 280 Neb. 27, 783 N.W.2d 600 (2010).

48-824.

An employer may lawfully implement changes in terms and conditions of employment which are mandatory topics of bargaining only when three conditions have been met: (1) The parties have bargained to impasse, (2) the terms and conditions implemented were contained in a final offer, and (3) the implementation occurred before a petition regarding the year in dispute is filed with the Commission of Industrial Relations. *IBEW Local 763 v. Omaha Pub. Power Dist.*, 280 Neb. 889, 791 N.W.2d 310 (2010).

The purpose of this section is to provide public sector employees with the protection from unfair labor practices that private sector employees enjoy under the National Labor Relations Act, by making refusals to negotiate in good faith regarding mandatory bargaining topics a prohibited practice. *IBEW Local 763 v. Omaha Pub. Power Dist.*, 280 Neb. 889, 791 N.W.2d 310 (2010).

48-1114.

An individual who has opposed discriminatory employment practices is protected by this section of the Nebraska Fair Employment Practice Act, making it unlawful for an employer to discriminate against an employee because he or she has opposed any practice unlawful under federal law or the laws of Nebraska. *Helvering v. Union Pacific RR. Co.*, 13 Neb. App. 818, 703 N.W.2d 134 (2005).

48-1229.

A payment will be considered a wage subject to the Nebraska Wage Payment and Collection Act if (1) it is compensation for labor or services, (2) it was previously agreed to, and (3) all the conditions stipulated have been met. *Eikmeier v. City of Omaha*, 280 Neb. 173, 783 N.W.2d 795 (2010).

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Payments pursuant to a severance agreement that were not earned and did not accrue through continued employment are not compensation for labor or services rendered, and therefore, the employee is not entitled to attorney fees. *Eikmeier v. City of Omaha*, 280 Neb. 173, 783 N.W.2d 795 (2010).

Subdivision (4) of this section provides that the term “wages” includes orders on file with the employer at the time of termination of employment. Thus, an employment agreement policy which clearly conflicts with such definition of wages, even though said policy is common within the industry, is void because it is prohibited by the Nebraska Wage Payment and Collection Act. *Sanford v. Clear Channel Broadcasting*, 14 Neb. App. 908, 719 N.W.2d 312 (2006).

49-14,131.

Advisory opinions of the Nebraska Accountability and Disclosure Commission are not the equivalent of either of the matters appealable to the district court in accordance with the Administrative Procedure Act identified in this section, to wit, contested cases or declaratory rulings, and therefore are not appealable under this section. *Engler v. State*, 283 Neb. 985, 814 N.W.2d 387 (2012).

52-157.

To act with bad faith, one must know his or her lien is invalid or overstated or act with reckless disregard as to such facts. *Chicago Lumber Co. of Omaha v. Selvera*, 282 Neb. 12, 809 N.W.2d 469 (2011).

53-132.

The limit to two times the license fee pertains only to taxes on the occupation of selling alcohol and has no bearing on occupation taxes designed to target activities other than selling alcoholic beverages. *Anthony, Inc. v. City of Omaha*, 283 Neb. 868, 813 N.W.2d 467 (2012).

54-601.

1992 Neb. Laws, L.B. 1011, was prompted by a court decision in which an injured person had been unable to recover for a broken hip that had allegedly been caused by a dog, because it was not a “wound” within the meaning of this section. *Underhill v. Hobelman*, 279 Neb. 30, 776 N.W.2d 786 (2009).

The purpose of 1992 Neb. Laws, L.B. 1011, was to expand the scope of this section to include “internal damages even if there are no external damages caused by the owner’s dog.” *Underhill v. Hobelman*, 279 Neb. 30, 776 N.W.2d 786 (2009).

57-229.

The transfer of ownership occurred years after the enactment of the dormant mineral statutes and prevented the abandonment of the severed mineral interests for at least 23 years into the future. The appellants had the full 23-year period specified in this section to publicly exercise their right of ownership so as to prevent abandonment of the mineral interests. *Peterson v. Sanders*, 282 Neb. 711, 806 N.W.2d 566 (2011).

Nebraska’s dormant mineral statutes expressly require the record owner of a severed mineral interest to publicly exercise the right of ownership by performing one of the actions specified in this section during the statutory dormancy period. *Ricks v. Vap*, 280 Neb. 130, 784 N.W.2d 432 (2010).

The plain language of this section provides that a severed mineral interest is abandoned unless the record owner of the interest is the one who publicly exercises it. *Ricks v. Vap*, 280 Neb. 130, 784 N.W.2d 432 (2010).

60-399.

A license plate hanging downward is not “fastened in an upright position” as required by subsection (1) of this section. *State v. Hyland*, 17 Neb. App. 539, 769 N.W.2d 781 (2009).

Where the front license plate was placed in the front window of the defendant’s vehicle, displayed so that a law enforcement officer was unable to ascertain the numbers or see the plate clearly, a traffic violation occurred, giving the officer probable cause to stop the defendant’s vehicle. *State v. Richardson*, 17 Neb. App. 388, 763 N.W.2d 420 (2008).

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60-3,100.

Where the front license plate was placed in the front window of the defendant's vehicle, displayed so that a law enforcement officer was unable to ascertain the numbers or see the plate clearly, a traffic violation occurred, giving the officer probable cause to stop the defendant's vehicle. *State v. Richardson*, 17 Neb. App. 388, 763 N.W.2d 420 (2008).

60-498.01.

An arresting officer's sworn report triggers the administrative license revocation process by establishing a prima facie basis for revocation. The sworn report must, at a minimum, contain the information specified in this section in order to confer jurisdiction. *Murray v. Neth*, 279 Neb. 947, 783 N.W.2d 424 (2010).

The Department of Motor Vehicles has the power, in an administrative license revocation proceeding, to evaluate the jurisdictional averments in a sworn report and, if necessary, solicit a sworn addendum to that report if necessary to establish jurisdiction to proceed. *Murray v. Neth*, 279 Neb. 947, 783 N.W.2d 424 (2010).

This section requires the director to conduct the administrative license revocation hearing, but allows the director to appoint a hearing officer to preside at the hearing, and thus, the hearing officer serves as the director's agent. *Hashman v. Neth*, 18 Neb. App. 951, 797 N.W.2d 275 (2011).

For purposes of subsection (5)(a) of this section, the test results are "received" on the date they are delivered to the law enforcement agency by which the arrest was effectuated and the arresting peace officer has 10 days thereafter to forward the sworn report to the director of the Department of Motor Vehicles. *Freeman v. Neth*, 18 Neb. App. 592, 790 N.W.2d 218 (2010).

In an administrative license revocation proceeding, pursuant to subsection (3) of this section, the sworn report of the arresting officer must, at a minimum, contain the information specified in this subsection in order to confer jurisdiction. *Freeman v. Neth*, 18 Neb. App. 592, 790 N.W.2d 218 (2010).

The 10-day time period for submitting a sworn report under subsection (5)(a) of this section is mandatory, and if the sworn report is submitted after the 10-day period, the Department of Motor Vehicles lacks jurisdiction to revoke a person's driver's license. *Freeman v. Neth*, 18 Neb. App. 592, 790 N.W.2d 218 (2010).

When a person submits to a chemical test of breath, the required recitations in the sworn report are (1) that the person was arrested as described in section 60-6,197(2)—reasonable grounds to believe such person was driving while under the influence of alcoholic liquor or drugs—and the reasons for such arrest, (2) that the person was requested to submit to the required test, and (3) that the person submitted to a test, the type of test to which he or she submitted, and that such test revealed the presence of alcohol in a concentration specified in section 60-6,196. *Teeters v. Neth*, 18 Neb. App. 585, 790 N.W.2d 213 (2010).

Where a sworn report identifies two arresting officers and, as submitted, conveys the information required by the applicable statute, the omission of the second arresting officer's signature of the report is a technical deficiency that does not deprive the Department of Motor Vehicles of jurisdiction. *Law v. Nebraska Dept. of Motor Vehicles*, 18 Neb. App. 237, 777 N.W.2d 586 (2010).

Despite the officer's failure to check the box next to "Submitted to a blood test," the information contained under this heading clearly shows that a blood test was performed and that the results of the blood test were in a concentration above the statutory amount, which conveys the information required by subsection (3) of this section. *Wilson v. Neth*, 18 Neb. App. 41, 773 N.W.2d 183 (2009).

Nebraska law grants the director of the Department of Motor Vehicles jurisdiction to administratively revoke the license of a person found to be driving while under the influence of alcohol. *Wilson v. Neth*, 18 Neb. App. 41, 773 N.W.2d 183 (2009).

Subsection (3) of this section requires a sworn report to state that the person was arrested as described in section 60-6,197(2), the reasons for such arrest, that the person was requested to submit to the required test, and that the person submitted to a test, the type of test to which he submitted, and that such test revealed the presence of alcohol in a concentration specified in section 60-6,196. *Wilson v. Neth*, 18 Neb. App. 41, 773 N.W.2d 183 (2009).

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The sworn report of the arresting officer must, at a minimum, contain the information specified in the applicable statute in order to confer jurisdiction. *Wilson v. Neth*, 18 Neb. App. 41, 773 N.W.2d 183 (2009).

The test used to determine whether an omission from a sworn report becomes a jurisdictional defect, as opposed to a technical one, is whether, notwithstanding the omission, the sworn report conveys the information required by the applicable statute. *Wilson v. Neth*, 18 Neb. App. 41, 773 N.W.2d 183 (2009).

If a sworn report falling under subsection (5)(a) of this section is submitted after the 10-day period, the Department of Motor Vehicles lacks jurisdiction to revoke a person's driver's license. *Murray v. Neth*, 17 Neb. App. 900, 773 N.W.2d 394 (2009).

The 10-day time limit set forth in subsection (3) of this section is directory rather than mandatory. *Murray v. Neth*, 17 Neb. App. 900, 773 N.W.2d 394 (2009).

The 10-day time limit set forth in subsection (2) of this section, which states that an arresting officer shall forward a sworn report to the director of the Department of Motor Vehicles, is directory rather than mandatory. *Walz v. Neth*, 17 Neb. App. 891, 773 N.W.2d 387 (2009).

Under subsection (5)(a) of this section, the 10-day time period for submitting a sworn report is mandatory, and if the sworn report is submitted after the 10-day period, the Department of Motor Vehicles lacks jurisdiction to revoke a person's driver's license. *Stoetzel v. Neth*, 16 Neb. App. 348, 744 N.W.2d 465 (2008).

The 10-day time limit set forth in subsection (3) of this section is directory rather than mandatory. *Thomsen v. Nebraska Dept. of Motor Vehicles*, 16 Neb. App. 44, 741 N.W.2d 682 (2007).

The last sentence of subsection (5)(a) of this section modifies only the preceding sentence and does not apply to the other subsections. *Thomsen v. Nebraska Dept. of Motor Vehicles*, 16 Neb. App. 44, 741 N.W.2d 682 (2007).

The 10-day time limit set forth in subsection (2) of this section is directory rather than mandatory. *Forgey v. Nebraska Dept. of Motor Vehicles*, 15 Neb. App. 191, 724 N.W.2d 828 (2006).

Pursuant to subsection (2) of this section, the failure of the notary to include the expiration date of his or her commission on the sworn report does not render such sworn report invalid because the presence of a notarial seal and the notary's signature serves as presumptive evidence of the performance of the notary's duty. *Valeriano-Cruz v. Neth*, 14 Neb. App. 855, 716 N.W.2d 765 (2006).

Once the arresting officer's sworn report is received, the case for revocation has prima facie validity and it becomes the petitioner's burden to establish by a preponderance of the evidence grounds upon which the operator's license revocation should not take effect. *Scott v. State*, 13 Neb. App. 867, 703 N.W.2d 266 (2005).

60-498.02.

This section, providing that drivers whose operator's licenses had been revoked for a period of 1 year were eligible for an employment driving permit, and section 60-4,129, providing that drivers whose operator's licenses had been revoked for a period of 90 days were eligible for an employment driving permit after a period of 30 days, are not in conflict or ambiguous. *Bazar v. Department of Motor Vehicles*, 17 Neb. App. 910, 774 N.W.2d 433 (2009).

60-498.04.

Pursuant to Nebraska's administrative revocation statutes, decisions of the director of the Department of Motor Vehicles are appealed pursuant to the Administrative Procedure Act. *Wilson v. Neth*, 18 Neb. App. 41, 773 N.W.2d 183 (2009).

60-4,108.

The language "from the date ordered by the court" means "from the date selected by the court." *State v. Fuller*, 278 Neb. 585, 772 N.W.2d 868 (2009).

ANNOTATIONS

60-4,129.

Section 60-498.02, providing that drivers whose operator's licenses had been revoked for a period of 1 year were eligible for an employment driving permit, and this section, providing that drivers whose operator's licenses had been revoked for a period of 90 days were eligible for an employment driving permit after a period of 30 days, are not in conflict or ambiguous. *Bazar v. Department of Motor Vehicles*, 17 Neb. App. 910, 774 N.W.2d 433 (2009).

60-649.

A residential driveway is not private property that is open to public access. Thus, criminal liability under section 60-6,196 does not extend to intoxicated persons in control of a vehicle parked on a residential driveway, regardless of whether part of the vehicle crosses a sidewalk. *State v. McCave*, 282 Neb. 500, 805 N.W.2d 290 (2011).

60-662.

Criminal liability under section 60-6,196 does not extend to intoxicated persons in control of a vehicle parked on a residential driveway, regardless of whether part of the vehicle crosses a sidewalk. *State v. McCave*, 282 Neb. 500, 805 N.W.2d 290 (2011).

60-6,108.

Criminal liability under section 60-6,196 does not extend to intoxicated persons in control of a vehicle parked on a residential driveway, regardless of whether part of the vehicle crosses a sidewalk. *State v. McCave*, 282 Neb. 500, 805 N.W.2d 290 (2011).

60-6,120.

Sovereign immunity barred a claim against the State of Nebraska and Cass County concerning the lack of pavement markings at a railroad crossing at which a collision occurred because the decision of whether to place pavement markings at the crossing was discretionary. *Shipley v. Department of Roads*, 283 Neb. 832, 813 N.W.2d 455 (2012).

60-6,121.

Sovereign immunity barred a claim against the State of Nebraska and Cass County concerning the lack of pavement markings at a railroad crossing at which a collision occurred because the decision of whether to place pavement markings at the crossing was discretionary. *Shipley v. Department of Roads*, 283 Neb. 832, 813 N.W.2d 455 (2012).

The Nebraska Legislature intended political subdivisions to have discretion in the installation of traffic control devices, for purposes of a claim under the Political Subdivisions Tort Claims Act. *Dresser v. Thayer Cty*, 18 Neb. App. 99, 774 N.W.2d 640 (2009).

60-6,196.

Criminal liability under this section does not extend to intoxicated persons in control of a vehicle parked on a residential driveway, regardless of whether part of the vehicle crosses a sidewalk. *State v. McCave*, 282 Neb. 500, 805 N.W.2d 290 (2011).

As used in this section, the phrase "under the influence of alcoholic liquor or of any drug" requires the ingestion of alcohol or drugs in an amount sufficient to impair to any appreciable degree the driver's ability to operate a motor vehicle in a prudent and cautious manner. *State v. Daly*, 278 Neb. 903, 775 N.W.2d 47 (2009).

This section only requires proof that the defendant was under the influence of any drug and does not require the drug to be identified by the arresting officer. *State v. Daly*, 278 Neb. 903, 775 N.W.2d 47 (2009).

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Whether impairment is caused by alcohol or drugs, a conviction for a violation of this section may be sustained by either a law enforcement officer's observations of a defendant's intoxicated behavior or the defendant's poor performance on field sobriety tests. *State v. Daly*, 278 Neb. 903, 775 N.W.2d 47 (2009).

When a person submits to a chemical test of breath, the required recitations in the sworn report are (1) that the person was arrested as described in section 60-6,197(2)—reasonable grounds to believe such person was driving while under the influence of alcoholic liquor or drugs—and the reasons for such arrest, (2) that the person was requested to submit to the required test, and (3) that the person submitted to a test, the type of test to which he or she submitted, and that such test revealed the presence of alcohol in a concentration specified in this section. *Teeters v. Neth*, 18 Neb. App. 585, 790 N.W.2d 213 (2010); *Wilson v. Neth*, 18 Neb. App. 41, 773 N.W.2d 183 (2009).

The elements of driving while under the influence which the State must prove beyond a reasonable doubt are (1) that the defendant was operating or in actual physical control of a motor vehicle and (2) that he did so while under the influence of alcoholic liquor. *State v. Martin*, 18 Neb. App. 338, 782 N.W.2d 37 (2010).

A prior conviction resulting in a sentence of probation, and not actual imprisonment, can be used for enhancement in subsequent proceedings without a showing that the defendant had or waived counsel in the prior proceeding. *State v. Wilson*, 17 Neb. App. 846, 771 N.W.2d 228 (2009).

The revocation of an operator's license pursuant to subsection (2)(c) of this section as it existed prior to July 16, 2004, includes a revocation made under a city or village ordinance enacted in conformance with subsection (2)(c) of this section. *State v. Flores*, 17 Neb. App. 532, 767 N.W.2d 512 (2009).

60-6,197.

The validity of a charge for refusing to submit to a chemical test under subsection (3) of this section depends upon the State's showing a valid arrest under subsection (2). If the arrest was invalid because the police officers lacked probable cause, a conviction for refusing to submit to a chemical test is invalid. *State v. McCave*, 282 Neb. 500, 805 N.W.2d 290 (2011).

When a person submits to a chemical test of breath, the required recitations in the sworn report are (1) that the person was arrested as described in subsection (2) of this section—reasonable grounds to believe such person was driving while under the influence of alcoholic liquor or drugs—and the reasons for such arrest, (2) that the person was requested to submit to the required test, and (3) that the person submitted to a test, the type of test to which he or she submitted, and that such test revealed the presence of alcohol in a concentration specified in section 60-6,196. *Teeters v. Neth*, 18 Neb. App. 585, 790 N.W.2d 213 (2010); *Wilson v. Neth*, 18 Neb. App. 41, 773 N.W.2d 183 (2009).

For purposes of an administrative license revocation, including a statement in the sworn report that the individual was arrested pursuant to this section does not provide a factual basis for the arrest, because such is a mere legal conclusion. *Yenney v. Nebraska Dept. of Motor Vehicles*, 15 Neb. App. 446, 729 N.W.2d 95 (2007).

60-6,197.02.

"Prior conviction" for purposes of enhancing a conviction for driving under the influence is defined in terms of other laws regarding driving under the influence, while a "prior conviction" for purposes of enhancing a conviction for refusing a chemical test is defined in terms of refusal laws. There is no crossover between driving under the influence and refusal convictions for purposes of sentence enhancement. *State v. Huff*, 282 Neb. 78, 802 N.W.2d 77 (2011).

It was not the Legislature's intent to prohibit the consideration of prior out-of-state driving under the influence convictions simply because differing elements of the offense or differing quantum of proof make it merely *possible* that the defendant's behavior would not have resulted in a violation of section 60-6,196, had it occurred in Nebraska. *State v. Garcia*, 281 Neb. 1, 792 N.W.2d 882 (2011).

The prosecution presents prima facie evidence of a prior driving under the influence conviction by presenting a certified copy of the conviction and evidence that it was counseled; the burden then shifts to the defendant to rebut the presumption that the documents reflect that an "offense for which the person was convicted would have been a violation of section 60-6,196." *State v. Garcia*, 281 Neb. 1, 792 N.W.2d 882 (2011).

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Under the plain language of this section, when sentencing for a driving under the influence conviction, a previous refusal to submit to chemical testing conviction is not in the list of convictions that are prior convictions for the purpose of enhancement, and when sentencing for a refusal conviction, a previous driving under the influence conviction is not in the list of prior convictions which can be used to enhance the refusal conviction. *State v. Hansen*, 16 Neb. App. 671, 749 N.W.2d 499 (2008).

60-6,197.03.

Pursuant to section 29-2262(2)(b), the mandate of subsection (6) of this section that an order of probation “shall also include” 60 days’ confinement does not conflict with the provision that a trial court may require the offender to be confined for a period not to exceed 180 days; the minimum jail term for a period granted probation for an offense punishable under subsection (6) of this section is 60 days, and the maximum is 180 days. *State v. Dinslage*, 280 Neb. 659, 789 N.W.2d 29 (2010).

A license revocation ordered pursuant to this section begins at the time appointed in the court’s order. *State v. Lankford*, 17 Neb. App. 123, 756 N.W.2d 739 (2008).

60-6,197.06.

An ignition-interlock permitholder who drives a vehicle not equipped with an ignition interlock device may not be charged under this section and must be charged under section 60-6,211.05(5). *State v. Hernandez*, 283 Neb. 423, 809 N.W.2d 279 (2012).

The revocation of an operator’s license pursuant to section 60-6,196(2)(c) as it existed prior to July 16, 2004, includes a revocation made under a city or village ordinance enacted in conformance with section 60-6,196(2)(c). *State v. Flores*, 17 Neb. App. 532, 767 N.W.2d 512 (2009).

60-6,197.09.

The imposition of the sentence, absent the pendency of an appeal, concludes the “proceedings” referred to in this section. *State v. Lamb*, 280 Neb. 738, 789 N.W.2d 918 (2010).

A motion to quash is a procedural prerequisite to facially challenge the constitutionality of this section. *State v. Albrecht*, 18 Neb. App. 402, 790 N.W.2d 1 (2010).

For the purposes of determining whether a defendant was participating in criminal proceedings, once a defendant has pleaded guilty and such plea was accepted to one charge, the defendant was obviously participating in that criminal proceeding at the time he pleaded to the second charge when both pleas were accepted at the same time. *State v. Albrecht*, 18 Neb. App. 402, 790 N.W.2d 1 (2010).

60-6,201.

Unlike section 60-6,210(1), subsection (1) of this section does not limit the use of chemical test results to prosecution under a specific statute; rather, it authorizes the use of results of the specified chemical test as competent evidence in “any” prosecution “under” a state statute “involving” operation of a motor vehicle while under the influence of alcoholic liquor or “involving” such operation with an excessive level of alcohol. *State v. Guzman-Gomez*, 13 Neb. App. 235, 690 N.W.2d 804 (2005).

60-6,210.

Unlike subsection (1) of this section, section 60-6,201(1) does not limit the use of chemical test results to prosecution under a specific statute; rather, it authorizes the use of results of the specified chemical test as competent evidence in “any” prosecution “under” a state statute “involving” operation of a motor vehicle while under the influence of alcoholic liquor or “involving” such operation with an excessive level of alcohol. *State v. Guzman-Gomez*, 13 Neb. App. 235, 690 N.W.2d 804 (2005).

60-6,211.05.

An ignition-interlock permitholder who drives a vehicle not equipped with an ignition interlock device may not be charged under section 60-6,197.06 and must be charged under subsection (5) of this section. *State v. Hernandez*, 283 Neb. 423, 809 N.W.2d 279 (2012).

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A trial court's refusal to grant the use of an ignition interlock device under this section was proper where the use of the device was not found to be a condition necessary or likely to ensure that the defendant would lead a law-abiding life. *State v. Kuhl*, 16 Neb. App. 127, 741 N.W.2d 701 (2007).

60-6,211.08.

Conviction for possessing an open container of alcohol in a vehicle was invalid when police officers found defendant intoxicated in a vehicle that was parked on a residential driveway and overhanging a public sidewalk. *State v. McCave*, 282 Neb. 500, 805 N.W.2d 290 (2011).

60-6,219.

Where a vehicle is equipped with two taillights, subsection (6) of this section requires both taillights to give substantially normal light output and to show red directly to the rear. *State v. Burns*, 16 Neb. App. 630, 747 N.W.2d 635 (2008).

60-6,221.

Auxiliary driving lights are defined by section 60-6,225(2), and under that subsection, if they do not meet the criteria for headlights set forth in this section, it is a Class III misdemeanor under section 60-6,222. *State v. Carnicle*, 18 Neb. App. 761, 792 N.W.2d 893 (2010).

The standard for a lawful headlight, and, by extension, a lawful auxiliary driving light, is found in this section. *State v. Carnicle*, 18 Neb. App. 761, 792 N.W.2d 893 (2010).

The terms of section 60-6,225(2) require reference to this section, which provides that headlights shall produce a driving light sufficient to render clearly discernible a person 200 feet ahead, but the headlights shall not project a glaring or dazzling light to persons in front of such headlights. *State v. Carnicle*, 18 Neb. App. 761, 792 N.W.2d 893 (2010).

Where a headlight or auxiliary driving light is so glaring or dazzling that an officer reasonably believes the light violates this section, such subjective belief could provide probable cause for a traffic stop. *State v. Carnicle*, 18 Neb. App. 761, 792 N.W.2d 893 (2010).

Whether a vehicle's front lights are unlawfully glaring or dazzling requires, at least for a conviction of the associated crime, an objective measurement under subsection (2) of this section. *State v. Carnicle*, 18 Neb. App. 761, 792 N.W.2d 893 (2010).

60-6,222.

Auxiliary driving lights are defined by section 60-6,225(2), and under that subsection, if they do not meet the criteria for headlights set forth in section 60-6,221, it is a Class III misdemeanor under this section. *State v. Carnicle*, 18 Neb. App. 761, 792 N.W.2d 893 (2010).

60-6,224.

The specific duty of a driver to dim a vehicle's lights in response to a signal from an oncoming driver is set forth in this section. *State v. Carnicle*, 18 Neb. App. 761, 792 N.W.2d 893 (2010).

60-6,225.

Auxiliary driving lights are defined by subsection (2) of this section, and under that subsection, if they do not meet the criteria for headlights set forth in section 60-6,221, it is a Class III misdemeanor under section 60-6,222. *State v. Carnicle*, 18 Neb. App. 761, 792 N.W.2d 893 (2010).

If fog lamps are contemplated under subsection (4) of this section as any device, other than headlights, spotlights, or auxiliary driving lights, which projects a beam of light of an intensity greater than 25 candlepower, then such fog lamps must be so directed that no part of the beam will strike the level of the surface on which the vehicle stands at a distance of more than 50 feet from the vehicle. *State v. Carnicle*, 18 Neb. App. 761, 792 N.W.2d 893 (2010).

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The terms of subsection (2) of this section require reference to section 60-6,221, which provides that headlights shall produce a driving light sufficient to render clearly discernible a person 200 feet ahead, but the headlights shall not project a glaring or dazzling light to persons in front of such headlights. *State v. Carnicle*, 18 Neb. App. 761, 792 N.W.2d 893 (2010).

60-6,294.

The term “original limitations” as used in section 60-6,298 means the original statutory restrictions listed in this section. *State v. Halverstadt*, 282 Neb. 736, 809 N.W.2d 480 (2011).

60-6,298.

The phrase “exceeding the size or weight specified by the permit” used in subsection (4)(a) of this section clearly refers to either exceeding axle weights or exceeding gross weights. *State v. Halverstadt*, 282 Neb. 736, 809 N.W.2d 480 (2011).

The term “original limitations” as used in this section means the original statutory restrictions listed in section 60-6,294. *State v. Halverstadt*, 282 Neb. 736, 809 N.W.2d 480 (2011).

61-206.

It is proper to join the Department of Natural Resources as a party to a hearing challenging the validity of the department’s administration of water. In *re 2007 Appropriations of Niobrara River Waters*, 283 Neb. 629, 820 N.W.2d 44 (2012).

When relevant to a hearing before the Department of Natural Resources, the issue of abandonment or forfeiture should be heard and decided, regardless of the manner in which the proceeding was initiated. In *re 2007 Appropriations of Niobrara River Waters*, 283 Neb. 629, 820 N.W.2d 44 (2012).

The Department of Natural Resources does not lose jurisdiction to determine the validity of a power district’s appropriation right even if an owner of a superior preference right who is challenging the validity of the power district’s right has also initiated condemnation proceedings as outlined in section 70-672. In *re 2007 Appropriations of Niobrara River Waters*, 278 Neb. 137, 768 N.W.2d 420 (2009).

64-107.

The certification of a notary public’s official duties, over his or her signature and official seal, is received by the courts as presumptive evidence of the facts certified therein. *Johnson v. Neth*, 276 Neb. 886, 758 N.W.2d 395 (2008).

The presence of a notarial seal and the notary’s signature serves as presumptive evidence of the performance of the notary’s duty, even when the expiration date of the notary’s commission does not appear on the certificate of authentication. *Valeriano-Cruz v. Neth*, 14 Neb. App. 855, 716 N.W.2d 765 (2006).

64-203.

An attestation clause that does not list a name in the acknowledgment section is incomplete. *Johnson v. Neth*, 276 Neb. 886, 758 N.W.2d 395 (2008).

66-1863.

This section specifically gives the Nebraska Public Service Commission jurisdiction to determine whether extensions or enlargements are in the public interest. *Metropolitan Util. Dist. v. Aquila*, 271 Neb. 454, 712 N.W.2d 280 (2006).

67-291.

Under this section, the court may award expenses, including attorney fees, as a separate component of the judgment. This section then requires that in a derivative action, the plaintiff may retain the portion of the judgment

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awarded as expenses, but any additional proceeds of the judgment that the plaintiff receives must be remitted to the partnership. *Fitzgerald v. Community Redevelopment Corp.*, 283 Neb. 428, 811 N.W.2d 178 (2012).

67-404.

Except for limited exceptions, the provisions of the Uniform Partnership Act of 1998 are default rules that govern the relations among partners in situations they have not addressed in a partnership agreement. *Shoemaker v. Shoemaker*, 275 Neb. 112, 745 N.W.2d 299 (2008).

67-410.

A business qualifies as a partnership under the “business for profit” element of subsection (1) of this section so long as the parties intended to carry on a business with the expectation of profits. *In re Dissolution & Winding Up of KeyTronics*, 274 Neb. 936, 744 N.W.2d 425 (2008).

Being “co-owners” of a business for profit does not refer to the co-ownership of property, but to the co-ownership of the business intended to garner profits. *In re Dissolution & Winding Up of KeyTronics*, 274 Neb. 936, 744 N.W.2d 425 (2008).

If the parties’ voluntary actions objectively form a relationship in which they carry on as co-owners of a business for profit, then they may inadvertently create a partnership despite their expressed subjective intention not to do so. *In re Dissolution & Winding Up of KeyTronics*, 274 Neb. 936, 744 N.W.2d 425 (2008).

In both actions inter sese between alleged partners and actions by a third party against an alleged partnership, the party asserting the existence of a partnership must prove that relationship by a preponderance of the evidence. *In re Dissolution & Winding Up of KeyTronics*, 274 Neb. 936, 744 N.W.2d 425 (2008).

In considering the parties’ intent to form an association, it is generally considered relevant how the parties characterize their relationship or how they have previously referred to one another. *In re Dissolution & Winding Up of KeyTronics*, 274 Neb. 936, 744 N.W.2d 425 (2008).

The objective indicia of co-ownership required for a partnership are commonly considered to be (1) profit sharing, (2) control sharing, (3) loss sharing, (4) contribution, and (5) co-ownership of property, but no single indicium is either necessary or sufficient to prove co-ownership. *In re Dissolution & Winding Up of KeyTronics*, 274 Neb. 936, 744 N.W.2d 425 (2008).

67-412.

In determining whether a party has rebutted the presumption in subsection (3) of this section, no single factor or combination of factors is dispositive. *Mogensen v. Mogensen*, 273 Neb. 208, 729 N.W.2d 44 (2007).

The presumption in subsection (3) of this section can apply when the partnership provides only a portion of the purchase price, and it can apply even though a third party who is not a partner to the firm holds title. *Mogensen v. Mogensen*, 273 Neb. 208, 729 N.W.2d 44 (2007).

67-431.

Under the Uniform Partnership Act of 1998, a partner’s voluntary withdrawal does not result in mandatory dissolution of the partnership; it results in a partner’s dissociation. *Shoemaker v. Shoemaker*, 275 Neb. 112, 745 N.W.2d 299 (2008).

67-433.

Under subsection (1) of this section, the 1998 Uniform Partnership Act creates separate paths through which a dissociated partner can recover partnership interests – dissolution with winding up of partnership business or mandatory buyout. *Shoemaker v. Shoemaker*, 275 Neb. 112, 745 N.W.2d 299 (2008).

When a partnership agreement mandates a buyout of a withdrawing partner’s interest but fails to specify a remedy for the partnership’s failure to pay, or to timely pay, the buyout price, the default rules for mandatory buyouts apply. *Shoemaker v. Shoemaker*, 275 Neb. 112, 745 N.W.2d 299 (2008).

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67-434.

If a partnership agreement is silent on profit distributions to a withdrawing partner after dissociation but before completion of the buyout of the withdrawing partner's interest, the 1998 Uniform Partnership Act does not authorize profit distributions. *Shoemaker v. Shoemaker*, 275 Neb. 112, 745 N.W.2d 299 (2008).

Nothing in this section provides that dissolution of a partnership is a remedy for a partnership's failure to timely pay an estimated buyout price to a withdrawing partner. *Shoemaker v. Shoemaker*, 275 Neb. 112, 745 N.W.2d 299 (2008).

Subsection (9) of this section provides a withdrawing partner's remedies for a partnership's failure to timely pay a buyout price or its unsatisfactory offer. *Shoemaker v. Shoemaker*, 275 Neb. 112, 745 N.W.2d 299 (2008).

67-439.

Dissolution of a partnership for a partner's voluntary withdrawal under subsection (1) of this section is a default rule that applies only when the partnership agreement does not provide for the partnership business to continue. *Shoemaker v. Shoemaker*, 275 Neb. 112, 745 N.W.2d 299 (2008).

The 1998 Uniform Partnership Act does not require remaining partners to strictly comply with a buyout provision in a partnership agreement to prevent dissolution upon the voluntary withdrawal of a partner; strict compliance is inconsistent with the act's provision of remedies for the withdrawing partner. *Shoemaker v. Shoemaker*, 275 Neb. 112, 745 N.W.2d 299 (2008).

68-901.

By enacting the Medical Assistance Act, Nebraska elected to participate in the federal Medicaid program; therefore, the State must comply with federal Medicaid statutes and regulations. *Smalley v. Nebraska Dept. of Health & Human Servs.*, 283 Neb. 544, 811 N.W.2d 246 (2012).

68-919.

The Department of Health and Human Services was entitled to summary judgment on its Medicaid estate recovery claim made pursuant to this section, where uncontroverted evidence showed that the decedent was 55 years of age or older when medical assistance benefits were provided, and was not survived by a spouse, a child under the age of 21, or a child who was blind or totally and permanently disabled, and where the department offered properly authenticated payment records as prescribed by subsection (4) of this section. *In re Estate of Cushing*, 283 Neb. 571, 810 N.W.2d 741 (2012).

Time limitations set forth in section 30-2485(a) applied to the Department of Health and Human Services' Medicaid estate recovery claim, because under this section, under which the claim was made, the indebtedness to the department arose during the lifetime of the recipient. *In re Estate of Cushing*, 283 Neb. 571, 810 N.W.2d 741 (2012).

Subsection (4) of this section clearly dispenses with foundation for the admission of the record, if properly certified. *In re Estate of Reimers*, 16 Neb. App. 610, 746 N.W.2d 724 (2008).

This section does not create any presumption that the amounts shown on the payment record of the Department of Health and Human Services are reimbursable by the recipient's estate—such must still be proved—and if the exhibit does not do so, then additional evidence is needed. *In re Estate of Reimers*, 16 Neb. App. 610, 746 N.W.2d 724 (2008).

68-1713.

Subsection (1)(d) of this section must be read in conjunction with the limitations and standards expressly provided by the Legislature. *Davio v. Nebraska Dept. of Health & Human Servs.*, 280 Neb. 263, 786 N.W.2d 655 (2010).

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68-1723.

This section does not authorize the removal of Medicaid benefits as a sanction for noncompliance with an Employment First contract. *Davio v. Nebraska Dept. of Health & Human Servs.*, 280 Neb. 263, 786 N.W.2d 655 (2010).

70-672.

An owner of a superior preference right who initiates condemnation proceedings to enforce that right is not barred from also challenging the validity of a power district's appropriation right. *In re 2007 Appropriations of Niobrara River Waters*, 278 Neb. 137, 768 N.W.2d 420 (2009).

71-519.

The newborn screening statutes do not violate the free exercise provisions of the Nebraska Constitution. *In re Interest of Anaya*, 276 Neb. 825, 758 N.W.2d 10 (2008).

71-524.

By its terms, in addition to the specific and therefore preferred remedy in district court, this section states that the newborn screening statutes may also be enforced through "other remedies which may be available by law." Under the proper set of proven facts, enforcement through the neglect provisions of the juvenile code may be one such "other remedy." *In re Interest of Anaya*, 276 Neb. 825, 758 N.W.2d 10 (2008).

71-902.

The Nebraska Mental Health Commitment Act applies to any person who is mentally ill and dangerous. *In re Interest of G.H.*, 279 Neb. 708, 781 N.W.2d 438 (2010).

71-907.

Substance dependence can be considered for purposes of determining that an individual is a dangerous sex offender. *In re Interest of G.H.*, 279 Neb. 708, 781 N.W.2d 438 (2010).

71-908.

Pursuant to subdivision (1) of this section, acts committed over 10 years prior to the filing of the petition seeking commitment can still be sufficiently recent to be probative on the issue of dangerousness where the subject's lengthy incarceration prevented him from committing a more recent act and where the subject had not completed any offense-specific treatment while incarcerated. *In re Interest of Michael U.*, 14 Neb. App. 918, 720 N.W.2d 403 (2006).

Before a person may be committed for treatment by a mental health board, the board must determine that the person meets the definition of a mentally ill and dangerous person as set forth herein. *In re Interest of Verle O.*, 13 Neb. App. 256, 691 N.W.2d 177 (2005).

71-915.

A mental health board may assign an alternate member to serve so that the board has the required three members. *In re Interest of A.M.*, 281 Neb. 482, 797 N.W.2d 233 (2011).

A person who is not a lawyer, a physician, a psychologist, a psychiatric social worker, a psychiatric nurse, or a clinical social worker is a "layman" within the meaning of this section. *In re Interest of A.M.*, 281 Neb. 482, 797 N.W.2d 233 (2011).

71-921.

Under the Nebraska Mental Health Commitment Act, venue is proper in one county even though the alleged behavior of the subject which constituted the basis for the petition occurred in another county, because both

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counties are within the same judicial district. In re Interest of Michael U., 14 Neb. App. 918, 720 N.W.2d 403 (2006).

71-925.

Pursuant to subsection (6) of this section, a mental health board, after considering all treatment alternatives including any treatment program or conditions suggested by the subject, the subject's counsel, or other interested person, can commit a person for inpatient treatment; such a treatment order shall represent the appropriate available treatment alternative that imposes the least possible restraint upon the liberty of the subject. Inpatient hospitalization or custody shall only be considered as a treatment alternative of last resort. In re Interest of Dennis W., 14 Neb. App. 827, 717 N.W.2d 488 (2006).

71-934.

Under former law, language in this section providing that no person may be held in custody pending a hearing for a period exceeding 7 days is directory, not mandatory, because of the purposes of this section and the lack of a remedy for violation of this section. In re Interest of E.M., 13 Neb. App. 287, 691 N.W.2d 550 (2005).

71-1115.

The Developmental Disabilities Court-Ordered Custody Act does not require proof of future harm before the court determines that the subject is in need of court-ordered custody and treatment and, therefore, does not violate due process. In re Interest of C.R., 281 Neb. 75, 793 N.W.2d 330 (2011).

71-1117.

The Developmental Disabilities Court-Ordered Custody Act provides procedures and evidentiary standards which protect an individual's constitutionally protected liberty interest and, therefore, does not violate the subject's due process rights. In re Interest of C.R., 281 Neb. 75, 793 N.W.2d 330 (2011).

71-1124.

The Developmental Disabilities Court-Ordered Custody Act provides procedures and evidentiary standards which protect an individual's constitutionally protected liberty interest and, therefore, does not violate the subject's due process rights. In re Interest of C.R., 281 Neb. 75, 793 N.W.2d 330 (2011).

71-1202.

This section does not violate the constitutional provisions relating to equal protection, special legislation, separation of powers, bills of attainder, ex post facto, or double jeopardy. In re Interest of A.M., 281 Neb. 482, 797 N.W.2d 233 (2011).

The Sex Offender Commitment Act applies specifically to convicted sex offenders who have completed their jail sentences but continue to pose a threat of harm to others. In re Interest of G.H., 279 Neb. 708, 781 N.W.2d 438 (2010).

The Sex Offender Commitment Act is not excessive in relation to its assigned nonpunitive purpose, which is to protect the public and provide treatment to dangerous sex offenders who are likely to reoffend. In re Interest of J.R., 277 Neb. 362, 762 N.W.2d 305 (2009).

71-1203.

The explicit purpose of the Sex Offender Commitment Act is to protect the public from sex offenders who continue to pose a threat of harm to others. In re Interest of J.R., 277 Neb. 362, 762 N.W.2d 305 (2009).

71-1207.

The Sex Offender Commitment Act requires service of a summons upon the subject which fixes a time for the hearing before a mental health board within 7 calendar days after the subject has been taken into emergency protective custody. *Condoluci v. State*, 18 Neb. App. 112, 775 N.W.2d 196 (2009).

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71-1209.

Under subsection (1)(b) of this section, the State's burden to prove that "neither voluntary hospitalization nor other treatment alternatives less restrictive of the subject's liberty than inpatient or outpatient treatment ordered by the mental health board are available or would suffice" was not met when the State provided evidence only of the treatment that would be recommended if the subject were to remain within the Department of Correctional Services. *In re Interest of O.S.*, 277 Neb. 577, 763 N.W.2d 723 (2009).

71-1219.

A hearing under subsection (1) of this section is a special proceeding within the ordinary meaning of the term. *In re Interest of D.I.*, 281 Neb. 917, 799 N.W.2d 664 (2011).

Denial of a motion for reconsideration under subsection (1) of this section is a final, appealable order. *In re Interest of D.I.*, 281 Neb. 917, 799 N.W.2d 664 (2011).

Once the subject of a petition has exercised his or her right to a review hearing, and asserted that there are less restrictive treatment alternatives available, the State is required to present clear and convincing evidence that a less restrictive treatment alternative is inappropriate. At that point, the subject may further rebut the State's evidence. *In re Interest of D.I.*, 281 Neb. 917, 799 N.W.2d 664 (2011).

The State bears the burden to show by clear and convincing evidence that the subject remains mentally ill and dangerous. Under the plain language of this section, a mental health board must determine whether the subject's mental illness or personality disorder has been "successfully treated or managed," which necessarily requires the board to review and rely upon the original reason for commitment. *In re Interest of D.I.*, 281 Neb. 917, 799 N.W.2d 664 (2011).

71-15,139.

Under this section, a public housing agency has the authority to file suit for recovery of the premises if the resident engages in violent criminal activity. *Banks v. Housing Auth. of City of Omaha*, 281 Neb. 67, 795 N.W.2d 632 (2011).

71-7202.

The Uniform Determination of Death Act does not establish a rule of evidence requiring that in all cases involving an alleged decedent, the fact of death must be medically established. *State v. Edwards*, 278 Neb. 55, 767 N.W.2d 784 (2009).

72-1249.02.

This section authorizes an investment officer to enter into contracts for investment management services. *Myers v. Nebraska Invest. Council*, 272 Neb. 669, 724 N.W.2d 776 (2006).

75-136.

All appeals from orders of the Nebraska Public Service Commission are to follow the procedural requirements of the Administrative Procedure Act. *Chase 3000, Inc. v. Nebraska Pub. Serv. Comm.*, 273 Neb. 133, 728 N.W.2d 560 (2007).

76-296.

An action for slander of title is based upon a false and malicious statement, oral or written, which disparages a person's title to real or personal property and results in special damage. For slander of title claims, malice requires (1) knowledge that the statement is false or (2) reckless disregard for its truth or falsity. *Wilson v. Fieldgrove*, 280 Neb. 548, 787 N.W.2d 707 (2010).

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76-2,120.

Attorney fees are mandatory for a successful plaintiff in an action under subsection (12) of this section. *Pepitone v. Winn*, 272 Neb. 443, 722 N.W.2d 710 (2006).

76-701.

A public entity may be considered a “condemnee” under the eminent domain statutes. *City of Waverly v. Hedrick*, 283 Neb. 464, 810 N.W.2d 706 (2012).

One cannot “acquire” something one already has; therefore, a public entity cannot condemn its own property interest. *City of Waverly v. Hedrick*, 283 Neb. 464, 810 N.W.2d 706 (2012).

Where the condemnor has a pre-existing lien interest in the land being acquired by condemnation, it is appropriate for the district court to consider the question of a setoff from the award, in the amount of the lien, upon timely motion by the condemnor. *City of Waverly v. Hedrick*, 283 Neb. 464, 810 N.W.2d 706 (2012).

76-705.

Under section 76-726(2), the court encompassed in the expression “the court having jurisdiction of a proceeding instituted by a condemnee under” this section includes the district court to which an appeal is taken under section 76-715. The provision in section 76-726(2) allowing an award of attorney fees when “(a) the court renders a judgment in favor of the condemnee or (b) a settlement is effected” authorizes the district court as well as the county court to award attorney fees upon the happening of either (a) or (b). *Armstrong v. County of Dixon*, 282 Neb. 623, 808 N.W.2d 37 (2011).

76-710.04.

This section does not prevent a city from acquiring private property for use as a deceleration lane on an existing public road for traffic control and safety purposes, even if the deceleration lane is contiguous to access to a retailer. *City of Omaha v. Tract No. 1*, 18 Neb. App. 247, 778 N.W.2d 122 (2010).

This section prohibits the use of eminent domain only where its primary purpose is economic development, and not where economic development may be a collateral benefit. *City of Omaha v. Tract No. 1*, 18 Neb. App. 247, 778 N.W.2d 122 (2010).

76-711.

Where a condemnee appeals from an appraisers’ award to the district court and obtains an award greater than was awarded by the appraisers, the condemnee is entitled to interest pursuant to this section even if it is not requested in the prayer of the petition. *Walter C. Diers Partnership v. State*, 17 Neb. App. 561, 767 N.W.2d 113 (2009).

76-715.

Under section 76-726(2), the court encompassed in the expression “the court having jurisdiction of a proceeding instituted by a condemnee under section 76-705” includes the district court to which an appeal is taken under this section. The provision in section 76-726(2) allowing an award of attorney fees when “(a) the court renders a judgment in favor of the condemnee or (b) a settlement is effected” authorizes the district court as well as the county court to award attorney fees upon the happening of either (a) or (b). *Armstrong v. County of Dixon*, 282 Neb. 623, 808 N.W.2d 37 (2011).

76-715.01.

The timely filing of an affidavit of service as required by this section is not jurisdictional, but instead is merely directory. As is stated by section 76-717, the act which confers jurisdiction on the district court in a condemnation action is the filing of the notice of appeal. *Wooden v. County of Douglas*, 275 Neb. 971, 751 N.W.2d 151 (2008).

Timely filing of the affidavit of mailing notice is required. *Wooden v. County of Douglas*, 16 Neb. App. 336, 744 N.W.2d 262 (2008).

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76-717.

The timely filing of an affidavit of service as required by section 76-715.01 is not jurisdictional, but instead is merely directory. As is stated by this section, the act which confers jurisdiction on the district court in a condemnation action is the filing of the notice of appeal. *Wooden v. County of Douglas*, 275 Neb. 971, 751 N.W.2d 151 (2008).

76-720.

While this section, providing for the award of attorney fees upon the happening of certain events, is couched in terms of “may,” in the absence of unusual and compelling reasons, the court “shall” enter such an award. *Armstrong v. County of Dixon*, 282 Neb. 623, 808 N.W.2d 37 (2011).

76-726.

Under subsection (2) of this section, the court encompassed in the expression “the court having jurisdiction of a proceeding instituted by a condemnee under section 76-705” includes the district court to which an appeal is taken under section 76-715. The provision in subsection (2) of this section allowing an award of attorney fees when “(a) the court renders a judgment in favor of the condemnee or (b) a settlement is effected” authorizes the district court as well as the county court to award attorney fees upon the happening of either (a) or (b). *Armstrong v. County of Dixon*, 282 Neb. 623, 808 N.W.2d 37 (2011).

76-1005.

When the beneficiary elects to judicially foreclose, the law governing foreclosure of mortgages applies. *State Bank of Trenton v. Lutz*, 14 Neb. App. 884, 719 N.W.2d 731 (2006).

76-1013.

A suit to collect on a contract that is from the foreclosed deed of trust is governed by the statute of limitations found in section 25-205, rather than the 3-month statute of limitations found in this section. *Boxum v. Munce*, 16 Neb. App. 731, 751 N.W.2d 657 (2008).

The 3-month statute of limitations in this section applies only when the suit for deficiency is on the obligation for which the foreclosed trust deed was given as security. *Boxum v. Munce*, 16 Neb. App. 731, 751 N.W.2d 657 (2008).

76-1416.

Where a tenant prevails in an action under subsection (2) of this section against the tenant’s landlord, the tenant is entitled to recover reasonable attorney fees under subsection (3) of this section as a matter of right; it is not at the discretion of the trial court. However, in order to recover fees under subsection (3) of this section, the tenant must present evidence of the tenant’s attorney fees such that a trial court can make a meaningful award. *Lomack v. Kohl-Watts*, 13 Neb. App. 14, 688 N.W.2d 365 (2004).

76-2324.

The right of an operator of an underground facility to recover under this section is not dependent upon whether it has taken steps to become a “member” of a one-call notification center. *Village of Hallam v. L.G. Barcus & Sons*, 281 Neb. 516, 798 N.W.2d 109 (2011).

76-2422.

One of the enumerated activities covered by subsection (6) of this section is the exchange of property, based on the plain language of section 81-885.01(2). *McCully, Inc. v. Baccaro Ranch*, 279 Neb. 443, 778 N.W.2d 115 (2010).

This section does not act as a statute of frauds. *McCully, Inc. v. Baccaro Ranch*, 279 Neb. 443, 778 N.W.2d 115 (2010).

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77-103.01.

The Tax Equalization and Review Commission did not err in finding that the market areas as drawn by the county assessor complied with professionally accepted methodology. *Vanderheiden v. Cedar Cty. Bd. of Equal.*, 16 Neb. App. 578, 746 N.W.2d 717 (2008).

77-105.

In classifying whether a trade fixture should be taxed as personal property, rather than a fixture that should be taxed as real property, where the parcel of land on which the fixture is located is used directly in commercial activities, it is irrelevant whether a taxpayer personally engages in the commercial activities on the land. *Vandenberg v. Butler County Bd. of Equal.*, 281 Neb. 437, 796 N.W.2d 580 (2011).

The three-part test for determining whether an item constitutes a fixture, requiring the court to look at (1) actual annexation to the realty, or something appurtenant thereto, (2) appropriation to use or purpose of that part of the realty with which it is connected, and (3) the intention of the party making the annexation to make the article a permanent accession to the freehold, does not apply to the determination of whether a trade fixture should be classified as a fixture and taxed as real property or a trade fixture and taxed as personal property. *Vandenberg v. Butler County Bd. of Equal.*, 281 Neb. 437, 796 N.W.2d 580 (2011).

77-112.

Real property sold at auction is sold in the ordinary course of trade within the meaning of this section. In re *Estate of Craven*, 281 Neb. 122, 794 N.W.2d 406 (2011).

In tax valuation cases, actual value is largely a matter of opinion and without a precise yardstick for determination with complete accuracy. *Reynolds v. Keith Cty. Bd. of Equal.*, 18 Neb. App. 616, 790 N.W.2d 455 (2010).

The purchase price of property, standing alone, is not conclusive of the actual value of the property for assessment purposes; it is only one factor to be considered in determining actual value. *Reynolds v. Keith Cty. Bd. of Equal.*, 18 Neb. App. 616, 790 N.W.2d 455 (2010).

77-132.

This section does not violate Neb. Const. art. VIII, sec. 1. *Agena v. Lancaster Cty. Bd. of Equal.*, 276 Neb. 851, 758 N.W.2d 363 (2008).

77-202.

The lease of property from one exempt organization to another exempt organization does not create a taxable use, so long as the property is used exclusively for exempt purposes. *Fort Calhoun Baptist Ch. v. Washington Cty. Bd. of Equal.*, 277 Neb. 25, 759 N.W.2d 475 (2009).

The intention to use property in the future for an exempt purpose is not a use of the property for exempt purposes under this section. *St. Monica's v. Lancaster Cty. Bd. of Equal.*, 275 Neb. 999, 751 N.W.2d 604 (2008).

77-202.04.

This section delineates who may appeal from the decision of the county board of equalization on a tax exemption determination and applies regardless of whether the appeal was by petition in error. *McClellan v. Board of Equal. of Douglas Cty.*, 275 Neb. 581, 748 N.W.2d 66 (2008).

77-1233.04.

This section and section 77-1233.06 control a taxpayer's appeal from a decision of a county board of equalization to the Tax Equalization and Review Commission when a county assessor changes a taxpayer's reported valuation of personal property to conform to net book value. *Prime Alliance Bank v. Lincoln Cty. Bd. of Equal.*, 283 Neb. 732, 811 N.W.2d 690 (2012).

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77-1233.06.

Section 77-1233.04 and this section control a taxpayer's appeal from a decision of a county board of equalization to the Tax Equalization and Review Commission when a county assessor changes a taxpayer's reported valuation of personal property to conform to net book value. *Prime Alliance Bank v. Lincoln Cty. Bd. of Equal.*, 283 Neb. 732, 811 N.W.2d 690 (2012).

The assignee of certain interests in ethanol manufacturing equipment had 30 days from the date of the decision under subsection (4) of this section, and not until the August 24 deadline under section 77-1510, to appeal to the Tax Equalization and Review Commission from a county board of equalization's decision in a case where the assignor had filed a personal property return with the value of zero dollars for the equipment and had not filed a protest of the valuation. *Republic Bank v. Lincoln Cty. Bd. of Equal.*, 283 Neb. 721, 811 N.W.2d 682 (2012).

77-1359.

The inclusion of the term "parcel" requires a county assessor to consider the use of an entire tract of land, including any homesite, to determine whether that property qualifies as agricultural. *Agena v. Lancaster Cty. Bd. of Equal.*, 276 Neb. 851, 758 N.W.2d 363 (2008).

This section does not violate Neb. Const. art. VIII, sec. 1. *Agena v. Lancaster Cty. Bd. of Equal.*, 276 Neb. 851, 758 N.W.2d 363 (2008).

77-1374.

Real and personal property of the state and its governmental subdivisions that is leased to a private party for any purpose other than a public purpose shall be subject to property taxes as if the property were owned by the lessee. *Reynolds v. Keith Cty. Bd. of Equal.*, 18 Neb. App. 616, 790 N.W.2d 455 (2010).

77-1501.

The county board constitutes the board of equalization, and thus, the two boards have the same membership. But because each board has its own well-defined public duties and functions, the two boards are separate and distinct bodies. *Wolf v. Grubbs*, 17 Neb. App. 292, 759 N.W.2d 499 (2009).

This section and Neb. Const. art. VIII, sec. 1, read together, require a county board of equalization to value comparable properties similarly, even where separate protests are heard in the first instance by referees who recommend greatly disparate property valuations. *Zabawa v. Douglas Cty. Bd. of Equal.*, 17 Neb. App. 221, 757 N.W.2d 522 (2008).

77-1502.

This section and section 77-1510 do not control a taxpayer's appeal from a decision of a county board of equalization to the Tax Equalization and Review Commission when a county assessor changes a taxpayer's reported valuation of personal property to conform to net book value. *Prime Alliance Bank v. Lincoln Cty. Bd. of Equal.*, 283 Neb. 732, 811 N.W.2d 690 (2012).

For protests of real property to a county board of equalization, a protest shall be filed for each parcel. *Widtfeldt v. Tax Equal. & Rev. Comm.*, 15 Neb. App. 410, 728 N.W.2d 295 (2007).

77-1502.01.

The ultimate responsibility to equalize valuations rests upon the county board of equalization, and it cannot avoid this duty by using the power to appoint referees. *Zabawa v. Douglas Cty. Bd. of Equal.*, 17 Neb. App. 221, 757 N.W.2d 522 (2008).

77-1510.

Section 77-1502 and this section do not control a taxpayer's appeal from a decision of a county board of equalization to the Tax Equalization and Review Commission when a county assessor changes a taxpayer's

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reported valuation of personal property to conform to net book value. *Prime Alliance Bank v. Lincoln Cty. Bd. of Equal.*, 283 Neb. 732, 811 N.W.2d 690 (2012).

The assignee of certain interests in ethanol manufacturing equipment had 30 days from the date of the decision under section 77-1233.06(4), and not until the August 24 deadline under this section, to appeal to the Tax Equalization and Review Commission from a county board of equalization's decision in a case where the assignor had filed a personal property return with the value of zero dollars for the equipment and had not filed a protest of the valuation. *Republic Bank v. Lincoln Cty. Bd. of Equal.*, 283 Neb. 721, 811 N.W.2d 682 (2012).

77-1735.

An unconstitutional tax is not an "illegal" tax that can be recovered under subsection (1) of this section; therefore, a district court does not have jurisdiction under subsection (1) of this section to hear a constitutional challenge to a tax statute. *Trumble v. Sarpy County Board*, 283 Neb. 486, 810 N.W.2d 732 (2012).

77-1837.

Where the original tax certificate is in the possession of the treasurer, the holder of the certificate is not obligated to undertake the formalistic procedure of requesting the return of the original tax certificate only to "present" the tax certificate back to the treasurer. *Ottaco Acceptance, Inc. v. Larkin*, 273 Neb. 765, 733 N.W.2d 539 (2007).

77-1839.

This section and section 77-1857 merely require that the treasurer's seal be affixed. They do not require that the treasurer's seal be entirely legible. *Ottaco Acceptance, Inc. v. Larkin*, 273 Neb. 765, 733 N.W.2d 539 (2007).

77-1843.

Even if title under a tax deed is void or voidable, the conditions precedent set forth in this section and section 77-1844 must be met in order to first question and then defeat title. *Ottaco Acceptance, Inc. v. Larkin*, 273 Neb. 765, 733 N.W.2d 539 (2007).

77-1844.

Even if title under a tax deed is void or voidable, the conditions precedent set forth in section 77-1843 and this section must be met in order to first question and then defeat title. *Ottaco Acceptance, Inc. v. Larkin*, 273 Neb. 765, 733 N.W.2d 539 (2007).

77-1857.

Section 77-1839 and this section merely require that the treasurer's seal be affixed. They do not require that the treasurer's seal be entirely legible. *Ottaco Acceptance, Inc. v. Larkin*, 273 Neb. 765, 733 N.W.2d 539 (2007).

77-1913.

Subsequent taxes that a purchaser at a sheriff's sale in the foreclosure of a tax certificate is required to pay before confirmation of the sale are limited to those levied and assessed on the property under foreclosure, i.e., taxes assessed and levied after commencement of the foreclosure proceeding. "Subsequent taxes" within the meaning of this section do not include taxes, whether general taxes or special assessments, that were assessed and levied prior to the commencement of the foreclosure proceeding. *INA Group v. Young*, 271 Neb. 956, 716 N.W.2d 733 (2006).

77-2003.

This section provides that personal representatives and recipients of property are liable for the payment of inheritance tax on transfers upon death and that there is a lien on the real property subject to the tax until it is paid or terminated by section 77-2039. *In re Estate of Reed*, 271 Neb. 653, 715 N.W.2d 496 (2006).

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77-2004.

Clear market value is measured by the fair market value of the property as of the date of the death of the grantor, less the consideration paid for the property. In re Estate of Craven, 281 Neb. 122, 794 N.W.2d 406 (2011).

Even though a natural parent-child relationship may exist elsewhere, if the parties regard each other in all of the usual incidents and relationships of family life as parent and child, the benefits of this section should be allowed. In re Estate of Malloy, 15 Neb. App. 755, 736 N.W.2d 399 (2007).

The burden is on the taxpayer to show that he or she clearly falls within the statutory language. In re Estate of Malloy, 15 Neb. App. 755, 736 N.W.2d 399 (2007).

77-2037.

This statute provides, inter alia, that an inheritance tax lien ceases 10 years from the date of death if no proceeding is started within that 10-year period. It does not relate to the inheritance tax liability of personal representatives or recipients of property. In re Estate of Reed, 271 Neb. 653, 715 N.W.2d 496 (2006).

77-2039.

Section 77-2003 provides that personal representatives and recipients of property are liable for the payment of inheritance tax on transfers upon death and that there is a lien on the real property subject to the tax until it is paid or terminated by this section. In re Estate of Reed, 271 Neb. 653, 715 N.W.2d 496 (2006).

77-2108.

Estate taxes will be apportioned under this section unless there is a clear and unambiguous direction to the contrary. In re Estate of Eriksen, 271 Neb. 806, 716 N.W.2d 105 (2006).

Review of apportionment proceedings under this section is de novo on the record. In re Estate of Eriksen, 271 Neb. 806, 716 N.W.2d 105 (2006).

77-2701.34.

A contractor who provided thermal paper and play slips to the Nebraska Lottery as one element of a contract to provide the Nebraska Lottery with a comprehensive on-line lottery gaming system was not purchasing the items for resale to the Nebraska Lottery; thus, the items were not exempt from consumer's use tax. Intralot, Inc. v. Nebraska Dept. of Rev., 276 Neb. 708, 757 N.W.2d 182 (2008).

77-2701.47.

Under this section and section 77-2704.22(1), the sale of manufacturing machinery and equipment includes the sale of items that are assembled to make manufacturing machinery and equipment. Concrete Indus. v. Nebraska Dept. of Rev., 277 Neb. 897, 766 N.W.2d 103 (2009).

77-2703.

A sales tax is a tax upon the sale, lease, rental, use, storage, distribution, or other consumption of all tangible personal property in the chain of commerce. Anthony, Inc. v. City of Omaha, 283 Neb. 868, 813 N.W.2d 467 (2012).

Although sales taxes and occupation taxes often have a similar appearance and effect, they are substantively distinct, because of the distinct identities of the taxpayers upon whom the tax is levied. Anthony, Inc. v. City of Omaha, 283 Neb. 868, 813 N.W.2d 467 (2012).

The legal incidence of a sales tax falls upon the purchaser, because it is a tax upon the privilege of buying tangible personal property. Anthony, Inc. v. City of Omaha, 283 Neb. 868, 813 N.W.2d 467 (2012).

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The method of computation of a tax is generally considered to be of no significance in determining the nature of the exaction imposed in any particular tax legislation. *Anthony, Inc. v. City of Omaha*, 283 Neb. 868, 813 N.W.2d 467 (2012).

A contractor who provided thermal paper and play slips to the Nebraska Lottery as one element of a contract to provide the Nebraska Lottery with a comprehensive on-line lottery gaming system was not purchasing the items for resale to the Nebraska Lottery; thus, the items were not exempt from consumer's use tax. *Intralot, Inc. v. Nebraska Dept. of Rev.*, 276 Neb. 708, 757 N.W.2d 182 (2008).

77-2704.22.

Under section 77-2701.47 and subsection (1) of this section, the sale of manufacturing machinery and equipment includes the sale of items that are assembled to make manufacturing machinery and equipment. *Concrete Indus. v. Nebraska Dept. of Rev.*, 277 Neb. 897, 766 N.W.2d 103 (2009).

77-2708.

A late filing cannot be excused on equitable grounds where the claim was time barred because it was filed beyond the limitations period specified in subsection (2)(b) of this section, as extended by agreement of the parties. *Becton, Dickinson & Co. v. Nebraska Dept. of Rev.*, 276 Neb. 640, 756 N.W.2d 280 (2008).

77-3442.

Because the levy authorized under subsection (2)(b) of this section benefits all taxpayers in a learning community, which is the relevant taxing district, subsection (2)(b) does not violate the constitutional prohibition in Neb. Const. art. VIII, sec. 4, against a commutation of taxes. *Sarpy Cty. Farm Bureau v. Learning Community*, 283 Neb. 212, 808 N.W.2d 598 (2012).

Because the levy authorized under subsection (2)(b) of this section is uniform throughout the entire learning community, which is the relevant taxing district, subsection (2)(b) does not violate the uniformity clause in Neb. Const. art. VIII, sec. 1. *Sarpy Cty. Farm Bureau v. Learning Community*, 283 Neb. 212, 808 N.W.2d 598 (2012).

Subsection (2)(b) of this section was enacted for substantially local purposes, and therefore it does not violate the prohibition in Neb. Const. art. VIII, sec. 1A, against a property tax for a state purpose. *Sarpy Cty. Farm Bureau v. Learning Community*, 283 Neb. 212, 808 N.W.2d 598 (2012).

77-4103.

Components are not qualified property unless they are part of the tangible property otherwise covered by subsection (13) of this section, and they are themselves depreciable or subject to amortization or other recovery. *Goodyear Tire & Rubber Co. v. State*, 275 Neb. 594, 748 N.W.2d 42 (2008).

77-5013.

A separate filing fee must accompany each appeal to the Tax Equalization and Review Commission and must be timely received by the commission in order for it to have jurisdiction over an appeal. *Widtfeldt v. Tax Equal. & Rev. Comm.*, 15 Neb. App. 410, 728 N.W.2d 295 (2007).

77-5016.

The Tax Equalization and Review Commission determines de novo all questions raised in proceedings before it. *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 753 N.W.2d 802 (2008).

The Tax Equalization and Review Commission is not required to accept any and all evidence offered during an informal hearing; it has some discretion in determining the probative value of proffered evidence and may exclude that which it determines to be incompetent, irrelevant, immaterial, and unduly repetitious. *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 753 N.W.2d 802 (2008).

The Tax Equalization and Review Commission is not required to make specific findings with respect to arguments or issues which it does not deem significant or necessary to its determination. *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 753 N.W.2d 802 (2008).

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The taxpayer's burden is to present clear and convincing evidence to rebut the presumption that the Board of Equalization faithfully performed its valuation duties. *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 753 N.W.2d 802 (2008).

77-5019.

Subsection (2)(a) of this section provides for service of only the state or a political subdivision. *Cargill Meat Solutions v. Colfax Cty. Bd. of Equal.*, 281 Neb. 93, 798 N.W.2d 823 (2011).

Where the Tax Equalization and Review Commission lacked jurisdiction over a tax valuation appeal because of the appellant's failure to pay a filing fee, the Nebraska Court of Appeals also lacked jurisdiction over the appellant's further appeal filed pursuant to this section. *Widtfeldt v. Tax Equal. & Rev. Comm.*, 15 Neb. App. 410, 728 N.W.2d 295 (2007).

NEBRASKA UNIFORM COMMERCIAL CODE

UCC 1-103.

Common-law claims are displaced when the Uniform Commercial Code applies. *Mandolfo v. Mandolfo*, 281 Neb. 443, 796 N.W.2d 603 (2011).

UCC 2-102.

The Uniform Commercial Code did not apply to a contract for the sale of an ongoing grain business, including both goods and nongoods, because the principal purpose of the transaction was the sale of nongoods. *MBH, Inc. v. John Otte Oil & Propane*, 15 Neb. App. 341, 727 N.W.2d 238 (2007).

Whether the Uniform Commercial Code applies to a contract for the sale of both goods and nongoods is a question of law. *MBH, Inc. v. John Otte Oil & Propane*, 15 Neb. App. 341, 727 N.W.2d 238 (2007).

UCC 2-201.

An agreement for the purchase of a truck for more than \$500 that is not signed by the party against whom enforcement is sought is unenforceable unless one of the limited exceptions set forth in this section is present. *Woodhouse Ford v. Laflan*, 268 Neb. 722, 687 N.W.2d 672 (2004).

The fact that there was no evidence of any oral or written agreement to purchase a truck that had a purchase price of more than \$500 is sufficient to establish the absence of a purchase agreement that conforms to this section. *Woodhouse Ford v. Laflan*, 268 Neb. 722, 687 N.W.2d 672 (2004).

UCC 2-313.

Pursuant to this section, in order to create an express warranty, the seller must make an affirmation of fact or promise to the buyer which relates to the goods and becomes part of the basis of the bargain. *Freeman v. Hoffman-La Roche, Inc.*, 260 Neb. 552, 618 N.W.2d 827 (2000).

UCC 2-316.

The use of an "as is" clause to exclude the implied warranty of merchantability cannot be against the public policy of this state when it mirrors the statutory requirements specifically allowing for such exclusion. *Wilke v. Woodhouse Ford*, 278 Neb. 800, 774 N.W.2d 370 (2009).

UCC 2-606.

Evidence that someone tried to return a truck that was in their possession for the purpose of a test drive is sufficient to show that the truck was not accepted within the meaning of this section. *Woodhouse Ford v. Laflan*, 268 Neb. 722, 687 N.W.2d 672 (2004).

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UCC 2-607.

Pursuant to subdivision (3)(a) of this section, whether the notice given is satisfactory and whether it is given within a reasonable time are generally questions of fact to be measured by all the circumstances of the case. *Fitl v. Strek*, 269 Neb. 51, 690 N.W.2d 605 (2005).

Pursuant to subsection (4) of this section, the burden is on the buyer to show a breach with respect to the goods accepted. *Fitl v. Strek*, 269 Neb. 51, 690 N.W.2d 605 (2005).

The notice requirement set forth in subdivision (3)(a) of this section serves three purposes. It provides the seller with an opportunity to correct any defect, to prepare for negotiation and litigation, and to protect itself against stale claims asserted after it is too late for the seller to investigate them. *Fitl v. Strek*, 269 Neb. 51, 690 N.W.2d 605 (2005).

UCC 2-725.

Pursuant to subsection (2) of this section, in order to constitute a future performance warranty, the terms of the warranty must unambiguously indicate that the manufacturer is warranting the future performance of the good for a specified period of time. *Controlled Environ. Constr. v. Key Indus. Refrig.*, 266 Neb. 927, 670 N.W.2d 771 (2003).

Pursuant to subsection (2) of this section, the determination of a discovery date is essentially an inquiry into all of the facts and circumstances facing the buyer; thus, a court should examine all relevant evidence that bears on the buyer's discovery. *Controlled Environ. Constr. v. Key Indus. Refrig.*, 266 Neb. 927, 670 N.W.2d 771 (2003).

Pursuant to subsection (2) of this section, the mere existence of "repair or replace" language in a warranty will not disturb a finding that the warranty extends to future performance. *Controlled Environ. Constr. v. Key Indus. Refrig.*, 266 Neb. 927, 670 N.W.2d 771 (2003).

Pursuant to subsection (2) of this section, when a warranty extends to future performance, the statute of limitations is tolled and the cause of action does not begin to accrue until the breach of that warranty is or should have been discovered. The discovery analysis should focus on the buyer's knowledge of the nature and extent of the problem(s) with the goods. It is only when a buyer discovers, or should have discovered, facts sufficient to doubt the overall quality of the goods that subsection (2) is satisfied and the statute of limitations begins to run. *Controlled Environ. Constr. v. Key Indus. Refrig.*, 266 Neb. 927, 670 N.W.2d 771 (2003).

Subsection (1) of this section prohibits the parties, at least by original agreement, from extending the statute of limitations. *Controlled Environ. Constr. v. Key Indus. Refrig.*, 266 Neb. 927, 670 N.W.2d 771 (2003).

The future performance exception contained in subsection (2) of this section applies only to an express warranty and not to an implied warranty. *Controlled Environ. Constr. v. Key Indus. Refrig.*, 266 Neb. 927, 670 N.W.2d 771 (2003).

The limitations period was designed to be relatively short to serve as a point of finality for businesses after which they could destroy records without the fear of subsequent suits. *Controlled Environ. Constr. v. Key Indus. Refrig.*, 266 Neb. 927, 670 N.W.2d 771 (2003).

The statute of limitations accrues upon tender, unless the warranty extends to future performance. There is no exception for new warranties extended postsale, and the creation of such an exception is not a matter for this court. *Controlled Environ. Constr. v. Key Indus. Refrig.*, 266 Neb. 927, 670 N.W.2d 771 (2003).

UCC 3-104.

Under subsection (a) of this section, an instrument may have a variable interest rate, but the principal must be fixed. A fixed principal is an absolute requisite to negotiability. *Heritage Bank v. Bruha*, 283 Neb. 263, 812 N.W.2d 260 (2012).

UCC 3-309.

Under this section and section 30-2456, a successor personal representative may enforce a lost note made payable to his or her decedent if the successor proves by clear and convincing evidence that (1) the predecessor

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personal representative was in possession of the notes and entitled to enforce them when the loss of possession occurred; (2) the loss of possession was not the result of a voluntary transfer by predecessor or lawful seizure; and (3) possession of the notes cannot be obtained because they were either destroyed, their whereabouts cannot be determined, or they are in the wrongful possession of an unknown person or a person who cannot be found or is not amenable to service of process. Where an estate has insufficient funds to provide for an indemnification bond, a court's withholding of judgment from the personal representative until the statute of limitations for enforcing negotiable instruments expires is a reasonable exercise of discretion in providing adequate protection for the defendant under subsection (b) of this section. *Fales v. Norine*, 263 Neb. 932, 644 N.W.2d 513 (2002).

UCC 3-118.

Pursuant to subsection (g) of this section, in the absence of fraudulent concealment by the defendant, the discovery rule does not toll the statute of limitations for claims involving negotiable instruments under the Uniform Commercial Code. *Mandolfo v. Mandolfo*, 281 Neb. 443, 796 N.W.2d 603 (2011).

UCC 3-419.

A person receiving only an indirect benefit from a transaction can qualify as an accommodation party. *Sack Lumber Co. v. Goosic*, 15 Neb. App. 529, 732 N.W.2d 690 (2007).

Whether a person is an accommodation party is a question of fact. *Sack Lumber Co. v. Goosic*, 15 Neb. App. 529, 732 N.W.2d 690 (2007).

UCC 3-420.

Common-law claims in which the plaintiff alleges that a bank made or obtained payment on an instrument to a person not entitled to enforce the instrument or receive payment on it are displaced by the Uniform Commercial Code. *Mandolfo v. Mandolfo*, 281 Neb. 443, 796 N.W.2d 603 (2011).

UCC 3-604.

Pursuant to subsection (2) of section 27-804, an alleged verbal cancellation or discharge of a promissory note cannot be said to be against a decedent's pecuniary interest, because there was no evidence of discharge by one of the physical acts, as detailed in Uniform Commercial Code section 3-604(a)(i), nor was there a signed writing, as detailed in section 3-604(a)(ii), offered or received into evidence which purported to discharge the debt owed to the decedent. *Haynes v. Dover*, 17 Neb. App. 640, 768 N.W.2d 140 (2009).

UCC 3-605.

Under former section 3-606, it discharges only the obligations of those parties who sign a negotiable instrument in the capacity of a surety. *Borley Storage & Transfer Co. v. Whitted*, 271 Neb. 84, 710 N.W.2d 71 (2006).

CONSTITUTION OF THE STATE OF NEBRASKA OF 1875, AND SUBSEQUENT AMENDMENTS

ARTICLE I BILL OF RIGHTS

Section

30. Discrimination or grant of preferential treatment prohibited; public employment, public education, or public contracting; section, how construed; remedies.

Sec. 30 Discrimination or grant of preferential treatment prohibited; public employment, public education, or public contracting; section, how construed; remedies.

(1) The state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting. (2) This section shall apply only to action taken after the section's effective date. (3) Nothing in this section prohibits bona fide qualifications based on sex that are reasonably necessary to the normal operation of public employment, public education, or public contracting. (4) Nothing in this section shall invalidate any court order or consent decree that is in force as of the effective date of this section. (5) Nothing in this section prohibits action that must be taken to establish or maintain eligibility for any federal program, if ineligibility would result in a loss of federal funds to the state. (6) For purposes of this section, state shall include, but not be limited to: (a) the State of Nebraska; (b) any agency, department, office, board, commission, committee, division, unit, branch, bureau, council, or sub-unit of the state; (c) any public institution of higher education; (d) any political subdivision of or within the state; and (e) any government institution or instrumentally of or within the state. (7) The remedies available for violations of this section shall be the same, regardless of the injured party's race, sex, color, ethnicity, or national origin, as are otherwise available for violations of Nebraska's antidiscrimination law. (8) This section shall be self executing. If any part or parts of this section are found to be in conflict with federal law or the Constitution of the United States, this section shall be implemented to the maximum extent that federal law and the Constitution of the United States permit. Any provision held invalid shall be severable from the remaining portions of this section.

Source: Neb. Const. art. I, sec. 30 (2008); Adopted 2008, Initiative Measure No. 424.

ARTICLE IV EXECUTIVE

Section

5. Impeachment.

Sec. 5 Impeachment.

A civil officer of this state shall be liable to impeachment for any misdemeanor in office or for any misdemeanor in pursuit of such office.

Source: Neb. Const. art. V, sec. 5 (1875); Transferred by Constitutional Convention, 1919-1920, art. IV, sec. 5; Amended 2012, Laws 2012, LR19CA, sec. 1.

ARTICLE XIII

STATE, COUNTY, AND MUNICIPAL INDEBTEDNESS

Section

2. Industrial and economic development; powers of counties and municipalities.
4. Nonprofit enterprise development; powers of counties and municipalities.

Sec. 2 Industrial and economic development; powers of counties and municipalities.

Notwithstanding any other provision in the Constitution, the Legislature may authorize any county or incorporated city or village, including cities operating under home rule charters, to acquire, own, develop, and lease real and personal property suitable for use by manufacturing or industrial enterprises and to issue revenue bonds for the purpose of defraying the cost of acquiring and developing such property by construction, purchase, or otherwise. The Legislature may also authorize such county, city, or village to acquire, own, develop, and lease real and personal property suitable for use by enterprises as determined by law if such property is located in blighted areas as determined by law and to issue revenue bonds for the purpose of defraying the cost of acquiring and developing or financing such property by construction, purchase, or otherwise. Such bonds shall not become general obligation bonds of the governmental subdivision by which such bonds are issued. Any real or personal property acquired, owned, developed, or used by any such county, city, or village pursuant to this section shall be subject to taxation to the same extent as private property during the time it is leased to or held by private interests, notwithstanding the provisions of Article VIII, section 2, of the Constitution. The acquiring, owning, developing, and leasing of such property shall be deemed for a public purpose, but the governmental subdivision shall not have the right to acquire such property by condemnation. The principal of and interest on any bonds issued may be secured by a pledge of the lease and the revenue therefrom and by mortgage upon such property. No such governmental subdivision shall have the power to operate any such property as a business or in any manner except as the lessor thereof.

Notwithstanding any other provision in the Constitution, the Legislature may also authorize any incorporated city or village, including cities operating under home rule charters, to appropriate such funds as may be deemed necessary for an economic or industrial development project or program subject to approval by a vote of a majority of the registered voters of such city or village voting upon the question. Subject to such vote, funds may be derived from property tax, local option sales tax, or any other general tax levied by the city or village or generated from municipally owned utilities or grants, donations, or state and federal funds received by the city or village subject to any restrictions of the grantor, donor, or state or federal law.

Source: Neb. Const. art. XII, sec. 2 (1875); Transferred by Constitutional Convention, 1919-1920, art. XIII, sec. 2; Amended 1972, Laws

1971, LB 688, sec. 1; Amended 1982, Laws 1982, LB 634, sec. 1; Amended 1990, Laws 1990, LR 11, sec. 1; Amended 2010, Laws 2010, LR297CA, sec. 1.

Sec. 4 Nonprofit enterprise development; powers of counties and municipalities.

Notwithstanding any other provision in this Constitution, the Legislature may authorize any county, city, or village to acquire, own, develop, and lease or finance real and personal property, other than property used or to be used for sectarian instruction or study or as a place for devotional activities or religious worship, to be used, during the term of any revenue bonds issued, only by nonprofit enterprises as determined by law and to issue revenue bonds for the purpose of defraying the cost of acquiring and developing or financing such property by construction, purchase, or otherwise. Such bonds shall not become general obligation bonds of the governmental subdivision by which such bonds are issued, and such governmental subdivision shall have no authority to impose taxes for the payment of such bonds. Notwithstanding the provisions of Article VIII, section 2, of this Constitution, the acquisition, ownership, development, use, or financing of any real or personal property pursuant to the provisions of this section shall not affect the imposition of any taxes or the exemption therefrom by the Legislature pursuant to this Constitution. The acquiring, owning, developing, and leasing or financing of such property shall be deemed for a public purpose, but the governmental subdivision shall not have the right to acquire such property for the purposes specified in this section by condemnation. The principal of and interest on any bonds issued may be secured by a pledge of the lease and the revenue therefrom and by mortgage upon such property. No such governmental subdivision shall have the power to operate any such property as a business or in any manner except as the lessor thereof.

Source: Neb. Const. art. XIII, sec. 4 (2010); Adopted 2010, Laws 2010, LR295CA, sec. 1.

ARTICLE XV

MISCELLANEOUS PROVISIONS

Section

25. Right to hunt, to fish, and to harvest wildlife; public hunting, fishing, and harvesting of wildlife; preferred means of managing and controlling wildlife.

Sec. 25 Right to hunt, to fish, and to harvest wildlife; public hunting, fishing, and harvesting of wildlife; preferred means of managing and controlling wildlife.

The citizens of Nebraska have the right to hunt, to fish, and to harvest wildlife, including by the use of traditional methods, subject only to laws, rules, and regulations regarding participation and that promote wildlife conservation and management and that preserve the future of hunting, fishing, and harvesting of wildlife. Public hunting, fishing, and harvesting of wildlife shall be a preferred means of managing and controlling wildlife. This section shall not be construed to modify any provision of law relating to trespass or property rights. This section shall not be construed to modify any provision of law relating to

Article XV, section 4, Article XV, section 5, Article XV, section 6, or Article XV, section 7, of this constitution.

Source: Neb. Const. art. XV, sec. 25 (2012); Adopted 2012, Laws 2012, LR40CA, sec. 1.

CHAPTER 1

ACCOUNTANTS

Section

1-116. Certified public accountant; examination; eligibility.

1-136.02. Permit; when issued.

1-116 Certified public accountant; examination; eligibility.

Prior to January 1, 1998, a person shall be eligible to take the examination described in section 1-114 if he or she meets the requirements of subdivision (1)(a) of section 1-114.

Any person making initial application on or after January 1, 1998, to take the examination described in section 1-114 shall be eligible to take the examination if he or she has completed at least one hundred fifty semester hours or two hundred twenty-five quarter hours of postsecondary academic credit and has earned a baccalaureate or higher degree from a college or university accredited by a regional accrediting agency recognized by the United States Department of Education or a similar agency as determined to be acceptable by the board. The person shall demonstrate that accounting, auditing, business, and other subjects at the appropriate academic level as required by the board are included within the required hours of postsecondary academic credit. A person who expects to complete the postsecondary academic credit and earn the degree as required by this section within sixty days following when the examination is held shall be eligible to take such examination, but such person shall not receive any credit for such examination unless evidence satisfactory to the board showing that such person has completed the postsecondary academic credit and earned the degree as required by this section is received by the board within ninety days following when the examination is held. The board shall not prescribe the specific curricula of colleges or universities. If the applicant is an individual, the application shall include the applicant's social security number.

Source: Laws 1957, c. 1, § 11, p. 59; Laws 1976, LB 619, § 2; Laws 1984, LB 473, § 6; Laws 1991, LB 75, § 5; Laws 1997, LB 114, § 13; Laws 1997, LB 752, § 49; Laws 1999, LB 346, § 1; Laws 2009, LB31, § 7; Laws 2014, LB967, § 1.
Effective date April 3, 2014.

1-136.02 Permit; when issued.

(1) The board shall issue a permit under subdivision (1)(a) of section 1-136 to a holder of a certificate as a certified public accountant when such holder has had:

(a) Two years of accounting experience satisfactory to the board, in any state, in employment as an accountant in a firm, proprietorship, partnership, corporation, limited liability company, or other business entity authorized in any state to engage in the practice of public accountancy under the supervision of an active certified public accountant who is the holder of a permit issued under subdivision (1)(a) of section 1-136 or the equivalent issued by another state; or

(b) Three years of accounting experience satisfactory to the board, in any state, in employment as (i) an accountant in government or business under the supervision of an active certified public accountant who is the holder of a permit issued under subdivision (1)(a) of section 1-136 or the equivalent issued by another state or (ii) faculty at a college or university of recognized standing under the supervision of an active certified public accountant who is the holder of a permit issued under subdivision (1)(a) of section 1-136 or the equivalent issued by another state.

(2) The board shall issue a permit under subdivision (1)(a) of section 1-136 to a holder of a reciprocal certificate issued under section 1-124 upon a showing that:

(a) He or she meets all current requirements in this state for issuance of a permit at the time the application is made; and

(b) At the time of the application for a permit the applicant, within the ten years immediately preceding application, meets the experience requirement in subdivision (1)(a) or (b) of this section.

Source: Laws 1977, LB 290, § 3; Laws 1993, LB 41, § 2; Laws 1997, LB 114, § 29; Laws 2007, LB24, § 2; Laws 2009, LB31, § 19; Laws 2013, LB27, § 1.

CHAPTER 2

AGRICULTURE

Article.

2. State and County Fairs.
 - (f) County Agricultural Society Act. 2-259, 2-264.
9. Noxious Weed Control. 2-967, 2-968.
10. Plant Diseases, Insect Pests, and Animal Pests.
 - (k) Plant Protection and Plant Pest Act. 2-1072 to 2-10,116.01.
12. Horseracing. 2-1203 to 2-1242.
15. Nebraska Natural Resources Commission.
 - (a) General Provisions. 2-1501 to 2-1513.
 - (c) Nebraska Resources Development Fund. 2-1588, 2-1592.
26. Pesticides. 2-2624 to 2-2656.
32. Natural Resources. 2-3225 to 2-3228.
38. Marketing, Development, and Promotion of Agricultural Products.
 - (a) Nebraska Agricultural Products Marketing Act. 2-3812.
39. Milk.
 - (c) Dairy Industry Development Act. 2-3951 to 2-3962.
 - (d) Nebraska Milk Act. 2-3965 to 2-3989.
 - (e) Dairy Study. 2-3993.
49. Climate Assessment. 2-4902.
57. Industrial Hemp. 2-5701.

ARTICLE 2

STATE AND COUNTY FAIRS

(f) COUNTY AGRICULTURAL SOCIETY ACT

Section

- 2-259. County fairgrounds; equipment purchase; additional tax levy.
 2-264. County agricultural society; powers relating to real estate.

(f) COUNTY AGRICULTURAL SOCIETY ACT

2-259 County fairgrounds; equipment purchase; additional tax levy.

Pursuant to a request by a county agricultural society, the county board of any county may levy an additional levy of three and five-tenths cents on each one hundred dollars of taxable valuation, or any part thereof, for the purpose of acquiring an interest in real property to comprise a portion or all of the county fairgrounds, for the purpose of capital construction on and renovation, repair, improvement, and maintenance of the county fairgrounds, over and above the operational tax levy authorized in section 2-257, or for the purpose of purchasing equipment. Such levy shall not exceed the amount actually required for such acquisition or work and shall be subject to section 77-3443.

Source: Laws 1969, c. 11, § 7, p. 149; Laws 1977, LB 484, § 2; Laws 1979, LB 187, § 7; Laws 1988, LB 977, § 1; Laws 1992, LB 398, § 4; Laws 1992, LB 719A, § 4; R.S.Supp.,1996, § 2-203.06; Laws 1997, LB 469, § 10; Laws 1999, LB 437, § 24; Laws 2000, LB 1190, § 1; Laws 2014, LB597, § 1.
 Effective date February 14, 2014.

2-264 County agricultural society; powers relating to real estate.

With the consent of the county board of the county within which the real estate is located, a county agricultural society may exchange its real estate and improvements for other real estate and improvements or may lease or sell its real estate and improvements and may make, execute, deliver, and accept all proper or necessary conveyances relating to such exchange, lease, sale, or purchase. County board approval is not required for leases having a term of less than ninety days. The right of the county to real estate and improvements as provided in section 2-263 shall extend to real estate, improvements, or proceeds derived from any exchange, sale, or purchase of real estate or improvements acquired with the additional tax levy provided in section 2-259.

A county agricultural society may purchase real estate and improve the same. The payment of the purchase price may be secured by mortgage or deed of trust.

Source: Laws 1879, § 15, p. 401; Laws 1905, c. 1, § 1, p. 52; R.S.1913, § 11; C.S.1922, § 11; C.S.1929, § 2-206; Laws 1931, c. 2, § 1, p. 58; C.S.Supp.,1941, § 2-206; R.S.1943, § 2-210; Laws 1967, c. 3, § 1, p. 71; R.S.1943, (1991), § 2-210; Laws 1997, LB 469, § 15; Laws 2014, LB597, § 2.

Effective date February 14, 2014.

ARTICLE 9**NOXIOUS WEED CONTROL**

Section

2-967. Riparian Vegetation Management Task Force; created; members.

2-968. Riparian Vegetation Management Task Force; duties; meetings; final report; expenses.

2-967 Riparian Vegetation Management Task Force; created; members.

The Riparian Vegetation Management Task Force is created. The Governor shall appoint the members of the task force. The members shall include one surface water project representative from each river basin that has been determined to be fully appropriated pursuant to section 46-714 or 46-720 or designated as overappropriated pursuant to section 46-713 by the Department of Natural Resources; one representative from the Department of Agriculture, the Department of Environmental Quality, the Department of Natural Resources, the office of the Governor, the office of the State Forester, the Game and Parks Commission, and the University of Nebraska; two representatives nominated by the Nebraska Association of Resources Districts; two representatives nominated by the Nebraska Weed Control Association; one riparian landowner from each of the state's congressional districts; and one representative from the Nebraska Environmental Trust. In addition to such members, any member of the Legislature may serve as a member of the task force at his or her option. For administrative and budgetary purposes only, the task force shall be housed within the Department of Agriculture. This section terminates on June 30, 2015.

Source: Laws 2007, LB701, § 1; Laws 2009, LB98, § 3; Laws 2013, LB477, § 1.

Termination date June 30, 2015.

2-968 Riparian Vegetation Management Task Force; duties; meetings; final report; expenses.

The Riparian Vegetation Management Task Force, in consultation with appropriate federal agencies, shall develop and prioritize vegetation management goals and objectives, analyze the cost-effectiveness of available vegetation treatment, and develop plans and policies to achieve such goals and objectives. Any plan shall utilize the principles of integrated vegetation management and sound science. The task force shall convene within thirty days after the appointment of the members is complete to elect a chairperson and conduct such other business as deemed necessary. The efforts of the task force shall be initially directed toward river basins designated by the Department of Natural Resources as fully appropriated or overappropriated. Task force meetings shall be held in communities within the Republican River and Platte River basins with a final report due to the Governor and the Legislature prior to June 30, 2015. The report submitted to the Legislature shall be submitted electronically. It is the intent of the Legislature that expenses of the task force not exceed twenty-five thousand dollars per fiscal year. This section terminates on June 30, 2015.

Source: Laws 2007, LB701, § 2; Laws 2009, LB98, § 4; Laws 2012, LB782, § 2; Laws 2013, LB477, § 2.
Termination date June 30, 2015.

ARTICLE 10

PLANT DISEASES, INSECT PESTS, AND ANIMAL PESTS

(k) PLANT PROTECTION AND PLANT PEST ACT

Section

2-1072.	Act, how cited.
2-1074.	Definitions, where found.
2-1075.01.	Repealed. Laws 2013, LB 68, § 23.
2-1075.03.	Certification inspection of Nebraska-grown nursery stock, defined.
2-1077.	Repealed. Laws 2013, LB 68, § 23.
2-1079.03.	Grow, defined.
2-1080.	Repealed. Laws 2013, LB 68, § 23.
2-1080.01.	Harmonization plan, defined.
2-1083.	Nursery stock, defined.
2-1083.01.	Nursery stock distributor, defined.
2-1091.	Enforcement of act; department; powers.
2-1091.01.	Nursery stock distributor license; application; contents; fees; licensee duties; nursery stock; requirements; license; posting; lapse of license.
2-1091.02.	Fees; department; powers.
2-1092.	Repealed. Laws 2013, LB 68, § 23.
2-1093.	Repealed. Laws 2013, LB 68, § 23.
2-1094.	Repealed. Laws 2013, LB 68, § 23.
2-1095.	Nursery stock distributors; nursery stock; certification inspection; application; distribution; restrictions; treatment or destruction of stock; department; powers.
2-1096.	Repealed. Laws 2013, LB 68, § 23.
2-1097.	Repealed. Laws 2013, LB 68, § 23.
2-1098.	Repealed. Laws 2013, LB 68, § 23.
2-1099.	Repealed. Laws 2013, LB 68, § 23.
2-10,100.	Repealed. Laws 2013, LB 68, § 23.
2-10,100.01.	Repealed. Laws 2013, LB 68, § 23.
2-10,100.02.	Repealed. Laws 2013, LB 68, § 23.
2-10,101.	Repealed. Laws 2013, LB 68, § 23.
2-10,102.	Collectors; nursery stock distributor's license required; inspection.

Section

- 2-10,103. Nursery stock distributor; duties.
 2-10,103.01. Nursery stock distributor; disciplinary actions; procedures.
 2-10,103.02. Administrative fine; collection; use.
 2-10,103.04. Notice or order; service; notice; contents; hearings; procedure; new hearing.
 2-10,104. Foreign distributor; reciprocity; department; reciprocal agreements.
 2-10,105. Optional inspections; nursery stock distributor's license; optional issuance.
 2-10,106. Importation and distribution; labeling requirements; exception; department; powers.
 2-10,111. Costs; liability.
 2-10,115. Violations; penalties; appeal of department order; procedure.
 2-10,116.01. Repealed. Laws 2013, LB 68, § 23.

(k) PLANT PROTECTION AND PLANT PEST ACT

2-1072 Act, how cited.

Sections 2-1072 to 2-10,117 shall be known and may be cited as the Plant Protection and Plant Pest Act.

Source: Laws 1988, LB 874, § 1; Laws 1993, LB 406, § 1; Laws 2008, LB791, § 1; Laws 2013, LB68, § 1.

2-1074 Definitions, where found.

For purposes of the Plant Protection and Plant Pest Act, unless the context otherwise requires, the definitions found in sections 2-1074.01 to 2-1089 shall be used.

Source: Laws 1988, LB 874, § 3; Laws 1993, LB 406, § 2; Laws 2008, LB791, § 2; Laws 2013, LB68, § 2.

2-1075.01 Repealed. Laws 2013, LB 68, § 23.**2-1075.03 Certification inspection of Nebraska-grown nursery stock, defined.**

Certification inspection of Nebraska-grown nursery stock shall mean an inspection performed pursuant to section 2-1095.

Source: Laws 2013, LB68, § 3.

2-1077 Repealed. Laws 2013, LB 68, § 23.**2-1079.03 Grow, defined.**

Grow shall mean to produce a plant or plant product, by propagation or cultivation, including, but not limited to, division, transplant, seed, or cutting, generally over a period of one year or greater. Grow does not include transferring nursery stock from one container to another or potting bare-root nursery stock, if the stock will be distributed within twelve months.

Source: Laws 2013, LB68, § 4.

2-1080 Repealed. Laws 2013, LB 68, § 23.**2-1080.01 Harmonization plan, defined.**

Harmonization plan shall mean any agreement between states, or a state or states and the federal government, designed to limit the spread of a plant pest into or out of a designated area.

Source: Laws 2013, LB68, § 5.

2-1083 Nursery stock, defined.

Nursery stock shall mean all botanically classified hardy perennial or biennial plants, trees, shrubs, and vines, either domesticated or wild, cuttings, grafts, scions, buds, bulbs, rhizomes, or roots thereof, and such plants and plant parts for, or capable of, propagation, excluding plants grown for indoor use, annual plants, florist stock, cut flowers, sod, turf, onions, potatoes, or seeds of any such plant.

Source: Laws 1988, LB 874, § 12; Laws 2013, LB68, § 6.

2-1083.01 Nursery stock distributor, defined.

Nursery stock distributor shall mean any person involved in:

- (1) The acquisition and further distribution of nursery stock;
- (2) The utilization of nursery stock for landscaping or purchase of nursery stock for other persons;
- (3) The distribution of nursery stock with a mechanical digger, commonly known as a tree spade, or by other means;
- (4) The solicitation of or taking orders for sales of nursery stock in the state; or
- (5) The growing and distribution of nursery stock or active involvement in the management or supervision of a nursery.

Source: Laws 2013, LB68, § 7.

2-1091 Enforcement of act; department; powers.

For the purpose of enforcement of the Plant Protection and Plant Pest Act or any rule or regulation, the department may:

- (1) Enter at reasonable times and in a reasonable manner without being subject to any action for trespass or damages, if reasonable care is exercised, all property where plants are grown, packed, held prior to distribution, or distributed to inspect all plants, structures, vehicles, equipment, packing materials, containers, records, and labels on such property. The department may inspect and examine all records and property relating to compliance with the act. Such records and property shall be made available to the department for review at all reasonable times;
- (2) In a reasonable manner, hold for inspection and take samples of any plants and associated materials which may not be in compliance with the act;
- (3) Inspect or reinspect at any time or place any plants that are in the state or being shipped into or through the state and treat, seize, destroy, require treatment or destruction of, or return to the state of origin any plants in order to inhibit or prevent the movement of plant pests throughout the state;
- (4) Obtain an inspection warrant in the manner prescribed in sections 29-830 to 29-835 from a court of record if any person refuses to allow the department to inspect pursuant to this section;

(5) Issue a written or printed withdrawal-from-distribution order and post signs to delineate sections not marked pursuant to subsection (3) of section 2-1095 or sections of distribution locations and to notify persons of any withdrawal-from-distribution order when the department has reasonable cause to believe any lot of nursery stock is being distributed in violation of the act or any rule or regulation;

(6) Apply for a restraining order, a temporary or permanent injunction, or a mandatory injunction against any person violating or threatening to violate the act or the rules and regulations. The district court of the county where the violation is occurring or is about to occur 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;

(7) Issue a quarantine or establish a quarantine area;

(8) Cooperate and enter into agreements, including harmonization plans, with any person in order to carry out the purpose of the act;

(9) Establish a restricted plant pest list to prohibit the movement into the state of plant pests not known to occur in Nebraska and to prohibit the movement of those plant pests present in the state but known to be destructive to the plant industry;

(10) Issue European corn borer quarantine certificates, phytosanitary certificates, and export certificates on plants for individual shipment to other states or foreign countries if those plants comply with the requirements or regulations of such state or foreign country or issue quarantine compliance agreements or European corn borer quarantine certification licenses;

(11) Inspect plants that any person desires to ship into another state or country when such person has made an application to the department for such inspection. The inspection shall determine the presence of plant pests to determine the acceptance of the plants into other states or countries. The department may accept the inspections of laboratories authorized by the department or field inspectors of the department;

(12) Certify plants or property to meet the requirements of specific quarantines imposed on Nebraska or Nebraska plants. The quarantine certification requirements shall be set forth in the rules and regulations;

(13) Until increased or decreased by rules or regulations, assess and collect fees set forth in section 2-1091.02 for inspections, services, or work performed in carrying out subdivisions (8) and (10) through (12) of this section. Inspection time shall include the driving to and from the location of the inspection in addition to the time spent conducting the inspection, and the mileage charge shall be for the purpose of inspection. Any fee charged to the department relating to such subdivisions shall be paid by the person requesting the inspection, services, or work. The department may, for purposes of administering such subdivisions, establish in rules and regulations inspection requirements, standards, and issuance, renewal, or revocation of licenses, certificates, or agreements necessitated by such subdivisions;

(14) Conduct continuing survey and detection programs on plant pests to monitor the population or spread of plant pests;

(15) Issue, place on probation, suspend, or revoke licenses issued or agreements entered into pursuant to the act or deny applications for such licenses or agreements pursuant to the act; and

(16) Issue orders imposing administrative fines or cease and desist orders pursuant to the act.

Source: Laws 1988, LB 874, § 20; Laws 1993, LB 406, § 11; Laws 2013, LB68, § 8.

2-1091.01 Nursery stock distributor license; application; contents; fees; licensee duties; nursery stock; requirements; license; posting; lapse of license.

(1) A person shall not operate as a nursery stock distributor without a valid license issued by the department. Any person validly licensed as a grower, a dealer, or a broker under the Plant Protection and Plant Pest Act as it existed on the day before September 6, 2013, shall remain validly licensed until December 31, 2013.

(2) Each nursery stock distributor shall apply for a license required by subsection (1) of this section on forms furnished by the department due on January 1 for the current license year. Such application shall include the full name and mailing address of the applicant, the names and addresses of any partners, limited liability company members, or corporate officers, the name and address of the person authorized by the applicant to receive notices and orders of the department as provided in the Plant Protection and Plant Pest Act, whether the applicant is an individual, partnership, limited liability company, corporation, or other legal entity, the location of the operation, and the signature of the applicant. A person distributing greenhouse plants grown for indoor use, annual plants, florist stock, cut flowers, sod, turf, onions, or potatoes, or seeds of any such plant, shall not be required to obtain a license but may do so pursuant to section 2-10,105.

(3) A nursery stock distributor license shall expire on December 31 of each year unless previously lapsed or revoked.

(4) All applications shall be accompanied by a license fee for the first acre on which nursery stock is located. If the nursery stock distributor does not have physical possession of nursery stock, the nursery stock distributor shall pay a license fee based on one acre. Additionally the applicant shall pay an acreage fee for each additional acre on which nursery stock is located. The license fees are set forth in section 2-1091.02. If the applicant has distributed nursery stock prior to applying for a license, the applicant shall pay an additional administrative fee as set forth in section 2-1091.02.

(5) All nursery stock distributed by a nursery stock distributor shall be only sound, healthy nursery stock that is reasonably capable of growth, labeled correctly, free from injurious plant pests, and stored or displayed under conditions which maintain its vigor as provided in the rules and regulations. Any fee charged to the department for diagnostic services or shipping costs shall be paid by the nursery stock distributor.

(6) A valid copy of the nursery stock distributor's license shall be posted in a conspicuous place at the distribution location.

(7) A nursery stock distributor shall obtain a license for each distribution location.

(8) Each applicant for a nursery stock distributor license shall furnish a signed written statement that such person will acquire and distribute only nursery stock which has been distributed by a person who is duly licensed

pursuant to the act or approved by an authorizing agency within the state of origin recognized by the department.

(9) Every nursery stock distributor shall continually maintain a complete and accurate list with the department of all sources from which nursery stock is received.

(10) Each nursery stock distributor shall keep and make available for examination by the department for a period of three years an accurate record of all transactions conducted in the ordinary course of business. Records pertaining to such business shall at a minimum include the names of the persons from which nursery stock was received, the receiving date, the amount received, and the variety and place of origin of the nursery stock received and all documents accompanying each shipment indicating compliance with state or federal requirements and quarantines.

(11) A nursery stock distributor license shall lapse automatically upon a change of ownership, and the subsequent owner must obtain a new license. The nursery stock distributor license shall lapse automatically upon a change of location, and such licensee must obtain a new license. A licensee shall notify the department in writing at least thirty days prior to any change in ownership, name, or address. A nursery stock distributor shall notify the department in writing before there is a change of the name or address of the person authorized to receive notices and orders of the department. When a nursery stock distributor permanently ceases operating, he or she shall return the license to the department.

Source: Laws 1993, LB 406, § 12; Laws 1994, LB 884, § 3; Laws 2013, LB68, § 9.

2-1091.02 Fees; department; powers.

(1) License fees for the Plant Protection and Plant Pest Act due on January 1, 2014, shall be the amount in column A of subsection (3) of this section.

(2) The license fees due January 1, 2015, and each January 1 thereafter shall be set by the director on or before July 1 of each year. The director may raise or lower such fees each year to meet the criteria in this subsection, but the fee shall not be greater than the amount in column B of subsection (3) of this section. The same percentage shall be applied to each category for all fee increases or decreases. The director shall use the fees in column A of subsection (3) of this section as a base for future fee increases or decreases. The director shall determine the fees based on estimated annual revenue and fiscal year-end cash fund balances as follows:

(a) The estimated annual revenue shall not be greater than one hundred seven percent of program cash fund appropriations allocated for the Plant Protection and Plant Pest Act; and

(b) The estimated fiscal year-end cash fund balance shall not be greater than seventeen percent of program cash fund appropriations allocated for the act.

(3) License Fees.

License Fees	A	B
Nursery stock distributor license as set forth in section 2-1091.01		

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for the first acre	\$115	\$140
Fee for additional acres	\$5.00 per acre	\$6.00 per acre
Distributing without obtaining a nursery stock distributor license fee	25% of the fee per month up to 100% of the license fee	

(4) Other fees for the Plant Protection and Plant Pest Act under subsection (5) of this section in effect on January 1, 2014, shall be the amount in column A of such subsection. The department may increase or decrease such fees by rules or regulations adopted and promulgated by the department. Such increases shall not result in fees greater than the amount in column B of subsection (5) of this section.

(5) Other Fees.

Other Fees	A	B
Certification fee for nursery stock growing acres as set forth in section 2-1095	Included in license fee	
Late applications for certification of nursery stock growing acres	\$24 per hour \$0.42 per mile	\$27 per hour \$0.50 per mile
Reinspections or requested inspections for nursery stock	\$24 per hour \$0.42 per mile	\$27 per hour \$0.50 per mile
Phytosanitary or export certificates set forth in section 2-1091	\$30 per certificate and \$7 for taking an application by telephone	\$40 per certificate and \$10 for taking an application by telephone
Phytosanitary or export certificate inspections and reinspections	\$24 per hour \$0.42 per mile	\$27 per hour \$0.50 per mile
European corn borer quarantine certification license set forth in section 2-1091	\$50 per license, annually	\$65 per license, annually
European corn borer certificate	\$6.25 for packet of 25	\$10.00 for packet of 25
Quarantine compliance agreements as set forth in section 2-1091	\$50 per agreement annually	\$65 per agreement annually
Quarantine compliance agreement inspections and reinspections	\$24 per hour \$0.42 per mile	\$27 per hour \$0.50 per mile

(6) Any fee remaining unpaid for more than one month shall be considered delinquent and the person owing the fee shall pay an additional administrative fee of twenty-five percent of the delinquent amount for each month it remains unpaid, not to exceed one hundred percent of the original amount due. The department may waive the additional administrative fee based upon the existence and extent of any mitigating circumstances that have resulted in the late payment of such fee. The purpose of the additional administrative fee is to

cover the administrative costs associated with collecting fees, and all money collected as an additional administrative fee shall be remitted to the State Treasurer for credit to the Plant Protection and Plant Pest Cash Fund.

Source: Laws 2013, LB68, § 11.

2-1092 Repealed. Laws 2013, LB 68, § 23.

2-1093 Repealed. Laws 2013, LB 68, § 23.

2-1094 Repealed. Laws 2013, LB 68, § 23.

2-1095 Nursery stock distributors; nursery stock; certification inspection; application; distribution; restrictions; treatment or destruction of stock; department; powers.

(1) All nursery stock distributors that distribute any nursery stock that they grow shall apply for an additional inspection for the certification of the Nebraska-grown nursery stock as provided in this section. The nursery stock distributor shall apply for such certification inspection of the Nebraska-grown nursery stock as part of the application for the nursery stock distributor license described in section 2-1091.01.

(2)(a) Applications for certification inspection of Nebraska-grown nursery stock that are due on January 1 pursuant to section 2-1091.01 and are not received prior to February 1 and initial applications not received prior to beginning of distribution shall be considered delinquent. Such applications shall have an inspection fee as set forth in section 2-1091.02.

(b) Inspection time shall include the driving time to and from the location of the inspection in addition to the time spent conducting the inspection, and the mileage charge shall be for the purpose of inspection.

(3) Each nursery stock distributor shall post signs delineating sections of all growing areas. A section shall be not larger than five acres.

(4) All growing areas within the state shall be inspected by the department at least once per year for certification and compliance with the Plant Protection and Plant Pest Act.

(5) Following the certification inspection of Nebraska-grown nursery stock, the department shall provide a copy of the plant inspection report to the nursery stock distributor specifying any area of the nursery from which nursery stock cannot be distributed or any plants which may not be distributed as nursery stock. When deemed necessary to maintain compliance with the purposes of the Plant Protection and Plant Pest Act, the department shall require the nursery stock distributor to withdraw from distribution any variety or amount of nursery stock. A reinspection may be conducted by the department at the nursery stock distributor's request and cost. The department may also reinspect to determine compliance with the act. To determine the cost of any reinspection, the department shall use fees as outlined in subsection (2) of this section. The nursery stock distributor shall comply with the recommendations of the department as to the treatment or destruction of nursery stock.

(6) The department may require the treatment or destruction of any nursery stock that is infested or infected with plant pests, nonviable, damaged, or desiccated to the point of not being reasonably capable of growth.

(7) Any nursery stock on which a withdrawal-from-distribution order has been issued shall be released for distribution only by authorized department employees or after written permission has been obtained from the department. Each nursery stock distributor shall promptly report to the department, in writing, the amount and type of plants treated or destroyed under requirements on withdrawal-from-distribution orders. The department may withhold a license or certification of Nebraska-grown nursery stock until conditions have been met by the nursery stock distributor as specified in the plant inspection report or any other order issued by the department. A certification of Nebraska-grown stock may be issued covering portions of the nursery which are not infested or infected if the nursery stock distributor agrees to treat, destroy, or remove as specified by the department those plants found to be infested or infected.

Source: Laws 1988, LB 874, § 24; Laws 1993, LB 406, § 15; Laws 2013, LB68, § 10.

2-1096 Repealed. Laws 2013, LB 68, § 23.

2-1097 Repealed. Laws 2013, LB 68, § 23.

2-1098 Repealed. Laws 2013, LB 68, § 23.

2-1099 Repealed. Laws 2013, LB 68, § 23.

2-10,100 Repealed. Laws 2013, LB 68, § 23.

2-10,100.01 Repealed. Laws 2013, LB 68, § 23.

2-10,100.02 Repealed. Laws 2013, LB 68, § 23.

2-10,101 Repealed. Laws 2013, LB 68, § 23.

2-10,102 Collectors; nursery stock distributor's license required; inspection.

Collectors shall be required to obtain a nursery stock distributor's license and shall be required to apply for an additional inspection for the certification of the collected nursery stock as provided in section 2-1095. All collected nursery stock shall be labeled as such.

Source: Laws 1988, LB 874, § 31; Laws 2013, LB68, § 12.

2-10,103 Nursery stock distributor; duties.

A nursery stock distributor shall:

(1) Comply with the Plant Protection and Plant Pest Act and the rules and regulations:

(a) In the care of nursery stock;

(b) In the distribution of nursery stock including nursery stock that has been withdrawn from distribution;

(c) Regarding treatment or destruction of nursery stock as required by a withdrawal-from-distribution order;

(d) In maintaining the nursery stock in a manner accessible to the department; and

(e) In the payment of license fees;

- (2) Comply with any order of the director issued pursuant to the act;
- (3) Not distribute nursery stock obtained from an unlicensed nursery stock distributor;
- (4) Not allow the license to be used by any person other than the person to whom it was issued; and
- (5) Not interfere with the department in the performance of its duties.

Source: Laws 1988, LB 874, § 32; Laws 1993, LB 406, § 22; Laws 2013, LB68, § 13.

2-10,103.01 Nursery stock distributor; disciplinary actions; procedures.

(1) A nursery stock distributor may be placed on probation requiring such person to comply with the conditions set out in an order of probation issued by the director or be ordered to cease and desist from failing to comply or be ordered to pay an administrative fine pursuant to section 2-10,103.02 after:

(a) The director determines the nursery stock distributor has not complied with section 2-10,103;

(b) The nursery stock distributor is given written notice to comply and written notice of the right to a hearing to show cause why the specified order should not be issued; and

(c) The director finds that issuing the specified order is appropriate based on the hearing record or the available information if the hearing is waived by the nursery stock distributor.

(2) A nursery stock distributor may be suspended after:

(a) The director determines the nursery stock distributor has not complied with section 2-10,103;

(b) The nursery stock distributor is given written notice to comply and written notice of the right to a hearing to show cause why the license should not be suspended; and

(c) The director finds that issuing an order suspending the license is appropriate based on the hearing record or the available information if the hearing is waived by the nursery stock distributor.

(3) A license may be immediately suspended and the director may order the nursery stock distributor's operation to cease prior to hearing when:

(a) The director determines an immediate danger to the public health, safety, or welfare exists; and

(b) The nursery stock distributor receives written notice to comply and written notice of the right to a hearing to show cause why the suspension should not be sustained. Within fifteen days after the suspension, the nursery stock distributor may request in writing a date for a hearing and the director shall consider the interests of the nursery stock distributor when the director establishes the date and time of the hearing, except that no hearing shall be held sooner than is reasonable under the circumstances. When a nursery stock distributor does not request a hearing date within such fifteen-day period, the director shall establish a hearing date and notify the nursery stock distributor of the date and time of such hearing.

(4) A license may be revoked after:

(a) The director determines the nursery stock distributor has committed serious, repeated, or multiple violations of any of the requirements of section 2-10,103;

(b) The nursery stock distributor is given written notice to comply and written notice of the right to a hearing to show cause why the license should not be revoked; and

(c) The director finds that issuing an order revoking the license is appropriate based on the hearing record or on the available information if the hearing is waived by the nursery stock distributor.

(5) Any nursery stock distributor whose license has been suspended shall cease operations until the license is reinstated. Any nursery stock distributor whose license is revoked shall cease operating until a new license is issued.

(6) The director may terminate a proceeding to suspend or revoke a license or subject a nursery stock distributor to an order of the director described in subsection (1) of this section at any time if the reasons for such proceeding no longer exist. A license which has been suspended may be reinstated, a person with a revoked license may be issued a new license, or a nursery stock distributor may no longer be subject to the director's order if the director determines that the conditions which prompted the suspension, revocation, or order of the director no longer exist.

(7) Proceedings to suspend or revoke a license or subject a nursery stock distributor to an order of the director described in subsection (1) of this section shall not preclude the department from pursuing other civil or criminal actions.

Source: Laws 1993, LB 406, § 23; Laws 2013, LB68, § 14.

2-10,103.02 Administrative fine; collection; use.

(1) The director may issue an order imposing an administrative fine on any person who has violated any provision, requirement, condition, limitation, or duty imposed by the Plant Protection and Plant Pest Act or rules and regulations adopted and promulgated pursuant to the act in an amount which shall not exceed one thousand dollars for each violation. A violation means each action which violates any separate or distinct provision, requirement, condition, limitation, or duty imposed by the act or such rules and regulations. In determining whether to impose an administrative fine and, if a fine is imposed, the amount of the fine, the director shall take into consideration (a) the seriousness of the violation, (b) the extent to which the person derived financial gain as a result of his or her failure to comply, (c) the extent of intent, willfulness, or negligence by the person in the violation, (d) the likelihood of the violation reoccurring, (e) the history of the person's failure to comply, (f) the person's attempts to prevent or limit his or her failure to comply, (g) the person's willingness to correct violations, (h) the nature of the person's disclosure of violations, (i) the person's cooperation with investigations of his or her failure to comply, and (j) any factors which may be established by the rules and regulations.

(2) The department shall remit administrative fines collected under the act to the State Treasurer on a monthly basis for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

(3) Any administrative fine imposed under the Plant Protection and Plant Pest Act and unpaid shall constitute a debt to the State of Nebraska which may be

collected by 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 lien shall attach to the real estate of the violator when notice of such lien is filed and indexed against the real estate in the office of the register of deeds or county clerk in the county where the real estate is located.

Source: Laws 1993, LB 406, § 24; Laws 2013, LB68, § 15.

2-10,103.04 Notice or order; service; notice; contents; hearings; procedure; new hearing.

(1) Any notice or order provided for in the Plant Protection and Plant Pest Act shall be personally served on the person holding the nursery stock distributor license, the person named in the notice, or the person authorized by the person holding the nursery stock distributor license to receive notices and orders of the department or shall be sent by certified mail, return receipt requested, to the last-known address of the person holding the nursery stock distributor license, the person named in the notice, or the person authorized to receive such notices and orders. A copy of the notice and the order shall be filed in the records of the department.

(2) Any notice to comply provided for in the act shall set forth the acts or omissions with which the person holding the nursery stock distributor license or the person named in the notice is charged.

(3) A notice of the right of the person holding the nursery stock distributor license or the person named in the notice to a hearing provided for in the act shall set forth the time and place of the hearing except as otherwise provided in subsection (3) of section 2-10,103.01. A notice of the right of the person holding the nursery stock distributor license or the person named in the notice to such hearing shall include notice that the right of the person holding the nursery stock distributor license or the person named in the notice to a hearing may be waived pursuant to subsection (5) of this section. A notice of such right to a hearing shall include notice of the potential actions that may be taken against the person holding the nursery stock distributor license or the person named in the notice.

(4) The hearings provided for in the act shall be conducted by the director at a time and place he or she designates. The director shall make a final finding based upon the complete hearing record and issue an order. If the director has suspended a license pursuant to subsection (3) of section 2-10,103.01, the director shall sustain, modify, or rescind the order. All hearings shall be in accordance with the Administrative Procedure Act.

(5) The person holding the nursery stock distributor license or the person named in the notice shall be deemed to waive the right to a hearing if such person does not come to the hearing at the time and place set forth in the notice described in subsection (3) of this section without requesting the director at least two days before the designated time to change the time and place for the hearing, except that before an order of the director becomes final, the director may designate a different time and place for the hearing if the person shows the director that the person had a justifiable reason for not coming to the hearing and not timely requesting a change in the time and place for such hearing. If the person holding the nursery stock distributor license or the person named in the notice waives the right to a hearing, the director shall

make a final finding based upon the available information and issue an order. If the director has suspended a license pursuant to subsection (3) of section 2-10,103.01, the director shall sustain, modify, or rescind the order.

(6) Any person aggrieved by the finding of the director shall have ten days from the entry of the director's order to request a new hearing if such person can show that a mistake of fact has been made which affected the director's determination. Any order of the director shall become final upon the expiration of ten days after its entry if no request for a new hearing is made.

Source: Laws 1993, LB 406, § 26; Laws 2013, LB68, § 16.

Cross References

Administrative Procedure Act, see section 84-920.

2-10,104 Foreign distributor; reciprocity; department; reciprocal agreements.

(1) Any person residing outside the state and desiring to solicit orders or distribute nursery stock in Nebraska may do so if:

(a) Such person is duly licensed under the nursery laws of the state where the nursery stock originates and the laws of that state are essentially equivalent to the laws of Nebraska as determined by the department; and

(b) Such person complies with the Plant Protection and Plant Pest Act and the rules and regulations on all nursery stock distributed in Nebraska.

(2) The department may cooperate with and enter into reciprocal agreements with other states regarding licensing and movement of nursery stock. Reciprocal agreements with other states shall not prevent the department from prohibiting the distribution in Nebraska of nursery stock which fails to meet the minimum criteria for nursery stock of Nebraska-licensed nursery stock distributors.

Source: Laws 1988, LB 874, § 33; Laws 2013, LB68, § 17.

2-10,105 Optional inspections; nursery stock distributor's license; optional issuance.

(1) Optional inspections of plants may be conducted by the department upon request by any persons desiring such inspection. A fee as set forth in subsection (2) of section 2-1095 shall be charged for such an inspection.

(2) Any person who desires a nursery stock distributor's license for any greenhouse plants grown for indoor use, annual plants, florist stock, cut flowers, sod, turf, onions, or potatoes, or seeds of any such plant, may apply for such license to the department. The inspection of such plants shall conform to the same requirements that apply to the inspection of nursery stock as set forth in section 2-1095. For persons who grow or distribute both nursery stock and greenhouse plants grown for indoor use, annual plants, florist stock, cut flowers, sod, turf, onions, or potatoes, or seeds of any such plant, one license shall be issued if the annual inspection of such plants is conducted concurrently with the nursery stock inspection and the other requirements of the Plant Protection and Plant Pest Act are met. If a reinspection trip is required, the

applicant shall be assessed a reinspection fee as outlined in subsection (2) of section 2-1095.

Source: Laws 1988, LB 874, § 34; Laws 1993, LB 406, § 27; Laws 2013, LB68, § 18.

2-10,106 Importation and distribution; labeling requirements; exception; department; powers.

(1) It shall be unlawful for any person, including any carrier transporting nursery stock, to bring into or cause to be brought into Nebraska any nursery stock unless such shipment is plainly and legibly marked with a label showing the name and address of the consignor and consignee, the nature and quantity of the contents, the place of origin, and the license or its equivalent issued by the recognized authorizing agency stating that the nursery from which the nursery stock originates has been inspected.

(2) It shall be unlawful for any person to distribute in Nebraska nursery stock for the purpose of resale in Nebraska without meeting the labeling criteria stated in this section.

(3) The requirements of this section shall not apply to nursery stock distributed to the final consumer at a distribution location where a valid nursery stock distributor's license has been conspicuously posted.

(4) The department may cause to be held for inspection any plants, regardless of proper labeling according to the Plant Protection and Plant Pest Act, if there is reason to believe they are infested or infected with plant pests. Such plants shall be held only for a period of time reasonable for proper inspection and any treatment deemed necessary by the department. The department shall not be held responsible for costs incurred by treatment or delay.

(5) In carrying out this section, the department may intercept or detain any person or property including vehicles or vessels reasonably believed to be carrying any plants or any other articles capable of carrying plant pests. The department may hold for treatment, destroy, or otherwise dispose of any plants, if found infested or infected with plant pests, at the owner's cost.

Source: Laws 1988, LB 874, § 35; Laws 2013, LB68, § 19.

2-10,111 Costs; liability.

(1) All costs associated with treating, seizing, or destroying any plant or issuing and enforcing any withdrawal-from-distribution order for any plant, which plant is in violation of the Plant Protection and Plant Pest Act or the rules and regulations adopted and promulgated pursuant to the act, shall be the responsibility of the person in possession of the plant. The department shall be reimbursed by the person in possession of the plant for the actual cost incurred by the department in enforcing the act or such rules and regulations.

(2) All costs related to enforcement of the act and such rules and regulations shall be the responsibility of the person violating the act. The department shall be reimbursed by persons violating the act or such rules and regulations for the actual cost incurred by the department in enforcing the act.

(3) The department shall not be liable for any costs incurred by any person due to any departmental actions relating to the enforcement of the act or such rules and regulations.

Source: Laws 1988, LB 874, § 40; Laws 2013, LB68, § 20.

2-10,115 Violations; penalties; appeal of department order; procedure.

(1) Any person shall be guilty of a Class IV misdemeanor for the first violation and a Class II misdemeanor for any subsequent violation of the same nature and in violation of the Plant Protection and Plant Pest Act if that person:

(a) Distributes nursery stock without a nursery stock distributor license issued under the Plant Protection and Plant Pest Act;

(b) Receives nursery stock for further distribution from any person who has not been duly licensed or approved under the act;

(c) Uses any license issued by the department after it has been revoked or has expired, while the licensee was under suspension, or for purposes other than those authorized by the act;

(d) Offers any hindrance or resistance to the department in the carrying out of the act, including, but not limited to, denying or concealing information or denying access to any property relevant to the proper enforcement of the act;

(e) Allows any plant declared a nuisance plant as outlined in section 2-10,107 to exist on such person's property or distributes any such plants or materials capable of harboring plant pests;

(f) Acts as a nursery stock distributor and:

(i) Fails to comply with provisions for treatment or destruction of nursery stock as required by withdrawal-from-distribution orders;

(ii) Distributes any quarantined nursery stock or nursery stock for which a withdrawal-from-distribution order has been issued;

(iii) Distributes nursery stock for the purpose of further distribution to any person in Nebraska not licensed as a nursery stock distributor; or

(iv) Fails to pay all fees required by the act and the rules and regulations;

(g) Distributes nursery stock which is not sound, healthy, reasonably capable of growth, labeled correctly, and free from injurious plant pests;

(h) Distributes plants which have been quarantined or are in a quarantined area;

(i) Violates any item set forth as unlawful in section 2-10,106;

(j) Distributes biological control agents or genetically engineered plant organisms without a permit if a permit is required by the act;

(k) Fails to keep and make available for examination by the department all books, papers, and other information necessary for the enforcement of the act;

(l) Violates any order of the director after such order has become final or upon termination of any review proceeding when the order has been sustained by a court of law; or

(m) Violates any other provision of the Plant Protection and Plant Pest Act.

(2) Any lot or shipment of plants not in compliance with the Plant Protection and Plant Pest Act, the rules and regulations, or both shall be subject to seizure on complaint of the department to a court of competent jurisdiction in the county in which such plants are located. If the court finds the plants to be in violation of the act, the rules and regulations, or both and orders the condemnation of the plants, such plants shall be disposed of in any manner deemed necessary by the department. In no instance shall the disposition of the plants be ordered by the court without first giving the claimant an opportunity to apply to the court for release of such plants or for permission to treat or relabel

the plants to bring such plants into compliance with the act, the rules and regulations, or both.

(3) It shall be the duty of the Attorney General or the county attorney of the county in which any violation occurs or is about to occur, when notified by the department of a violation or threatened violation, to pursue appropriate proceedings without delay pursuant to this section, subdivision (6) of section 2-1091, or subsection (3) of section 2-10,103.02 or any combination thereof.

(4) Any person adversely affected by an order made by the department pursuant to the Plant Protection and Plant Pest Act may appeal such order, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1988, LB 874, § 44; Laws 1993, LB 406, § 29; Laws 2013, LB68, § 21.

Cross References

Administrative Procedure Act, see section 84-920.

2-10,116.01 Repealed. Laws 2013, LB 68, § 23.

ARTICLE 12 HORSERACING

Section

- 2-1203. Commission; powers; fines; board of stewards; powers; appeal; fine.
- 2-1203.01. State Racing Commission; duties.
- 2-1207. Horseracing; parimutuel wagering; how conducted; certificate, contents; deductions; licensee; duties; person under nineteen years of age prohibited; penalty.
- 2-1208. Race meetings; tax; fees.
- 2-1216. Parimutuel wagering legalized; fees paid, how construed.
- 2-1221. Accepting anything of value to be wagered, transmitted, or delivered for wager; delivering off-track wagers; prohibited; penalty.
- 2-1222. Racing Commission's Cash Fund; created; receipts; use; investment.
- 2-1230. Repealed. Laws 2014, LB 656, § 9.
- 2-1231. Repealed. Laws 2014, LB 656, § 9.
- 2-1232. Repealed. Laws 2014, LB 656, § 9.
- 2-1233. Repealed. Laws 2014, LB 656, § 9.
- 2-1234. Repealed. Laws 2014, LB 656, § 9.
- 2-1235. Repealed. Laws 2014, LB 656, § 9.
- 2-1236. Repealed. Laws 2014, LB 656, § 9.
- 2-1237. Repealed. Laws 2014, LB 656, § 9.
- 2-1238. Repealed. Laws 2014, LB 656, § 9.
- 2-1239. Repealed. Laws 2014, LB 656, § 9.
- 2-1240. Repealed. Laws 2014, LB 656, § 9.
- 2-1241. Repealed. Laws 2014, LB 656, § 9.
- 2-1242. Repealed. Laws 2014, LB 656, § 9.

2-1203 Commission; powers; fines; board of stewards; powers; appeal; fine.

The State Racing Commission shall have power to prescribe and enforce rules and regulations governing horseraces and race meetings licensed as provided in sections 2-1201 to 2-1229. Such rules and regulations shall contain criteria to be used by the commission for decisions on approving and revoking track licenses and setting racing dates.

The commission may revoke or suspend licenses issued to racing industry participants and may, in lieu of or in addition to such suspension or revocation, impose a fine in an amount not to exceed five thousand dollars upon a finding

that a rule or regulation has been violated by a licensed racing industry participant. The exact amount of the fine shall be proportional to the seriousness of the violation and the extent to which the licensee derived financial gain as a result of the violation.

The commission may delegate to a board of stewards such of the commission's powers and duties as may be necessary to carry out and effectuate the purposes of sections 2-1201 to 2-1229.

Any decision or action of such board of stewards may be appealed to the commission or may be reviewed by the commission on its own initiative. The board of stewards may impose a fine not to exceed fifteen hundred dollars upon a finding that a rule or regulation has been violated.

The commission shall remit administrative fines collected under this section to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 1935, c. 173, § 3, p. 630; C.S.Supp., 1941, § 2-1503; R.S. 1943, § 2-1203; Laws 1975, LB 582, § 1; Laws 1980, LB 939, § 3; Laws 1991, LB 200, § 1; Laws 1992, LB 718, § 1; Laws 1994, LB 1153, § 1; Laws 2001, LB 295, § 2; Laws 2003, LB 243, § 1; Laws 2005, LB 573, § 1; Laws 2014, LB656, § 1.
Effective date July 18, 2014.

2-1203.01 State Racing Commission; duties.

The State Racing Commission shall:

(1) Enforce all state laws covering horseracing as required by sections 2-1201 to 2-1229 and enforce rules and regulations adopted and promulgated by the commission under the authority of section 2-1203;

(2) License racing industry participants, race officials, mutuel employees, concessionaires, and such other persons as deemed necessary by the commission if the license applicants meet eligibility standards established by the commission;

(3) Prescribe and enforce security provisions, including, but not limited to, the restricted access to areas within track enclosures and backstretch areas, and prohibitions against misconduct or corrupt practices;

(4) Determine or cause to be determined by chemical testing and analysis of body fluids whether or not any prohibited substance has been administered to the winning horse of each race and any other horse selected by the board of stewards;

(5) Verify the certification of horses registered as being Nebraska-bred under section 2-1213; and

(6) Collect and verify the amount of revenue received by the commission under section 2-1208.

Source: Laws 1980, LB 939, § 2; Laws 1989, LB 591, § 1; Laws 1992, LB 718, § 2; Laws 2014, LB656, § 2.
Effective date July 18, 2014.

2-1207 Horseracing; parimutuel wagering; how conducted; certificate, contents; deductions; licensee; duties; person under nineteen years of age prohibited; penalty.

(1) Within the enclosure of any racetrack where a race or race meeting licensed and conducted under sections 2-1201 to 2-1218 is held or at a racetrack licensed to simulcast races or conduct interstate simulcasting, the parimutuel method or system of wagering on the results of the respective races may be used and conducted by the licensee. Under such system, the licensee may receive wagers of money from any person present at such race or racetrack receiving the simulcast race or conducting interstate simulcasting on any horse in a race selected by such person to run first in such race, and the person so wagering shall acquire an interest in the total money so wagered on all horses in such race as first winners in proportion to the amount of money wagered by him or her. Such licensee shall issue to each person so wagering a certificate on which shall be shown the number of the race, the amount wagered, and the number or name of the horse selected by such person as first winner. As each race is run, at the option of the licensee, the licensee may deduct from the total sum wagered on all horses as first winners not less than fifteen percent or more than eighteen percent from such total sum, plus the odd cents of the redistribution over the next lower multiple of ten. At the option of the licensee, the licensee may deduct up to and including twenty-five percent from the total sum wagered by exotic wagers as defined in section 2-1208.03. The State Racing Commission may authorize other levels of deduction on wagers conducted by means of interstate simulcasting. The licensee shall notify the commission in writing of the percentages the licensee intends to deduct during the live race meet conducted by the licensee and shall notify the commission at least one week in advance of any changes to such percentages the licensee intends to make. The licensee shall also deduct from the total sum wagered by exotic wagers, if any, the tax plus the odd cents of the redistribution over the next multiple of ten as provided in subsection (1) of section 2-1208.04. The balance remaining on hand shall be paid out to the holders of certificates on the winning horse in the proportion that the amount wagered by each certificate holder bears to the total amount wagered on all horses in such race to run first. The licensee may likewise receive such wagers on horses selected to run second, third, or both, or in such combinations as the commission may authorize, the method, procedure, and authority and right of the licensee, as well as the deduction allowed to the licensee, to be as specified with respect to wagers upon horses selected to run first.

(2) At all race meets held pursuant to this section, the licensee shall deduct from the total sum wagered one-third of the amount over fifteen percent deducted pursuant to subsection (1) of this section on wagers on horses selected to run first, second, or third and one percent of all exotic wagers to be used to promote agriculture and horse breeding in Nebraska and for the support and preservation of horseracing pursuant to section 2-1207.01.

(3) No person under nineteen years of age shall be permitted to make any parimutuel wager, and there shall be no wagering except under the parimutuel method outlined in this section. Any person, association, or corporation who knowingly aids or abets a person under nineteen years of age in making a parimutuel wager shall be guilty of a Class IV misdemeanor.

Source: Laws 1935, c. 173, § 7, p. 631; C.S.Supp.,1941, § 2-1507; R.S. 1943, § 2-1207; Laws 1959, c. 5, § 1, p. 71; Laws 1963, c. 6, § 1, p. 66; Laws 1965, c. 9, § 1, p. 123; Laws 1973, LB 76, § 1; Laws 1976, LB 519, § 5; Laws 1977, LB 40, § 12; Laws 1982, LB 631, § 1; Laws 1983, LB 365, § 1; Laws 1986, LB 1041, § 4; Laws

1987, LB 708, § 5; Laws 1989, LB 591, § 2; Laws 1990, LB 1055, § 1; Laws 1992, LB 718, § 3; Laws 1993, LB 471, § 1; Laws 1994, LB 1153, § 3; Laws 2005, LB 573, § 2; Laws 2014, LB656, § 3.

Effective date July 18, 2014.

2-1208 Race meetings; tax; fees.

For all race meetings, every corporation or association licensed under the provisions of sections 2-1201 to 2-1218 shall pay the tax imposed by section 2-1208.01 and shall also pay to the State Racing Commission the sum of sixty-four one hundredths of one percent of the gross sum wagered by the parimutuel method at each licensed racetrack enclosure during the calendar year. For race meetings devoted principally to running live races, the licensee shall pay to the commission the sum of fifty dollars for each live racing day that the licensee serves as the host track for intrastate simulcasting and twenty-five dollars for any other live racing day.

No other license tax, permit tax, occupation tax, or excise tax or racing fee, except as provided in this section and in sections 2-1203 and 2-1208.01, shall be levied, assessed, or collected from any such licensee by the state or by any county, township, district, city, village, or other governmental subdivision or body having power to levy, assess, or collect any such tax or fee.

Source: Laws 1935, c. 173, § 8, p. 632; C.S.Supp.,1941, § 2-1508; R.S. 1943, § 2-1208; Laws 1959, c. 5, § 2, p. 72; Laws 1980, LB 939, § 4; Laws 1992, LB 718, § 4; Laws 1994, LB 1153, § 4; Laws 1999, LB 127, § 1; Laws 2005, LB 573, § 3; Laws 2014, LB656, § 4.

Effective date July 18, 2014.

2-1216 Parimutuel wagering legalized; fees paid, how construed.

The parimutuel system of wagering on the results of horseraces, when conducted within the racetrack enclosure at licensed horserace meetings, shall not under any circumstances be held or construed to be unlawful, any other statutes of the State of Nebraska to the contrary notwithstanding. The money inuring to the State Racing Commission under sections 2-1201 to 2-1218 from permit fees or from other sources shall never be considered as license money. It is the intention of the Legislature that the funds arising under such sections be construed as general revenue to be appropriated and allocated exclusively for the specific purposes set forth in such sections.

Source: Laws 1935, c. 173, § 20, p. 637; C.S.Supp.,1941, § 2-1516; R.S.1943, § 2-1216; Laws 1992, LB 718, § 5; Laws 2014, LB656, § 5.

Effective date July 18, 2014.

2-1221 Accepting anything of value to be wagered, transmitted, or delivered for wager; delivering off-track wagers; prohibited; penalty.

Except as provided in section 2-1207, whoever directly or indirectly accepts anything of value to be wagered or to be transmitted or delivered for wager in any parimutuel system of wagering on horseraces or delivers anything of value which has been received outside of the enclosure of a racetrack holding a race meet licensed under sections 2-1201 to 2-1247 to be placed as wagers in the

parimutuel pool within such enclosure shall be guilty of a Class II misdemeanor.

Source: Laws 1977, LB 273, § 1; Laws 1978, LB 748, § 1; Laws 1984, LB 915, § 1; Laws 1987, LB 1, § 10; Laws 1992, LB 718, § 6; Laws 2014, LB656, § 6.
Effective date July 18, 2014.

2-1222 Racing Commission's Cash Fund; created; receipts; use; investment.

There is hereby created the Racing Commission's Cash Fund from which shall be appropriated such amounts as are available therefrom and as shall be considered incident to the administration of the State Racing Commission's office. The fund shall contain all license fees and gross receipt taxes collected by the commission as provided under sections 2-1203, 2-1203.01, and 2-1208 but shall not include taxes collected pursuant to section 2-1208.01, and such fees and taxes collected shall be remitted to the State Treasurer for credit to the Racing Commission's Cash 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 1980, LB 939, § 6; Laws 1992, LB 718, § 7; Laws 1994, LB 1066, § 4; Laws 2014, LB656, § 7.
Effective date July 18, 2014.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

2-1230 Repealed. Laws 2014, LB 656, § 9.

2-1231 Repealed. Laws 2014, LB 656, § 9.

2-1232 Repealed. Laws 2014, LB 656, § 9.

2-1233 Repealed. Laws 2014, LB 656, § 9.

2-1234 Repealed. Laws 2014, LB 656, § 9.

2-1235 Repealed. Laws 2014, LB 656, § 9.

2-1236 Repealed. Laws 2014, LB 656, § 9.

2-1237 Repealed. Laws 2014, LB 656, § 9.

2-1238 Repealed. Laws 2014, LB 656, § 9.

2-1239 Repealed. Laws 2014, LB 656, § 9.

2-1240 Repealed. Laws 2014, LB 656, § 9.

2-1241 Repealed. Laws 2014, LB 656, § 9.

2-1242 Repealed. Laws 2014, LB 656, § 9.**ARTICLE 15****NEBRASKA NATURAL RESOURCES COMMISSION**

(a) GENERAL PROVISIONS

Section

- 2-1501. Terms, defined.
- 2-1504. Nebraska Natural Resources Commission; creation; functions; membership; selection; terms; vacancy.
- 2-1506. Water Sustainability Fund; goals; legislative findings.
- 2-1507. Water Sustainability Fund; distribution; allocation; natural resources district; eligibility; report.
- 2-1508. Commission; rank and score applications for funding; criteria.
- 2-1509. Application; form; contents; director; duties; state participation; request.
- 2-1510. Program, project, or activity; funding request; director; powers; findings; conflict of interest.
- 2-1511. Director; recommendations; agreement; contents; loan; repayment period; successor; contract; lien; filing.
- 2-1512. Department; powers; Water Sustainability Fund; use.
- 2-1513. Water Sustainability Fund; legislative analysis.

(c) NEBRASKA RESOURCES DEVELOPMENT FUND

- 2-1588. Fund; allocation; report; projects; costs.
- 2-1592. Grant or loan; application; deadline; procedure.

(a) GENERAL PROVISIONS

2-1501 Terms, defined.

As used in sections 2-1501 to 2-15,123, unless the context otherwise requires:

- (1) Commission means the Nebraska Natural Resources Commission;
- (2) State means the State of Nebraska;
- (3) Agency of this state means the government of this state and any subdivision, agency, or instrumentality, corporate or otherwise, of the government of this state;
- (4) United States or agencies of the United States means the United States of America, the Natural Resources Conservation Service of the United States Department of Agriculture, and any other agency or instrumentality, corporate or otherwise, of the United States of America;
- (5) Government or governmental means the government of this state, the government of the United States, and any subdivision, agency, or instrumentality, corporate or otherwise, of either of them;
- (6) Lands, easements, and rights-of-way means lands and rights or interests in lands whereon channel improvements, channel rectifications, or water-retarding or gully-stabilization structures are located, including those areas for flooding and flowage purposes, spoil areas, borrow pits, access roads, and similar purposes;
- (7) Local organization means any natural resources district, drainage district, irrigation district, or other public district, county, city, or state agency;
- (8) Subwatershed means a portion of a watershed project as divided by the department on a complete hydrologic unit;
- (9) Rechanneling means the channeling of water from one watercourse to another watercourse by means of open ditches;

(10) Watercourse means any depression two feet or more below the surrounding land serving to give direction to a current of water at least nine months of the year, having a bed and well-defined banks and, upon order of the commission, also includes any particular depression which would not otherwise be within the definition of watercourse;

(11) Director means the Director of Natural Resources;

(12) Department means the Department of Natural Resources; and

(13) Combined sewer overflow project means a municipal project to reduce overflows from a combined sewer system pursuant to a long-term control plan approved by the Department of Environmental Quality.

Source: Laws 1937, c. 8, § 3, p. 93; C.S.Supp.,1941, § 2-1903; R.S.1943, § 2-1503; Laws 1951, c. 7, § 1, p. 73; Laws 1959, c. 6, § 2, p. 75; Laws 1961, c. 4, § 1, p. 65; Laws 1961, c. 3, § 2, p. 62; Laws 1963, c. 8, § 2, p. 73; Laws 1963, c. 9, § 1, p. 76; Laws 1969, c. 16, § 1, p. 164; Laws 1969, c. 9, § 66, p. 138; Laws 1971, LB 415, § 1; Laws 1972, LB 542, § 1; Laws 1977, LB 510, § 1; Laws 1984, LB 1106, § 11; Laws 1999, LB 403, § 1; R.S.Supp.,1999, § 2-1503; Laws 2000, LB 900, § 17; Laws 2014, LB1098, § 1. Operative date April 17, 2014.

2-1504 Nebraska Natural Resources Commission; creation; functions; membership; selection; terms; vacancy.

(1) The Nebraska Natural Resources Commission is established. The commission shall advise the department as requested by the director and shall perform such other functions as are specifically conferred on the commission by law. The commission shall have no jurisdiction over matters pertaining to water rights.

(2) The voting members of the commission, all of whom shall have attained the age of majority, shall be:

(a) One resident of each of the following river basins, with delineations being those on the Nebraska river basin map officially adopted by the commission and on file with the department: (i) The Niobrara River, White River, and Hat Creek basin, (ii) the North Platte River basin, (iii) the South Platte River basin, (iv) the middle Platte River basin, (v) the lower Platte River basin, (vi) the Loup River basin, (vii) the Elkhorn River basin, (viii) the Missouri tributaries basin, (ix) the Republican River basin, (x) the Little Blue River basin, (xi) the Big Blue River basin, and (xii) the Nemaha River basin;

(b) One additional resident of each river basin which encompasses one or more cities of the metropolitan class; and

(c) Fourteen members appointed by the Governor, subject to confirmation by the Legislature. Of the members appointed by the Governor, one shall represent each of the following categories: Agribusiness interests; agricultural interests; ground water irrigators; irrigation districts; manufacturing interests; metropolitan utilities districts; municipal users of water from a city of the primary class; municipal users of water from a city of the first or second class or a village; outdoor recreation users; public power districts; public power and irrigation districts; range livestock owners; surface water irrigators; and wildlife conservation interests.

(3) Members of the commission described in subdivision (2)(a) of this section shall be selected for four-year terms at individual caucuses of the natural resources district directors residing in the river basin from which the member is selected. Such caucuses shall be held for each basin within ten days following the first Thursday after the first Tuesday of the year the term of office of the member from that basin expires. The dates and locations for such caucuses shall be established by the commission, and the commission shall provide notice to the public by issuing press releases for publication in a newspaper of general circulation in each county that comprises the river basin for which a caucus election will be held. Terms of office of such members shall follow the sequence originally determined by the river basin representatives to the commission at their first meeting on the third Thursday after the first Tuesday in January 1975. All river basin members shall take office on the third Thursday after the first Tuesday in January following their selection and any vacancy shall be filled for the unexpired term by a caucus held within thirty days following the date such vacancy is created. Each member of the commission representing a river basin shall qualify by filing with the other members of the commission an acceptance in writing of his or her selection.

(4) Members of the commission described in subdivision (2)(b) of this section shall be residents of natural resources districts which encompass one or more cities of the metropolitan class and shall be selected in the same manner, at the same time, and for a four-year term having the same term sequence as provided for the other members from such basin under subsection (3) of this section.

(5) For members of the commission described in subdivision (2)(c) of this section:

(a) The Governor shall appoint the eleven additional members added by Laws 2014, LB1098, within thirty days after April 17, 2014. The eleven additional appointments shall be for staggered four-year terms, as determined by the Governor. The Governor shall also set the terms of the current members of the commission appointed under such subdivision and serving on April 17, 2014, to staggered four-year terms. Future appointments shall be for four-year terms. Members whose terms have expired shall continue to serve until their successors have been appointed. In the case of a vacancy, the Governor shall appoint a successor for the unexpired term. Members may be removed for cause. Initial appointees shall begin serving immediately following notice of appointment, except that the member appointed representing municipal users of water from the class of city or a village that is being represented by the current member representing municipal users of water and the members representing surface water irrigators and ground water irrigators shall not begin serving until the term of the current member representative of the category expires or such member resigns or is otherwise removed; and

(b) In appointing such members, the Governor shall:

(i) Create a broad-based commission which has knowledge of, has experience with, and is representative of Nebraska's water use and economy;

(ii) Give recognition to the importance of both water quantity and water quality; and

(iii) Appoint members who represent diverse geographic regions of the state, including urban and rural areas, and represent, to the extent possible, the racial and ethnic diversity of the state.

(6) After the members have been appointed as required under this section, the commission shall revise or adopt and promulgate rules and regulations as necessary to administer the Water Sustainability Fund pursuant to sections 2-1506 to 2-1513.

Source: Laws 1937, c. 8, § 4, p. 94; C.S.Supp.,1941, § 2-1904; R.S.1943, § 2-1504; Laws 1951, c. 7, § 2, p. 74; Laws 1957, c. 3, § 2, p. 82; Laws 1959, c. 6, § 3, p. 76; Laws 1961, c. 4, § 2, p. 66; Laws 1963, c. 9, § 2, p. 78; Laws 1967, c. 7, § 1, p. 78; Laws 1967, c. 5, § 1, p. 73; Laws 1969, c. 9, § 67, p. 140; Laws 1972, LB 542, § 2; Laws 1973, LB 337, § 1; Laws 1977, LB 510, § 2; Laws 1980, LB 423, § 1; Laws 1983, LB 36, § 1; Laws 1983, LB 37, § 1; Laws 1984, LB 1106, § 13; Laws 2000, LB 900, § 22; Laws 2014, LB1098, § 2.

Operative date April 17, 2014.

Cross References

Department of Natural Resources, powers, see Chapter 61, article 2.

2-1506 Water Sustainability Fund; goals; legislative findings.

(1) The goals of the Water Sustainability Fund are to: (a) Provide financial assistance to programs, projects, or activities that increase aquifer recharge, reduce aquifer depletion, and increase streamflow; (b) remediate or mitigate threats to drinking water; (c) promote the goals and objectives of approved integrated management plans or ground water management plans; (d) contribute to multiple water supply management goals including flood control, reducing threats to property damage, agricultural uses, municipal and industrial uses, recreational benefits, wildlife habitat, conservation, and preservation of water resources; (e) assist municipalities with the cost of constructing, upgrading, developing, and replacing sewer infrastructure facilities as part of a combined sewer overflow project; (f) provide increased water productivity and enhance water quality; (g) use the most cost-effective solutions available; and (h) comply with interstate compacts, decrees, other state contracts and agreements and federal law.

(2) The Legislature finds that the goals of the Water Sustainability Fund can be met by equally considering programs, projects, or activities in the following categories: (a) Research, data, and modeling; (b) rehabilitation or restoration of water supply infrastructure, new water supply infrastructure, or water supply infrastructure maintenance or flood prevention for protection of critical infrastructure; (c) conjunctive management, storage, and integrated management of ground water and surface water; and (d) compliance with interstate compacts or agreements or other formal state contracts or agreements or federal law.

Source: Laws 2014, LB1098, § 3.

Operative date April 17, 2014.

2-1507 Water Sustainability Fund; distribution; allocation; natural resources district; eligibility; report.

(1) It is the intent of the Legislature that the Water Sustainability Fund be equitably distributed statewide to the greatest extent possible for the long term and give priority funding status to projects which are the result of federal mandates.

(2) Distributions to assist municipalities with the cost of constructing, upgrading, developing, and replacing sewer infrastructure facilities as part of a combined sewer overflow project shall be based on a demonstration of need and shall equal ten percent of the total annual appropriation to the Water Sustainability Fund if (a) applicants have applied for such funding as required under section 2-1509 and (b) any such application has been recommended for further consideration by the director and is subsequently approved for allocation by the commission pursuant to subsection (1) of section 2-1511. If more than one municipality demonstrates a need for funds pursuant to this subsection, funds shall be distributed proportionally based on population.

(3) Any money in the Water Sustainability Fund may be allocated by the commission to applicants in accordance with sections 2-1506 to 2-1513. Such money may be allocated in the form of grants or loans for water sustainability programs, projects, or activities undertaken within the state. The allocation of funds to a program, project, or activity in one form shall not of itself preclude additional allocations in the same or any other form to the same program, project, or activity.

(4) A natural resources district is eligible for funding from the Water Sustainability Fund only if the district has adopted or is currently participating in the development of an integrated management plan pursuant to subdivision (1)(a) or (b) of section 46-715.

(5) The commission shall utilize the resources and expertise of and collaborate with the Department of Natural Resources, the University of Nebraska, the Department of Environmental Quality, the Nebraska Environmental Trust Board, and the Game and Parks Commission on funding and planning for water programs, projects, or activities.

(6) A biennial report shall be made to the Clerk of the Legislature describing the work accomplished by the use of funds towards the goals of the Water Sustainability Fund beginning on December 31, 2015. The report submitted to the Clerk of the Legislature shall be submitted electronically.

Source: Laws 2014, LB1098, § 4.

Operative date April 17, 2014 .

2-1508 Commission; rank and score applications for funding; criteria.

The commission shall rank and score applications for funding based on criteria that demonstrate the extent to which a program, project, or activity:

- (1) Remediates or mitigates threats to drinking water;
- (2) Meets the goals and objectives of an approved integrated management plan or ground water management plan;
- (3) Contributes to water sustainability goals by increasing aquifer recharge, reducing aquifer depletion, or increasing streamflow;
- (4) Contributes to multiple water supply management goals, including, but not limited to, flood control, agricultural use, municipal and industrial uses, recreational benefits, wildlife habitat, conservation of water resources, and preservation of water resources;
- (5) Maximizes the beneficial use of Nebraska's water resources for the benefit of the state's residents;
- (6) Is cost-effective;

(7) Helps the state meet its obligations under interstate compacts, decrees, or other state contracts or agreements or federal law;

(8) Reduces threats to property damage or protects critical infrastructure that consists of the physical assets, systems, and networks vital to the state or the United States such that their incapacitation would have a debilitating effect on public security or public health and safety;

(9) Improves water quality;

(10) Has utilized all available funding resources of the local jurisdiction to support the program, project, or activity;

(11) Has a local jurisdiction with plans in place that support sustainable water use;

(12) Addresses a statewide problem or issue;

(13) Contributes to the state's ability to leverage state dollars with local or federal government partners or other partners to maximize the use of its resources;

(14) Contributes to watershed health and function; and

(15) Uses objectives described in the annual report and plan of work for the state water planning and review process issued by the department.

Source: Laws 2014, LB1098, § 5.

Operative date April 17, 2014.

2-1509 Application; form; contents; director; duties; state participation; request.

(1) Applicants for funds may file an application with the department for a grant or loan from the Water Sustainability Fund. Applications for grants to the department itself shall be filed by the department. Each application shall be filed in such manner and form and be accompanied by such information as may be prescribed by the director and the commission.

(2) Any such application shall:

(a) Describe the nature and purpose of the proposed program, project, or activity;

(b) Set forth or be accompanied by a plan for development of the proposed program, project, or activity, together with engineering, economic, and financial feasibility data and information, and such estimated costs of construction or implementation as may be required by the director and the commission;

(c) State whether money other than that for which the application is made will be used to help in meeting program, project, or activity costs and whether such money is available or has been sought for this purpose;

(d) When appropriate, state that the applicant holds or can acquire title to all lands or has the necessary easements and rights-of-way for the program, project, or activity and related lands and has or may acquire all water rights necessary for the proposed program, project, or activity;

(e) Show that the applicant possesses all necessary authority to undertake or participate in the proposed program, project, or activity; and

(f) Demonstrate the probable environmental and ecological consequences that may result from such proposed program, project, or activity.

(3) Upon receipt of an application, the director shall evaluate and investigate all aspects of the proposed program, project, or activity and the proposed schedule for development and completion of such program, project, or activity, determine eligibility for funding, and make appropriate recommendations to the commission pursuant to sections 2-1506 to 2-1513. As a part of his or her investigation, the director shall consider whether the plan for development of the program, project, or activity is satisfactory. If the director determines that the plan is unsatisfactory or that the application does not contain adequate information upon which to make determinations, the director shall return the application to the applicant and may make such recommendations to the applicant as are considered necessary to make the plan or the application satisfactory.

(4) Requests for utilization of the Water Sustainability Fund for state participation in any water and related land-water resources projects shall also be filed with the department for the director's evaluation, investigation, and recommendations. Such requests shall be filed in the manner and form and be accompanied by such information as shall be prescribed by the department and the commission.

Source: Laws 2014, LB1098, § 6.
Operative date April 17, 2014.

2-1510 Program, project, or activity; funding request; director; powers; findings; conflict of interest.

(1) Each program, project, or activity for which funding is requested, whether such request has as its origin an application or the action of the department itself, shall be reviewed as provided in sections 2-1506 to 2-1513 by the director prior to the approval of any allocation for such program, project, or activity by the commission.

(2) The director may recommend approval of and the commission may approve grants or loans, including the appropriate repayment period and the rate of interest, for program, project, or activity costs or acquisition of interests in programs, projects, or activities if after investigation and evaluation the director finds that:

- (a) The plan does not conflict with any existing Nebraska state land plan;
- (b) The proposed program, project, or activity is economically and financially feasible based upon standards adopted by the commission pursuant to sections 2-1506 to 2-1513;
- (c) The plan for development of the proposed program, project, or activity is satisfactory;
- (d) The plan of development minimizes any adverse impacts on the natural environment;
- (e) The applicant is qualified, responsible, and legally capable of carrying out the program, project, or activity;
- (f) In the case of a loan, the borrower has demonstrated the ability to repay the loan and there is assurance of adequate operation, maintenance, and replacement during the repayment life of the program, project, or activity;
- (g) The plan considers other plans and programs of the state and resources development plans of the political subdivisions of the state; and

(h) The money required from the Water Sustainability Fund is available.

(3) The director and staff of the department shall carry out their powers and duties under sections 2-1506 to 2-1513 independently of and without prejudice to their powers and duties under other provisions of law.

(4) No member of the commission shall be eligible to participate in the action of the commission concerning an application for funding to any entity in which such commission member has any interest. The director may be delegated additional responsibilities consistent with the purposes of sections 2-1506 to 2-1513. It shall be the sole responsibility of the commission to determine the priority in which funds are allocated for eligible programs, projects, or activities under section 2-1508.

Source: Laws 2014, LB1098, § 7.

Operative date April 17, 2014.

2-1511 Director; recommendations; agreement; contents; loan; repayment period; successor; contract; lien; filing.

(1) The director shall make recommendations based upon his or her review of the criteria set forth in section 2-1510 of whether an application should be considered further or rejected and the form of allocation he or she deems appropriate. The commission shall act in accordance with such recommendations according to the application procedures adopted and promulgated in rules and regulations.

(2) If, after review of the recommendation by the director, the commission determines that an application for a grant, loan, acquisition of an interest, or combination thereof pursuant to sections 2-1506 to 2-1513 is satisfactory and qualified to be approved, before the final approval of such application may be given and the funds allocated, the department shall enter into an agreement in the name of the state with the applicant agency or organization and with any other organizations it deems to be involved in the program, project, or activity to which funds shall be applied. The department shall also enter into such agreements as are appropriate before allocation of any funds for the acquisition of an interest in any qualified program, project, or activity when such acquisition is initiated by the department itself pursuant to section 2-1512. All agreements entered into pursuant to this section shall include, but not be limited to, a specification of the amount of funds involved, whether the funds are considered as a grant or loan or for the acquisition of an interest in the name of the state, and, if a combination of these is involved, the amount of funds allocated to each category, the specific purpose for which the allocation is made, the terms of administration of the allocated funds, and any penalties to be imposed upon the applicant organization should it fail to apply or repay the funds in accordance with the agreement.

(3) If the allocation to be approved is a loan, the department and the applicant or applicants shall include in the agreement provisions for repayment to the Water Sustainability Fund of money loaned together with any interest at reasonable rates as established by the commission. The agreement shall further provide that repayment of the loan together with any interest thereon shall commence no later than one full year after construction of the project or implementation of the program or activity is completed and that repayment shall be completed within the time period specified by the commission. The repayment period shall not exceed fifty years, except that the commission may

extend the time for making repayment in the event of extreme emergency or hardship. Such agreement shall also provide for such assurances of and security for repayment of the loan as shall be considered necessary by the department.

(4) With the express approval of the commission, an applicant may convey its interest in a program, project, or activity to a successor. The department shall contract with the qualified successor in interest of the original obligor for repayment of the loan together with any interest thereon and for succession to its rights and obligations in any contract with the department.

(5) The state shall have a lien upon a program, project, or activity constructed, improved, or renovated with money from the Water Sustainability Fund for the amount of the loan together with any interest thereon. This lien shall attach to all program, project, or activity facilities, equipment, easements, real property, and property of any kind or nature in which the loan recipient has an interest and which is associated with the program, project, or activity. The department shall file a statement of the lien, its amount, terms, and a description of the program, project, or activity with the register of deeds of each county in which the program, project, or activity or any part thereof is located. The register of deeds shall record the lien, and it shall be indexed as other liens are required by law to be indexed. The lien shall be valid until paid in full or otherwise discharged. The lien shall be foreclosed in accordance with applicable state law governing foreclosure of mortgages and liens. Any lien provided for by this section may be subordinate to that which secures federal assistance or other secured assistance received on the same program, project, or activity.

Source: Laws 2014, LB1098, § 8.

Operative date April 17, 2014.

2-1512 Department; powers; Water Sustainability Fund; use.

In order to develop Nebraska's water resources, the department, using the process provided for in subsection (4) of section 2-1509, and with the approval of the commission, may acquire interests in water and related land resources projects in the name of the state utilizing the Water Sustainability Fund. Such use of the fund shall be made when the public benefits obtained from the projects or a part thereof are statewide in nature and when associated costs are determined to be more appropriately financed by other than a local organization. Such use of the fund may be made upon the determination by the department and the commission that such acquisition is appropriate under sections 2-1506 to 2-1513. The department, with the approval of the commission, may also acquire interests in water resource projects in the name of the state to meet future demands for usable water. Such water resource projects may include, but not be limited to, the construction of dams and reservoirs to provide surplus water storage capacity for municipal and industrial water demands and for other projects to assure an adequate quantity of usable water. In furtherance of these goals, the department may contract with the federal government or any of its agencies or departments for the inclusion of additional water supply storage space behind existing or proposed structures.

Source: Laws 2014, LB1098, § 9.

Operative date April 17, 2014.

2-1513 Water Sustainability Fund; legislative analysis.

The Appropriations Committee of the Legislature shall, beginning with the FY2019-21 biennial budget review process, conduct a biennial analysis of the financial status of the Water Sustainability Fund, including a review of the committed and uncommitted balance of the fund and the financial impact of pending programs, projects, or activities. The committee shall base its recommendation for transfers to the Water Sustainability Fund upon information provided in the review process.

Source: Laws 2014, LB1098, § 10.
Operative date April 17, 2014.

(c) NEBRASKA RESOURCES DEVELOPMENT FUND

2-1588 Fund; allocation; report; projects; costs.

(1) No money in the Nebraska Resources Development Fund may be reallocated by the commission in accordance with sections 2-1586 to 2-1595 for utilization by the department, by any state office, agency, board, or commission, or by any political subdivision of the state which has the authority to develop the state's water and related land resources after March 30, 2014. The commission may commit appropriated funds to projects approved as of March 30, 2014, not to exceed amounts specifically allocated to such projects prior to March 30, 2014. Prior to March 30, 2014, the fund may be allocated in the form of grants or loans or for acquiring state interests in water and related land resources programs and projects undertaken within the state. The allocation of funds to a program or project in one form shall not of itself preclude additional allocations in the same or any other form to the same program or project. Funds may also be allocated to assist natural resources districts in the preparation of management plans as provided in section 46-709. Funds so allocated shall not be subject to sections 2-1589 to 2-1595.

(2) No project, including all related phases, segments, parts, or divisions, shall receive more than ten million dollars from the fund. On July 1 of each year after 1993, the director shall adjust the project cost and payment limitation of this subsection by an amount equal to the average percentage change in a readily available construction cost index for the prior three years.

(3) Prior to September 1 of each even-numbered year, a biennial report shall be made to the Governor and the Clerk of the Legislature describing the work accomplished by the use of such development fund during the immediately preceding two-year period. The report submitted to the Clerk of the Legislature shall be submitted electronically. The report shall include a complete financial statement. Each member of the Legislature shall receive an electronic copy of such report upon making a request to the director.

Source: Laws 1974, LB 975, § 3; Laws 1979, LB 322, § 3; Laws 1981, LB 545, § 2; R.S.Supp., 1982, § 2-3265; Laws 1984, LB 1106, § 17; Laws 1985, LB 102, § 2; Laws 1993, LB 155, § 1; Laws 1996, LB 108, § 2; Laws 1998, LB 656, § 5; Laws 2000, LB 900, § 33; Laws 2001, LB 129, § 1; Laws 2004, LB 962, § 2; Laws 2006, LB 1226, § 3; Laws 2009, LB179, § 1; Laws 2012, LB782, § 3; Laws 2014, LB906, § 9.
Effective date March 30, 2014.

2-1592 Grant or loan; application; deadline; procedure.

(1) Any organization qualified to apply for and receive funds from the Nebraska Resources Development Fund may file an application with the department for a grant or loan from such fund. Applications for grants to the department itself shall be filed by the department. Each application shall be filed in such manner and form and be accompanied by such information as may be prescribed by the director and the commission. No applications may be made to receive funds by grant or loan from the Nebraska Resources Development Fund after March 30, 2014.

(2) Any such application shall:

(a) Describe the nature and purpose of the proposed program or project;

(b) Set forth or be accompanied by a plan for development of the proposed program or project, together with engineering, economic, and financial feasibility data and information, and such estimated costs of construction or implementation as may be required by the director and the commission;

(c) State whether money other than that for which the application is made will be used to help in meeting program or project costs and whether such money is available or has been sought for this purpose;

(d) When appropriate, state that the applicant holds or can acquire title to all lands or has the necessary easements and rights-of-way for the project and related lands and has or may acquire all water rights necessary for the proposed project;

(e) Show that the applicant possesses all necessary authority to undertake or participate in the proposed program or project; and

(f) Demonstrate the probable environmental and ecological consequences that may result from such proposed program or project.

(3) Upon receipt of an application, the director shall evaluate and investigate all aspects of the proposed program or project and the proposed schedule for development and completion of such program or project, determine the eligibility of the program or project for funding, and make appropriate recommendations to the commission pursuant to sections 2-1586 to 2-1595. As a part of his or her investigation, the director shall consider whether the plan for development of the program or project is satisfactory. If the director determines that the plan is unsatisfactory or that the application does not contain adequate information upon which to make determinations, the director shall return the application to the applicant and may make such recommendations to the applicant as are considered necessary to make the plan or the application satisfactory.

(4) Requests for utilization of the Nebraska Resources Development Fund for state participation in any water and related land-water resources projects through acquisition of a state interest therein shall also be filed with the department for the director's evaluation, investigation, and recommendations. Such requests shall be filed in the manner and form and be accompanied by such information as shall be prescribed by the department and the commission.

Source: Laws 1974, LB 975, § 7; R.S.1943, (1977), § 2-3269; Laws 1984, LB 1106, § 18; Laws 2000, LB 900, § 36; Laws 2014, LB906, § 10.

Effective date March 30, 2014.

ARTICLE 26

PESTICIDES

Section

- 2-2624. Terms, defined.
- 2-2626. Department; powers and duties.
- 2-2629. Registration; application; contents; department; powers; confidentiality; agent for service of process.
- 2-2634. Registration and renewal fees; late registration fee.
- 2-2635. Pesticide dealer license; when required; application; fee; expiration; display; department; powers; disciplinary actions; restricted-use pesticides; records required; registered agent for service of process.
- 2-2636. Pesticide applicators; restrictions; department; duties; reciprocity.
- 2-2638. Commercial applicator license; when required; application; denial, when; fee; resident agent for service of process.
- 2-2639. Noncommercial applicator license; application; denial, when; resident agent for service of process.
- 2-2641. Private applicator; qualifications; application for license; requirements; fee.
- 2-2642. Commercial, noncommercial, and private applicator licenses; expiration; renewal; procedure; noncertified applicator; restrictions.
- 2-2646. Prohibited acts.
- 2-2646.01. Pesticide business; owner or operator; liability.
- 2-2656. Nebraska aerial pesticide business license; application; form; contents; fee; resident agent.

2-2624 Terms, defined.

For purposes of the Pesticide Act:

(1) Active ingredient means:

(a) In the case of a pesticide other than a plant regulator, defoliant, or desiccant, an ingredient that prevents, destroys, repels, or mitigates a pest;

(b) In the case of a plant regulator, an ingredient that, through physiological action, accelerates or retards the rate of growth or rate of maturation or otherwise alters the behavior of an ornamental or crop plant or a product of an ornamental or crop plant;

(c) In the case of a defoliant, an ingredient that causes leaves or foliage to drop from a plant; or

(d) In the case of a desiccant, an ingredient that artificially accelerates the drying of plant tissue;

(2) Administrator means the Administrator of the United States Environmental Protection Agency;

(3) Adulterated means:

(a) That the strength or purity of a pesticide falls below the professed standard of quality as expressed on the labeling under which a pesticide is sold;

(b) That any substance is substituted wholly or in part for the pesticide; or

(c) That any valuable constituent of the pesticide has been wholly or in part abstracted;

(4) Animal means a vertebrate or invertebrate species, including humans, other mammals, birds, fish, and shellfish;

(5) Antidote means a practical treatment used in preventing or lessening ill effects from poisoning, including first aid;

(6) Biological control agent means any living organism applied to or introduced into the environment that is intended to function as a pesticide against another organism;

(7) Bulk means any distribution of a pesticide in a refillable container designed and constructed to accommodate the return and refill of greater than fifty-five gallons of liquid measure or one hundred pounds of dry net weight of the product;

(8) Commercial applicator means any applicator required by the act to obtain a commercial applicator license;

(9) Dealer means any manufacturer, registrant, or distributor who is required to be licensed as such under section 2-2635;

(10) Defoliant means a substance or mixture of substances intended to cause the leaves or foliage to drop from a plant, with or without causing abscission;

(11) Department means the Department of Agriculture;

(12) Desiccant means a substance or mixture of substances intended to artificially accelerate the drying of plant tissue;

(13) Device means an instrument or contrivance, other than a firearm, that is used to trap, destroy, repel, or mitigate a pest or other form of plant or animal life, other than a human or a bacteria, virus, or other microorganism on or in living humans or other living animals. Device does not include equipment intended to be used for the application of pesticides when sold separately from a pesticide;

(14) Director means the Director of Agriculture or his or her designee;

(15) Distribute means to offer for sale, hold for sale, sell, barter, exchange, supply, deliver, offer to deliver, ship, hold for shipment, deliver for shipment, or release for shipment;

(16) Environment includes water, air, land, plants, humans, and other animals living in or on water, air, or land and interrelationships which exist among these;

(17) Federal act means the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136 et seq., and any regulations adopted and promulgated under it, as the act and regulations existed on January 1, 2013;

(18) Federal agency means the United States Environmental Protection Agency;

(19) Fungus means any non-chlorophyll-bearing thallophyte, including rust, smut, mildew, mold, yeast, and bacteria, but does not include non-chlorophyll-bearing thallophytes on or in living humans or other living animals or those on or in a processed food or beverage or pharmaceuticals;

(20) Inert ingredient means an ingredient that is not an active ingredient;

(21) Ingredient statement means a statement which contains the name and percentage of each active ingredient and the total percentage of all inert ingredients in the pesticide. If the pesticide contains arsenic in any form, a statement of the percentage of total water-soluble arsenic calculated as elementary arsenic shall be included;

(22) Insect means any of the numerous small invertebrate animals generally having a segmented body and for the most part belong to the class Insecta, comprising six-legged, usually winged forms such as beetles, bugs, bees, and flies. Insect includes allied classes of arthropods, the members of which are

wingless and usually have more than six legs, such as spiders, mites, ticks, centipedes, and wood lice;

(23) Label means the written, printed, or graphic matter on or attached to a pesticide or device or any of its containers or wrappers;

(24) Labeling means all labels and any other written, printed, or graphic matter (a) accompanying the pesticide or device at any time or (b) to which reference is made on a label or in literature accompanying or referring to a pesticide or device, except accurate, nonmisleading references made to a current official publication of a federal or state institution or agency authorized by law to conduct research in the field of pesticides;

(25) License holder means any person licensed under the Pesticide Act;

(26) Licensed certified applicator means any person licensed and certified under the act as a commercial applicator, noncommercial applicator, or private applicator;

(27) Misbranded means that any pesticide meets one or more of the following criteria:

(a) Its labeling bears any statement, design, or graphic representation relative to the pesticide or to its ingredients which is false or misleading in any particular;

(b) It is contained in a package or other container or wrapping which does not conform to the standards established by the administrator pursuant to 7 U.S.C. 136w(c) of the federal act;

(c) It is an imitation of or distributed under the name of another pesticide;

(d) Its label does not bear the registration number assigned under 7 U.S.C. 136e of the federal act to each establishment in which it was produced;

(e) Any word, statement, or other information required by or under authority of the Pesticide Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness, as compared with other words, statements, designs, or graphic matter in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(f) The labeling accompanying it does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with, together with any requirements imposed under 7 U.S.C. 136a(d) of the federal act, are adequate to protect health and the environment;

(g) The label does not contain a warning or caution statement which may be necessary and if complied with, together with any requirements imposed under the Pesticide Act or 7 U.S.C. 136a(d) of the federal act, is adequate to protect health and the environment;

(h) In the case of a pesticide not registered in accordance with sections 2-2628 and 2-2629 and intended for export, the label does not contain, in words prominently placed thereon with such conspicuousness, as compared with other words, statements, designs, or graphic matter in the labeling, as to render it likely to be noted by the ordinary individual under customary conditions of purchase and use, the words Not Registered for Use in the United States of America;

(i) The label does not bear an ingredient statement on that part of the immediate container, and on the outside container or wrapper of the retail

package, if any, through which the ingredient statement on the immediate container cannot be clearly read, which is presented or displayed under customary conditions of purchase, except that a pesticide is not misbranded under this subdivision if:

(i) The size or form of the immediate container or the outside container or wrapper of the retail package makes it impracticable to place the ingredient statement on the part which is presented or displayed under customary conditions of purchase; and

(ii) The ingredient statement appears prominently on another part of the immediate container or outside container or wrapper, permitted by the administrator;

(j) The labeling does not contain a statement of the use classification under which the product is registered;

(k) There is not affixed to its container, and to the outside container or wrapper of the retail package, if any, through which the required information on the immediate container cannot be clearly read, a label bearing:

(i) The name and address of the producer, registrant, or person for whom produced;

(ii) The name, brand, or trademark under which the pesticide is sold;

(iii) The net weight or measure of the content, except that the administrator may permit reasonable variations; and

(iv) When required by regulations of the administrator to effectuate the purposes of the federal act, the registration number assigned to the pesticide under such act and the use classification; or

(l) The pesticide contains any substance or substances in quantities highly toxic to humans, unless the label bears, in addition to any other matter required by the Pesticide Act:

(i) The skull and crossbones;

(ii) The word poison prominently in red on a background of distinctly contrasting color; and

(iii) A statement of a practical first-aid or other treatment in case of poisoning by the pesticide;

(28) Nematode means an invertebrate animal of the phylum Nematelminthes and class Nematode, an unsegmented roundworm with an elongated, fusiform, or sac-like body covered with cuticle, inhabiting soil, water, plants, or plant parts;

(29) Noncommercial applicator means (a) any applicator who is not a commercial applicator and uses restricted-use pesticides only on property owned or controlled by his or her employer or for a federal entity or state agency or a political subdivision of the state or (b) any employee or other person acting on behalf of a political subdivision of the state who is not a commercial applicator who uses pesticides for outdoor vector control;

(30) Person means any individual, partnership, limited liability company, association, corporation, or organized group of persons, whether incorporated or not;

(31) Pest means:

(a) Any insect, snail, slug, rodent, bird, nematode, fungus, weed, or other form of terrestrial or aquatic plant or animal life, excluding humans; or

(b) Any virus, bacteria, or other microorganism, other than a virus, bacteria, or microorganism in or on living humans or other living animals, as defined by the department;

(32) Pesticide means a substance or mixture of substances intended to prevent, destroy, repel, or mitigate any pest or any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant, including any biological control agent. Pesticide does not include any article that is a new animal drug within the meaning of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 321(v), as the section existed on January 1, 2013, that has been determined by the Secretary of Health and Human Services to be a new animal drug by regulation establishing conditions of use for the article, or that is an animal feed within the meaning of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 321(w), as the section existed on January 1, 2013, bearing or containing a new animal drug;

(33) Pesticide management plan means a management plan for a specific, identified pesticide to implement a strategy to prevent, monitor, evaluate, and mitigate (a) any occurrence of the pesticide or pesticide breakdown products in ground water and surface water in the state or (b) any other unreasonable adverse effect of the pesticide on humans or the environment;

(34) Plant regulator means a substance or mixture of substances intended through physiological action to accelerate or retard the rate of growth or rate of maturation or otherwise to alter the behavior of an ornamental or crop plant or the product of an ornamental or crop plant but does not include a substance to the extent that it is intended as a plant nutrient, trace element, nutritional chemical, plant inoculant, or soil amendment;

(35) Pollute means to alter the physical, chemical, or biological quality of or to contaminate water in the state, which alteration or contamination renders the water harmful, detrimental, or injurious to humans, the environment, or the public health, safety, or welfare;

(36) Private applicator means an applicator who is not a commercial applicator or a noncommercial applicator and uses or supervises the use of any pesticide which is classified for restricted use for purposes of producing any agricultural commodity on property owned or rented by him or her or his or her employer or, if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person;

(37) Property means any land or water area, including airspace, and any plant, animal, structure, building, contrivance, commodity, or machinery, whether fixed or mobile, appurtenant to or situated on a land or water area or airspace, including any vehicle used for transportation;

(38) Restricted-use pesticide means a pesticide classified as a restricted-use pesticide by the federal agency, a state-limited-use pesticide, or any pesticide for which an exemption under section 136p of the federal act has been granted;

(39) State management plan means a generic plan developed by the department to implement a strategy to prevent, monitor, evaluate, and mitigate any occurrence of pesticides in ground water and surface water in the state and any specific plans developed when an occurrence has been detected;

(40) State pesticide plan means the plan developed by the department to enter into a cooperative agreement with the federal agency to assume the responsibility for the primary enforcement of pesticide use and the training and licensing of certified applicators;

(41) State-limited-use pesticide means any pesticide included on a list of state-limited-use pesticides by the department pursuant to a pesticide management plan;

(42) Unreasonable adverse effect on humans or the environment means any unreasonable risk to humans or the environment taking into account the severity and longevity of adverse effects of use of the pesticide and also taking into account the economic, social, and environmental costs and benefits of the use of the pesticide. The costs and benefits of a public health pesticide shall also weigh any risks of the use of the pesticide against the health risks to be mitigated or controlled by the use of the pesticide;

(43) Vector means any organism capable of transmitting the causative agent of human disease or capable of producing human discomfort or injury, including mosquitoes, flies, fleas, cockroaches, ticks, mites, other insects, mice, and rats; and

(44) Weed means any plant that grows where not wanted.

Source: Laws 1993, LB 267, § 32; Laws 1993, LB 588, § 3; Laws 1994, LB 884, § 7; Laws 2002, LB 436, § 3; Laws 2003, LB 157, § 1; Laws 2006, LB 874, § 2; Laws 2013, LB69, § 1.

2-2626 Department; powers and duties.

The department shall have the following powers, functions, and duties:

(1) To administer, implement, and enforce the Pesticide Act and serve as the lead state agency for the regulation of pesticides. The department shall involve the natural resources districts and other state agencies, including the Department of Environmental Quality, the Department of Natural Resources, or the Department of Health and Human Services, in matters relating to water quality. Nothing in the act shall be interpreted in any way to affect the powers of any other state agency or of any natural resources district to regulate for ground water quality or surface water quality as otherwise provided by law;

(2) To be responsible for the development and implementation of a state management plan and pesticide management plans. The Department of Environmental Quality shall be responsible for the adoption of standards for pesticides in surface water and ground water, and the Department of Health and Human Services shall be responsible for the adoption of standards for pesticides in drinking water. These standards shall be established as action levels in the state management plan and pesticide management plans at which prevention and mitigation measures are implemented. Such action levels may be set at or below the maximum contaminant level set for any product as set by the federal agency under the federal Safe Drinking Water Act, 42 U.S.C. 300f et seq., as the act existed on January 1, 2013. The Department of Agriculture shall cooperate with and use existing expertise in other state agencies when developing the state management plan and pesticide management plans and shall not hire a hydrologist within the department for such purpose;

(3) After notice and public hearing, to adopt and promulgate rules and regulations providing lists of state-limited-use pesticides for the entire state or for a designated area within the state, subject to the following:

(a) A pesticide shall be included on a list of state-limited-use pesticides if:

(i) The Department of Agriculture determines that the pesticide, when used in accordance with its directions for use, warnings, and cautions and for uses for which it is registered, may without additional regulatory restrictions cause unreasonable adverse effects on humans or the environment, including injury to the applicator or other persons because of acute dermal or inhalation toxicity of the pesticides;

(ii) The water quality standards set by the Department of Environmental Quality or the Department of Health and Human Services pursuant to this section are exceeded; or

(iii) The Department of Agriculture determines that the pesticide requires additional restrictions to meet the requirements of the Pesticide Act, the federal act, or any plan adopted under the Pesticide Act or the federal act;

(b) The Department of Agriculture may regulate the time and conditions of use of a state-limited-use pesticide and may require that it be purchased or possessed only:

(i) With permission of the department;

(ii) Under direct supervision of the department or its designee in certain areas and under certain conditions;

(iii) In specified quantities and concentrations or at specified times; or

(iv) According to such other restrictions as the department may set by regulation;

(c) The Department of Agriculture may require a person authorized to distribute or use a state-limited-use pesticide to maintain records of the person's distribution or use and may require that the records be kept separate from other business records;

(d) The state management plan and pesticide management plans shall be coordinated with the Department of Agriculture and other state agency plans and with other state agencies and with natural resources districts;

(e) The state management plan and pesticide management plans may impose progressively more rigorous pesticide management practices as pesticides are detected in ground water or surface water at increasing fractions of the standards adopted by the Department of Environmental Quality or the Department of Health and Human Services; and

(f) A pesticide management plan may impose progressively more rigorous pesticide management practices to address any unreasonable adverse effect of pesticides on humans or the environment. When appropriate, a pesticide management plan may establish action levels for imposition of such progressively more rigorous management practices based upon measurable indicators of the adverse effect on humans or the environment;

(4) To adopt and promulgate such rules and regulations as are necessary for the enforcement and administration of the Pesticide Act. The regulations shall include, but not be limited to, regulations providing for:

(a) The collection of samples, examination of records, and reporting of information by persons subject to the act;

(b) The safe handling, transportation, storage, display, distribution, use, and disposal of pesticides and their containers;

(c) Labeling requirements of all pesticides required to be registered under provisions of the act, except that such regulations shall not impose any requirements for federally registered labels contrary to those required pursuant to the federal act;

(d) Classes of devices which shall be subject to the Pesticide Act;

(e) Reporting and record-keeping requirements for persons distributing or using pesticide products made available under 7 U.S.C. 136i-1 of the federal act and for persons required to keep records under the Pesticide Act;

(f) Methods to be used in the application of pesticides when the Department of Agriculture finds that such regulations are necessary to carry out the purpose and intent of the Pesticide Act. Such regulations may include methods to be used in the application of a restricted-use pesticide, may relate to the time, place, manner, methods, materials, amounts, and concentrations in connection with the use of the pesticide, may restrict or prohibit use of the pesticides in designated areas during specified periods of time, and may provide specific examples and technical interpretations of subdivision (4) of section 2-2646. The regulations shall encompass all reasonable factors which the department deems necessary to prevent damage or injury by drift or misapplication to (i) plants, including forage plants, or adjacent or nearby property, (ii) wildlife in the adjoining or nearby areas, (iii) fish and other aquatic life in waters in reasonable proximity to the area to be treated, (iv) surface water or ground water, and (v) humans, animals, or beneficial insects. In adopting and promulgating such regulations, the department shall give consideration to pertinent research findings and recommendations of other agencies of the state, the federal government, or other reliable sources. The department may, by regulation, require that notice of a proposed use of a pesticide be given to landowners whose property is adjacent to the property to be treated or in the immediate vicinity thereof if the department finds that such notice is necessary to carry out the purpose of the act;

(g) State-limited-use pesticides for the state or for designated areas in the state;

(h) Establishment of the amount of any fee or fine as directed by the act;

(i) Establishment of the components of any state management plan or pesticide management plan;

(j) Establishment of categories for licensed pesticide applicators in addition to those established in 40 C.F.R. 171, as the regulation existed on January 1, 2013; and

(k) Establishment of a process for the issuance of permits for emergency-use pesticides made available under 7 U.S.C. 136p of the federal act;

(5) To enter any public or private premises at any reasonable time to:

(a) Inspect and sample any equipment authorized or required to be inspected under the Pesticide Act or to inspect the premises on which the equipment is kept or stored;

(b) Inspect or sample any area exposed or reported to be exposed to a pesticide or where a pesticide use has occurred;

(c) Inspect and sample any area where a pesticide is disposed of or stored;

- (d) Observe the use and application of and sample any pesticide;
- (e) Inspect and copy any records relating to the distribution or use of any pesticide or the issuance of any license, permit, or registration under the act; or
- (f) Inspect, examine, or take samples from any application equipment, building, or place owned, controlled, or operated by any person engaging in an activity regulated by the act if, from probable cause, it appears that the application equipment, building, or place contains a pesticide;
- (6) To sample, inspect, make analysis of, and test any pesticide found within this state;
- (7) To issue and enforce a written or printed order to stop the sale, removal, or use of a pesticide if the Department of Agriculture has reason to believe that the pesticide is in violation of any provision of the act. The department shall present the order to the owner or custodian of the pesticide. The person who receives the order shall not distribute, remove, or use the pesticide until the department determines that the pesticide is in compliance with the act. This subdivision shall not limit the right of the department to proceed as authorized by any other provision of the act;
- (8)(a) To sue in the name of the director to enjoin any violation of the act. Venue for such action shall be in the county in which the alleged violation occurred, is occurring, or is threatening to occur; and
- (b) To request the county attorney or the Attorney General to bring suit to enjoin a violation or threatened violation of the act;
- (9) To impose or levy an administrative fine of not more than five thousand dollars for each violation on any person who has violated any provision, requirement, condition, limitation, or duty imposed by the act or rules and regulations adopted and promulgated pursuant to the act. A violation means each action which violates any separate or distinct provision, requirement, condition, limitation, or duty imposed by the act or rules and regulations adopted and promulgated pursuant to the act;
- (10) To cause a violation warning letter to be served upon the alleged violator or violators pursuant to the act;
- (11) To take reasonable measures to assess and collect all fees and fines prescribed by the act and the rules or regulations adopted under the act;
- (12) To access, inspect, and copy all books, papers, records, bills of lading, invoices, and other information relating to the use, manufacture, repackaging, and distribution of pesticides necessary for the enforcement of the act;
- (13) To seize, for use as evidence, without formal warrant if probable cause exists, any pesticide which is in violation of the act or is not approved by the Department of Agriculture or which is found to be used or distributed in the violation of the act or the rules and regulations adopted and promulgated under it;
- (14) To declare as a pest any form of plant or animal life, other than humans and other than bacteria, viruses, and other microorganisms on or in living humans or other living animals, which is injurious to health or the environment;
- (15) To adopt classifications of restricted-use pesticides as determined by the federal agency under the federal act. In addition to the restricted-use pesticides classified by the administrator, the Department of Agriculture may also deter-

mine state-limited-use pesticides for the state or for designated areas within the state as provided in subdivision (3) of this section;

(16) To receive grants-in-aid from any federal entity, and to enter into cooperative agreements with any federal entity, any agency of this state, any subdivision of this state, any agency of another state, any Indian tribe, or any private person for the purpose of obtaining consistency with or assistance in the implementation of the Pesticide Act. The Department of Agriculture may reimburse any such entity from the Pesticide Administrative Cash Fund for the work performed under the cooperative agreement. The department may delegate its administrative responsibilities under the act to cities of the metropolitan and primary classes if it reasonably believes that such cities can perform the responsibilities in a manner consistent with the act and the rules and regulations adopted and promulgated under it;

(17) To prepare and adopt such plans as are necessary to implement any requirements of the federal agency under the federal act;

(18) To request the assistance of the Attorney General or the county attorney in the county in which a violation of the Pesticide Act has occurred with the prosecution or enforcement of any violation of the act;

(19) To enter into a settlement agreement with any person regarding the disposition of any license, permit, registration, or administrative fine;

(20) To issue a cease and desist order pursuant to section 2-2649;

(21) To deny an application or cancel, suspend, or modify the registration of a pesticide pursuant to section 2-2632;

(22) To issue, cancel, suspend, modify, or place on probation any license or permit issued pursuant to the act; and

(23) To make such reports to the federal agency as are required under the federal act.

Source: Laws 1993, LB 588, § 5; Laws 1996, LB 1044, § 38; Laws 2000, LB 900, § 50; Laws 2002, LB 93, § 1; Laws 2002, LB 436, § 5; Laws 2006, LB 874, § 3; Laws 2007, LB296, § 17; Laws 2010, LB254, § 7; Laws 2013, LB69, § 2.

2-2629 Registration; application; contents; department; powers; confidentiality; agent for service of process.

(1) The application for registration of a pesticide shall include:

(a) The name and address of the applicant and the name and address of the person whose name shall appear on the pesticide label, if not the applicant's;

(b) The name of the pesticide;

(c) Two complete copies of all labeling to accompany the pesticide and a statement of all claims to be made for it, including the directions for use;

(d) The use classification, whether for restricted or general use, as provided by the federal act;

(e) The use classification proposed by the applicant if the pesticide is not required by federal law to be registered under a use classification;

(f) A designation of a resident agent for service of process in actions taken in the administration and enforcement of the Pesticide Act. In lieu of designating a

resident agent, the applicant may designate in writing the Secretary of State as the recipient of service of process for the applicant in this state; and

(g) Other information required by the department for determining the eligibility for registration.

(2) Application information may be provided in electronic format acceptable to the department.

(3) The department may require the applicant to submit the complete formula for a pesticide, including active and inert ingredients, as a prerequisite to registration.

(4) The department may require additional information including a full description of the tests conducted and the results of the tests on which claims are based, either before or after approving the registration of a pesticide. The department may request that additional tests or field monitoring be conducted in Nebraska ecosystems, or reasonably similar ecosystems, in order to determine the validity of assumptions used to register pesticides under the federal act.

(5) Information collected under subsection (3) or (4) of this section shall not be public records. The department shall not reveal such information to other than representatives of the department, the Attorney General or other legal representative of the department when relevant in any judicial proceeding, or any other officials of another Nebraska agency, the federal government, or other states who are similarly prohibited from revealing this information.

Source: Laws 1993, LB 267, § 33; Laws 1993, LB 588, § 8; Laws 2002, LB 436, § 6; Laws 2006, LB 874, § 5; Laws 2009, LB100, § 1; Laws 2013, LB69, § 3.

2-2634 Registration and renewal fees; late registration fee.

(1) As a condition to registration or renewal of registration as required by sections 2-2628 to 2-2633, an applicant shall pay to the department a fee of one hundred sixty dollars for each pesticide to be registered, except that the fee may be increased or decreased by rules and regulations adopted and promulgated pursuant to the Pesticide Act. In no event shall such fee exceed two hundred ten dollars for each pesticide to be registered.

(2) All fees collected under subsection (1) of this section shall be remitted to the State Treasurer for credit as follows:

(a) Thirty dollars of such fee to the Noxious Weed Cash Fund as provided in section 2-958;

(b) Sixty dollars of such fee to the Buffer Strip Incentive Fund as provided in section 2-5106;

(c) Fifty-five dollars of such fee to the Natural Resources Water Quality Fund; and

(d) The remainder of such fee to the Pesticide Administrative Cash Fund.

(3) If a person fails to apply for renewal of registration before January 1 of any year, such person, as a condition to renewal, shall pay a late registration fee equal to twenty-five percent of the fee due and owing per month, not to exceed one hundred percent, for each product to be renewed in addition to the renewal fee. The purpose of the late registration fee is to cover the administrative costs associated with collecting fees, and all money collected as a late

registration fee shall be remitted to the State Treasurer for credit to the Pesticide Administrative Cash Fund.

Source: Laws 1993, LB 588, § 13; Laws 1998, LB 1126, § 12; Laws 2001, LB 329, § 4; Laws 2006, LB 874, § 6; Laws 2013, LB69, § 4.

2-2635 Pesticide dealer license; when required; application; fee; expiration; display; department; powers; disciplinary actions; restricted-use pesticides; records required; registered agent for service of process.

(1) Except as provided in subsection (2) of this section, a person shall not distribute at wholesale or retail or possess pesticides with an intent to distribute them without a pesticide dealer license for each distribution location. Any manufacturer, registrant, or distributor who has no pesticide dealer outlet licensed within this state and who distributes such pesticides directly into this state shall obtain a pesticide dealer license for his, her, or its principal out-of-state location or outlet.

(2) The requirements of subsection (1) of this section shall not apply to:

(a) A commercial applicator or noncommercial applicator licensed under sections 2-2636 to 2-2642 who uses restricted-use pesticides only as an integral part of a pesticide application service and does not distribute any unapplied pesticide;

(b) A federal, state, county, or municipal agency using restricted-use pesticides only for its own program; or

(c) Persons who sell only pesticide products in containers holding fifty pounds or less by weight or one gallon or less by volume and do not sell any restricted-use pesticides or bulk pesticides.

(3) A pesticide dealer may distribute restricted-use pesticides only to:

(a) A licensed pesticide dealer;

(b) A licensed certified applicator issued a license with the appropriate category for using the restricted-use pesticide being distributed;

(c) An applicator issued a license by another state with the appropriate category for using the restricted-use pesticide being distributed;

(d) A noncertified applicator authorized by the Pesticide Act to apply restricted-use pesticides if the licensed certified applicator supervising the noncertified applicator is issued a license with the appropriate category for using the restricted-use pesticide being distributed; or

(e) Any other person if the pesticide dealer maintains records set out in rules and regulations adopted and promulgated pursuant to the act requiring the person to verify in writing that:

(i) The restricted-use pesticide will be delivered to an applicator described in subdivision (3)(b), (c), or (d) of this section; and

(ii) The applicator receiving the restricted-use pesticide acknowledges and agrees to the distribution.

(4) A pesticide dealer license shall expire on December 31 of each year, unless it is suspended or revoked before that date. Such license shall not be transferable to another person or location and shall be prominently displayed to the public in the pesticide dealer's place of business.

(5) If the pesticide dealer has had a license suspended or revoked, or has otherwise had a history of violations of the Pesticide Act, the department may require an additional demonstration of dealer qualifications prior to issuance or renewal of a license to such person.

(6) Application for an initial pesticide dealer license shall be submitted to the department prior to commencing business as a pesticide dealer. Application for renewal of a pesticide dealer license shall be submitted to the department by January 1 of each year. All applications shall be accompanied by an annual license fee of twenty-five dollars. The fee may be increased by the director by rules and regulations adopted and promulgated pursuant to the act. The fee shall not exceed one hundred dollars per license. Application shall be on a form prescribed by the department and shall include the full name of the person applying for such license. If such applicant is a partnership, limited liability company, association, corporation, or organized group of persons, the full name of each member of the firm, partnership, or limited liability company or of the principal officers of the association or corporation shall be given on the application. Such application shall further state the address of each outlet to be licensed, the principal business address of the applicant, the name of the person domiciled in this state authorized to receive and accept service of summons of legal notices of all kinds for the applicant, and any other necessary information prescribed by the department.

An applicant located outside this state shall file with the department a written designation of a resident agent for service of process in actions taken in the administration and enforcement of the act. In lieu of designating a resident agent, the applicant may designate the Secretary of State as the recipient of service of process for the applicant in this state.

If an application for renewal of a pesticide dealer license is not filed before January 1 of the year for which the license is to be issued, an additional fee equal to twenty-five percent of the fee due and owing per month, not to exceed one hundred percent, shall be paid by the applicant before the license may be issued. The purpose of the additional fee is to cover the administrative costs associated with collecting fees.

An application for a duplicate pesticide dealer's license shall be accompanied by a nonrefundable application fee of ten dollars.

All fees collected pursuant to this subsection shall be remitted to the State Treasurer for credit to the Pesticide Administrative Cash Fund.

(7) Each licensed pesticide dealer shall be responsible for the acts of each person employed by him or her in the solicitation and distribution of pesticides and all claims and recommendations for use of pesticides. The dealer's license shall be subject to denial, suspension, modification, or revocation after a hearing for any violation of the act, whether committed by the dealer or by the dealer's officer, agent, or employee.

(8) The department shall require each pesticide dealer to maintain records of the dealer's purchases and distribution of all restricted-use pesticides and may require such records to be kept separate from other business records. The department may prescribe by rules and regulations the information to be included in the records. The dealer shall keep such records for a period of three

years and shall provide the department access to examine such records and a copy of any record on request.

Source: Laws 1993, LB 267, § 34; Laws 1993, LB 588, § 14; Laws 1994, LB 884, § 8; Laws 1997, LB 752, § 54; Laws 2001, LB 329, § 5; Laws 2002, LB 436, § 8; Laws 2013, LB69, § 5.

2-2636 Pesticide applicators; restrictions; department; duties; reciprocity.

(1) The department shall license pesticide applicators involved in the categories established in 40 C.F.R. 171, as the regulation existed on January 1, 2013, and any other categories established pursuant to rules and regulations necessary to meet the requirements of the state. The department may issue a reciprocal license to a pesticide applicator licensed or certified in another state or by a federal agency. Residents of the State of Nebraska are not eligible for reciprocal certification. The department may waive part or all of any license certification examination requirements for a reciprocal license if the other state or federal agency that licensed or certified the pesticide applicator has substantially the same certification examination standards and procedural requirements as required under the Pesticide Act.

(2) A person shall not use a restricted-use pesticide unless the person is:

(a) Licensed as a commercial or noncommercial applicator and authorized by the license to use the restricted-use pesticide in the category covering the proposed pesticide use;

(b) Licensed as a private applicator; or

(c) At least sixteen years of age and working under the direct supervision of a licensed certified applicator pursuant to subsection (5) of section 2-2642.

(3) A person shall not use lawn care or structural pest control pesticides on the property of another person for hire or compensation unless the person is:

(a) Licensed as a commercial applicator; or

(b) At least sixteen years of age and working under the direct supervision of a licensed certified applicator pursuant to subsection (5) of section 2-2642.

(4) An employee or other person acting on behalf of any political subdivision of the state shall not use pesticides for outdoor vector control unless the applicator is:

(a) Licensed as a commercial applicator or a noncommercial applicator; or

(b) At least sixteen years of age and working under the direct supervision of a licensed certified applicator pursuant to subsection (5) of section 2-2642.

(5) In order to receive a commercial, noncommercial, or private applicator license, a person shall be at least sixteen years of age.

Source: Laws 1993, LB 588, § 15; Laws 2002, LB 436, § 9; Laws 2006, LB 874, § 7; Laws 2009, LB100, § 2; Laws 2013, LB69, § 6.

2-2638 Commercial applicator license; when required; application; denial, when; fee; resident agent for service of process.

(1) An individual who uses restricted-use pesticides on the property of another person in the State of Nebraska for hire or compensation shall meet all certification requirements of the Pesticide Act and shall be a commercial applicator license holder of a license issued for the categories and subcategories in which the pesticide use is to be made.

(2) Any person who uses lawn care or structural pest control pesticides on the property of another person in the State of Nebraska for hire or compensation shall be a commercial applicator license holder, regardless of whether such person uses any restricted-use pesticide.

(3) Application for an original or renewal commercial applicator license shall be made to the department on forms prescribed by the department. The application shall include information as required by the director and be accompanied by a license fee of ninety dollars. If the applicant is an individual, the application shall include the applicant's date of birth. The fee may be increased by the director by rules and regulations adopted and promulgated pursuant to the act. The fee shall not exceed one hundred fifty dollars per license. All fees collected shall be remitted to the State Treasurer for credit to the Natural Resources Water Quality Fund.

(4) The department may deny a commercial applicator license if it has determined that:

(a) The applicant has had a license as a licensed certified applicator issued by this state or another state revoked within the last two years;

(b) The applicant has been unable to satisfactorily fulfill certification or licensing requirements;

(c) The applicant for any other reason cannot be expected to be able to fulfill the provisions of the Pesticide Act applicable to the category for which application is made; or

(d) An applicant for an original commercial applicator license has not passed an examination under sections 2-2637 and 2-2640.

(5) An individual to whom a commercial applicator license is issued shall be a licensed certified applicator authorized to use restricted-use pesticides in the categories and subcategories in which the individual is licensed.

(6) As a condition to issuance of a commercial applicator license, an applicant located outside this state shall file with the department a written designation of a resident agent for service of process in actions taken in the administration and enforcement of the act. In lieu of designating a resident agent, the applicant may designate in writing the Secretary of State as the recipient of service of process for the applicant in this state.

Source: Laws 1993, LB 588, § 17; Laws 1997, LB 752, § 55; Laws 2001, LB 329, § 6; Laws 2002, LB 436, § 11; Laws 2006, LB 874, § 8; Laws 2009, LB100, § 3; Laws 2013, LB69, § 7.

2-2639 Noncommercial applicator license; application; denial, when; resident agent for service of process.

(1) A noncommercial applicator shall meet all certification requirements of the Pesticide Act and shall be a noncommercial applicator license holder of a license issued for the categories and subcategories in which the pesticide use is to be made.

(2) Application for an original or renewal noncommercial applicator license shall be made to the department on forms prescribed by the department. If the applicant is an individual, the application shall include the applicant's date of birth. The department shall not charge a noncommercial applicant a license fee.

(3) The director shall not issue an original noncommercial applicator license before the applicant has passed an examination under sections 2-2637 and 2-2640.

(4) A person to whom a noncommercial applicator license is issued shall be a licensed certified applicator authorized to use restricted-use pesticides in the categories and subcategories in which the individual is licensed.

(5) As a condition to issuance of a noncommercial applicator license, an applicant located outside this state shall file with the department a written designation of a resident agent for service of process in actions taken in the administration and enforcement of the Pesticide Act. In lieu of designating a resident agent the applicant may designate the Secretary of State as the recipient of service of process for the applicant in this state.

Source: Laws 1993, LB 588, § 18; Laws 1997, LB 752, § 56; Laws 2002, LB 436, § 13; Laws 2006, LB 874, § 9; Laws 2009, LB100, § 4; Laws 2013, LB69, § 8.

2-2641 Private applicator; qualifications; application for license; requirements; fee.

(1) A person shall be deemed to be a private applicator if the person uses a restricted-use pesticide in the State of Nebraska for the purpose of producing an agricultural commodity:

(a) On property owned or rented by the person or person's employer or under the person's general control; or

(b) On the property of another person if applied without compensation other than the trading of personal services between producers of agricultural commodities.

(2) An employee shall qualify as a private applicator under subdivision (1)(a) of this section only if he or she provides labor for the pesticide use but does not provide the necessary equipment or pesticides.

(3) Every person applying for a license as a private applicator shall meet the certification requirement of (a) undertaking a training session approved by the department or (b) passing an examination showing that the person is properly qualified to perform functions associated with pesticide use to a degree directly related to the nature of the activity and the associated responsibility. The examination shall be approved by the department and monitored by the department or its authorized agent. If the applicant is an individual, the application shall include the applicant's date of birth.

(4) Application for an original or renewal private applicator license shall be made to the department and accompanied by a license fee of twenty-five dollars. All fees collected shall be remitted to the State Treasurer for credit to the Natural Resources Water Quality Fund.

Source: Laws 1993, LB 588, § 20; Laws 1997, LB 752, § 57; Laws 2001, LB 329, § 7; Laws 2002, LB 436, § 15; Laws 2006, LB 874, § 10; Laws 2009, LB100, § 5; Laws 2013, LB69, § 9.

2-2642 Commercial, noncommercial, and private applicator licenses; expiration; renewal; procedure; noncertified applicator; restrictions.

(1) Each commercial, noncommercial, and private applicator license shall expire on April 15 following the third year in which it was issued.

(2) Except as provided by subsection (3) of this section, a person having a valid commercial or noncommercial applicator license may renew the license for another three-year period by:

(a) Paying to the department an amount equal to the license fee required by section 2-2638 for commercial applicator licenses or section 2-2639 for non-commercial applicator licenses, if any; and

(b)(i) Undertaking the training approved by the department; or

(ii) Submitting to retesting prior to renewal of the license.

(3) Any person who allows his or her commercial or noncommercial applicator license to expire shall be required to submit to testing prior to the renewal of the license.

(4) The application for renewal of a private applicator license shall be the same as the application for an initial license.

(5) Notwithstanding sections 2-2636 to 2-2642, any individual required to be a licensed certified applicator may use pesticides as a noncertified applicator for only one consecutive sixty-day period of time if:

(a) The individual or his or her employer applies to the department for a license as a licensed certified applicator within ten days of making the first pesticide use. Such license application shall include the name and license number of the licensed certified applicator who is supervising the noncertified applicator;

(b) All pesticide uses made by an individual as a noncertified applicator are made under the direct supervision of a licensed certified applicator; and

(c) The licensed certified applicator provides such training and supervision as is necessary to:

(i) Determine the level of experience and knowledge of the noncertified applicator in the use of a pesticide;

(ii) Provide verifiable, detailed guidance on how to conduct each individual pesticide use performed under his or her direct supervision;

(iii) Accompany the noncertified applicator to at least one site which would be typical of each type of pesticide use that the noncertified applicator performs;

(iv) Be accessible by voice or electronic means to provide further instructions at all times during the noncertified applicator's use of the pesticide; and

(v) Be able to be physically on the site, should the need arise, where the pesticide use or storage is taking place within a reasonable period of time as established by the director by rules and regulations. Both the licensed certified applicator and noncertified applicator shall be responsible for the acts of the noncertified applicator and each shall be subject to all fines, license actions, and other enforcement actions prescribed by the Pesticide Act for violations under the act. The department may deny or suspend the use of pesticides by a noncertified applicator if it has reasonable cause to believe that such person may not become eligible to become a licensed certified applicator or uses any pesticide in violation of the act.

Source: Laws 1993, LB 588, § 21; Laws 2002, LB 436, § 16; Laws 2013, LB69, § 10.

2-2646 Prohibited acts.

It shall be unlawful for any person:

(1) To distribute within the state or deliver for transportation or transport in intrastate commerce or between points within this state through a point outside this state, any of the following:

(a) A pesticide that has not been registered or whose registration has been canceled or suspended under the Pesticide Act;

(b) A pesticide that has a claim, a direction for its use, or labeling that differs from the representations made in connection with its registration;

(c) A pesticide that is not in the registrant's or manufacturer's unbroken immediate container and that is not labeled with the information and in the manner required by the act and any regulations adopted under the act;

(d) A pesticide that is adulterated;

(e) A pesticide or device that is misbranded;

(f) A pesticide in a container that is unsafe due to damage;

(g) A pesticide which differs from its composition as registered; or

(h) A pesticide that has not been colored or discolored as required by the Pesticide Act or the federal act;

(2) To detach, alter, deface, or destroy, wholly or in part, any label or labeling provided for by the Pesticide Act or a rule or regulation adopted under the act;

(3) To add any substance to or take any substance from a pesticide in a manner that may defeat the purpose of the act or any rule or regulation adopted and promulgated under the act;

(4) To use or cause to be used a pesticide contrary to the act, to the labeling of the pesticide, or to a rule or regulation of the department limiting the use of the pesticide, except that it shall not be unlawful to:

(a) Use a pesticide at any dosage, concentration, or frequency less than that specified or recommended on the labeling if the labeling does not specifically prohibit deviation from the specified or recommended dosage, concentration, or frequency or, if the pesticide is a termiticide, it is not used at a rate below the minimum concentration specified or recommended on the label for pre-construction treatments;

(b) Use a pesticide against any target pest not specified on the labeling if the use is for the crop, animal, or site specified or recommended on the labeling and the labeling does not specifically state that the pesticide may be used only for the pests specified or recommended on the labeling;

(c) Employ any method of use not prohibited by the labeling if (i) the labeling does not specifically state that the product may be used only by the methods specified or recommended on the labeling, (ii) the method of use is consistent with the method specified on labeling, and (iii) the method of use does not more than minimally increase the exposure of the pesticide to humans or the environment;

(d) Mix a pesticide or pesticides with a fertilizer when such mixture is not prohibited by the labeling if such mixing is consistent with the method of application specified or recommended on the labeling and does not more than minimally increase the exposure of the pesticide to humans or the environment;

(e) Use a pesticide in conformance with 7 U.S.C. 136c, 136p, or 136v of the federal act or section 2-2626; or

(f) Use a pesticide in a manner that the director determines to be consistent with the purposes of the Pesticide Act;

(5) To use a pesticide at any dosage, concentration, or frequency greater than specified or recommended on the labeling unless the labeling allows the greater dosage, concentration, or frequency;

(6) To handle, transport, store, display, or distribute a pesticide in a manner that violates any provision of the Pesticide Act or a rule or regulation adopted and promulgated under the act;

(7) To use, cause to be used, dispose, discard, or store a pesticide or pesticide container in a manner that the person knows or should know is:

(a) Likely to adversely affect or cause injury to humans, the environment, vegetation, crops, livestock, wildlife, or pollinating insects;

(b) Likely to pollute a water supply or waterway; or

(c) A violation of the Environmental Protection Act or a rule or regulation adopted and promulgated pursuant to the act;

(8) To use for the person's advantage or reveal, other than to a properly designated state or federal official or employee, to a physician, or in an emergency to a pharmacist or other qualified person for the preparation of an antidote, any information relating to pesticide formulas, trade secrets, or commercial or financial information acquired under the Pesticide Act and marked as privileged or confidential by the registrant;

(9) To commit an act for which a licensed certified applicator's license may be suspended, modified, revoked, or placed on probation under the Pesticide Act whether or not the person committing the act is a licensed certified applicator;

(10) To knowingly or intentionally use, cause to be used, handle, store, or dispose of a pesticide in a manner that causes bodily injury to or the death of a human or that pollutes ground water, surface water, or a water supply;

(11) To fail to obtain a license or to pay all fees and fines as prescribed by an order of the director, the act, and the rules and regulations adopted and promulgated pursuant to the act;

(12) To fail to keep or refuse to make available for examination and copying by the department all books, papers, records, and other information necessary for the enforcement of the act;

(13) To hinder, obstruct, or refuse to assist the director in the performance of his or her duties;

(14) To violate any state management plan or pesticide management plan developed or approved by the department;

(15) To distribute or advertise any restricted-use pesticide for some other purpose other than in accordance with the Pesticide Act and the federal act;

(16) To use any pesticide which is under an experimental-use or emergency-use permit which is contrary to the provisions of such permit;

(17) To fail to follow any order of the department;

(18) Except as authorized by law, to knowingly or intentionally use, cause to be used, handle, store, or dispose of a pesticide on property without the permission of the owner or lawful tenant. Applications for outdoor vector control authorized by a federal or state agency or political subdivision shall not

be in violation of this subdivision when the application is made from public access property and cannot practically be confined to public property;

(19) To knowingly falsify all or part of any application for registration or licensing or any other records required to be maintained pursuant to the Pesticide Act;

(20) To alter or falsify all or part of a license issued by the department; and

(21) To violate any other provision of the act.

Source: Laws 1993, LB 588, § 25; Laws 2002, LB 436, § 24; Laws 2003, LB 157, § 2; Laws 2006, LB 874, § 12; Laws 2009, LB100, § 7; Laws 2010, LB254, § 8; Laws 2013, LB69, § 11.

Cross References

Environmental Protection Act, see section 81-1532.

2-2646.01 Pesticide business; owner or operator; liability.

Any person who owns or operates a business that uses pesticides on the property of another person for hire or compensation shall be responsible for the acts or omissions of anyone using a pesticide for such business. Such person shall be subject to the same fines, license actions, and other enforcement actions prescribed by the Pesticide Act for violations under the act as the applicator.

Source: Laws 2002, LB 436, § 12; Laws 2013, LB69, § 12.

2-2656 Nebraska aerial pesticide business license; application; form; contents; fee; resident agent.

(1) An application for an initial or renewal Nebraska aerial pesticide business license shall be submitted to the department prior to the commencement of aerial spraying operations, and an application for renewal of a Nebraska aerial pesticide business license shall be submitted to the department before commencement of application of pesticides. The application shall be accompanied by an annual license fee of one hundred dollars. The license fee may be increased by the director after a public hearing is held outlining the reason for any proposed change in the fee, except that the fee shall not exceed one hundred fifty dollars. All fees collected pursuant to this section shall be remitted to the State Treasurer for credit to the Pesticide Administrative Cash Fund. The application shall be on a form prescribed by the department and shall include the following:

(a) The full name and permanent mailing address of the person applying for such license. If such applicant is an individual, the application shall include the applicant's personal mailing address. If such applicant is not an individual, the full name of each partner or member or the full name of the principal officers shall be given on the application;

(b) The location of the applicant's principal departure location and any additional departure locations utilized for aerial spraying operations to be conducted within Nebraska identified by one of the following: Global Positioning System coordinates, legal description, local address of the site, or airport identifier;

(c) A copy of the applicant’s agricultural aircraft operator certificate issued pursuant to 14 C.F.R. part 137 or evidence the applicant holds such a certificate issued by the Federal Aviation Administration;

(d) The aircraft registration number issued by the Federal Aviation Administration pursuant to 14 C.F.R. part 47 of all aircraft owned, rented, or leased by the applicant to be utilized for aerial pesticide applications and all other aircraft utilized in aerial spraying operations conducted by the applicant;

(e) The Nebraska commercial applicator certificate number and current Federal Aviation Administration commercial pilot certificate number of all persons operating aircraft for the aerial application of pesticides during any aerial spraying operations conducted by the applicant; and

(f) Such other information as deemed necessary by the director to determine the suitability of the applicant for licensure as an aerial pesticide business.

(2) An applicant located outside this state shall file with the department a written designation of a resident agent for service of process in actions taken in the administration and enforcement of the Pesticide Act. In lieu of designating a resident agent, the applicant may designate the Secretary of State as the recipient of service of process for the applicant in this state.

Source: Laws 2010, LB254, § 3; Laws 2013, LB69, § 13.

ARTICLE 32

NATURAL RESOURCES

Section

- 2-3225. Districts; tax; levies; limitation; use; collection.
- 2-3226.05. River-flow enhancement bonds; costs and expenses of qualified projects; occupation tax authorized; exemption; collection; accounting; lien; foreclosure.
- 2-3226.06. Repealed. Laws 2014, LB 906, § 23.
- 2-3226.07. Repealed. Laws 2014, LB 906, § 23.
- 2-3226.08. Repealed. Laws 2014, LB 906, § 23.
- 2-3226.09. Repealed. Laws 2014, LB 906, § 23.
- 2-3228. Districts; powers; Nebraska Association of Resources Districts; retirement plan reports; duties.

2-3225 Districts; tax; levies; limitation; use; collection.

(1)(a) Each district shall have the power and authority to levy a tax of not to exceed four and one-half cents on each one hundred dollars of taxable valuation annually on all of the taxable property within such district unless a higher levy is authorized pursuant to section 77-3444.

(b) Each district shall also have the power and authority to levy a tax equal to the dollar amount by which its restricted funds budgeted to administer and implement ground water management activities and integrated management activities under the Nebraska Ground Water Management and Protection Act exceed its restricted funds budgeted to administer and implement ground water management activities and integrated management activities for FY2003-04, not to exceed one cent on each one hundred dollars of taxable valuation annually on all of the taxable property within the district.

(c) In addition to the power and authority granted in subdivisions (1)(a) and (b) of this section, each district located in a river basin, subbasin, or reach that has been determined to be fully appropriated pursuant to section 46-714 or designated overappropriated pursuant to section 46-713 by the Department of

Natural Resources shall also have the power and authority to levy a tax equal to the dollar amount by which its restricted funds budgeted to administer and implement ground water management activities and integrated management activities under the Nebraska Ground Water Management and Protection Act exceed its restricted funds budgeted to administer and implement ground water management activities and integrated management activities for FY2005-06, not to exceed three cents on each one hundred dollars of taxable valuation on all of the taxable property within the district for fiscal year 2006-07 and each fiscal year thereafter through fiscal year 2017-18.

(d) In addition to the power and authority granted in subdivisions (a) through (c) of this subsection, a district with jurisdiction that includes a river subject to an interstate compact among three or more states and that also includes one or more irrigation districts within the compact river basin may annually levy a tax not to exceed ten cents per one hundred dollars of taxable valuation of all taxable property in the district. The proceeds of such tax may be used for the payment of principal and interest on bonds and refunding bonds issued pursuant to section 2-3226.01. Such levy is not includable in the computation of other limitations upon the district's tax levy.

(2) The proceeds of the tax levies authorized in subdivisions (1)(a) through (c) of this section shall be used, together with any other funds which the district may receive from any source, for the operation of the district. When adopted by the board, the tax levies authorized in subdivisions (1)(a) through (d) of this section shall be certified by the secretary to the county clerk of each county which in whole or in part is included within the district. Such levy shall be handled by the counties in the same manner as other levies, and proceeds shall be remitted to the district treasurer. Such levy shall not be considered a part of the general county levy and shall not be considered in connection with any limitation on levies of such counties.

Source: Laws 1969, c. 9, § 25, p. 115; Laws 1972, LB 540, § 1; Laws 1975, LB 577, § 19; Laws 1979, LB 187, § 10; Laws 1981, LB 110, § 1; Laws 1987, LB 148, § 4; Laws 1992, LB 719A, § 10; Laws 1993, LB 734, § 14; Laws 1996, LB 1114, § 17; Laws 2004, LB 962, § 3; Laws 2006, LB 1226, § 4; Laws 2007, LB701, § 11; Laws 2008, LB1094, § 1; Laws 2011, LB400, § 1; Laws 2014, LB906, § 11.

Effective date March 30, 2014.

Cross References

Nebraska Ground Water Management and Protection Act, see section 46-701.

2-3226.05 River-flow enhancement bonds; costs and expenses of qualified projects; occupation tax authorized; exemption; collection; accounting; lien; foreclosure.

(1) A district with an integrated management plan as described in subsection (1) of section 2-3226.01 may levy an occupation tax upon the activity of irrigation of agricultural lands within such district on an annual basis, not to exceed ten dollars per irrigated acre, the proceeds of which may be used for (a) repaying principal and interest on any bonds or refunding bonds issued pursuant to section 2-3226.01 for one or more projects under section 2-3226.04 or (b) payment of all or any part of the costs and expenses of one or more qualified projects described in section 2-3226.04. If such district has more than

one river basin as described in section 2-1504 within its jurisdiction, such district shall confine such occupation tax authorized in this section to the geographic area affected by an integrated management plan adopted in accordance with section 46-715.

(2)(a) Acres classified by the county assessor as irrigated shall be subject to such district's occupation tax unless on or before June 1 in each calendar year the record owner certifies to the district the nonirrigation status of such acres for the same calendar year.

(b) A district may exempt from the occupation tax acres that are enrolled in local, state, or federal temporary irrigation retirement programs that prohibit the application of irrigation water in the year for which the tax is levied.

(c) Except as provided in subdivisions (2)(a) and (b) of this section, a district is prohibited from providing an exemption from, or allowing a request for a local refund of, an occupation tax on irrigated acres regardless of the irrigation source while the record owner maintains irrigated status on such acres in the year for which the tax is levied.

(3) Any such occupation tax shall remain in effect so long as the natural resources district has bonds outstanding which have been issued stating such occupation tax as an available source for payment and for the purpose of paying all or any part of the costs and expenses of one or more projects authorized pursuant to section 2-3226.04.

(4) Such occupation taxes shall be certified to, collected by, and accounted for by the county treasurer at the same time and in the same manner as general real estate taxes, and such occupation taxes shall be and remain a perpetual lien against such real estate until paid. Such occupation taxes shall become delinquent at the same time and in the same manner as general real property taxes. The county treasurer shall publish and post a list of delinquent occupation taxes with the list of real property subject to sale for delinquent property taxes provided for in section 77-1804. In addition, the list shall be provided to natural resources districts which levied the delinquent occupation taxes. The list shall include the record owner's name, the parcel identification number, and the amount of delinquent occupation tax. For services rendered in the collection of the occupation tax, the county treasurer shall receive the fee provided for collection of general natural resources district money under section 33-114.

(5) Such lien shall be inferior only to general taxes levied by political subdivisions of the state. When such occupation taxes have become delinquent and the real property on which the irrigation took place has not been offered at any tax sale, the district may proceed in district court in the county in which the real estate is situated to foreclose in its own name the lien in the same manner and with like effect as a foreclosure of a real estate mortgage, except that sections 77-1903 to 77-1917 shall govern when applicable.

Source: Laws 2007, LB701, § 10; Laws 2008, LB1094, § 3; Laws 2010, LB862, § 2; Laws 2012, LB1125, § 1; Laws 2014, LB906, § 12; Laws 2014, LB1098, § 11.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB906, section 12, with LB1098, section 11, to reflect all amendments.

Note: Changes made by LB906 became effective March 30, 2014. Changes made by LB1098 became operative April 17, 2014.

2-3226.06 Repealed. Laws 2014, LB 906, § 23.

2-3226.07 Repealed. Laws 2014, LB 906, § 23.

2-3226.08 Repealed. Laws 2014, LB 906, § 23.

2-3226.09 Repealed. Laws 2014, LB 906, § 23.

2-3228 Districts; powers; Nebraska Association of Resources Districts; retirement plan reports; duties.

(1) Each district shall have the power and authority to:

(a) Receive and accept donations, gifts, grants, bequests, appropriations, or other contributions in money, services, materials, or otherwise from the United States or any of its agencies, from the state or any of its agencies or political subdivisions, or from any person as defined in section 49-801 and use or expend all such contributions in carrying on its operations;

(b) Establish advisory groups by appointing persons within the district, pay necessary and proper expenses of such groups as the board shall determine, and dissolve such groups;

(c) Employ such persons as are necessary to carry out its authorized purposes and, in addition to other compensation provided, establish and fund a pension plan designed and intended for the benefit of all permanent full-time employees of the district. Any recognized method of funding a pension plan may be employed. Employee contributions shall be required to fund at least fifty percent of the benefits, and past service benefits may be included. The district shall pay all costs of any such past service benefits, which may be retroactive to July 1, 1972, and the plan may be integrated with old age and survivors' insurance, generally known as social security. A uniform pension plan, including the method for jointly funding such plan, shall be established for all districts in the state. A district may elect not to participate in such a plan but shall not establish an independent plan;

(d) Purchase liability, property damage, workers' compensation, and other types of insurance as in the judgment of the board are necessary to protect the assets of the district;

(e) Borrow money to carry out its authorized purposes;

(f) Adopt and promulgate rules and regulations to carry out its authorized purposes; and

(g) Invite the local governing body of any municipality or county to designate a representative to advise and counsel with the board on programs and policies that may affect the property, water supply, or other interests of such municipality or county.

(2)(a) Beginning December 31, 1998, and each December 31 thereafter, the Nebraska Association of Resources Districts as organized under the Interlocal Cooperation Act shall file with the Public Employees Retirement Board an annual report on each retirement plan established pursuant to this section and section 401(a) of the Internal Revenue Code and shall submit copies of such report to the Auditor of Public Accounts. The Auditor of Public Accounts may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. The annual report shall be in a form prescribed by the Public Employees Retirement Board and shall contain the following information for each such retirement plan:

(i) The number of persons participating in the retirement plan;

- (ii) The contribution rates of participants in the plan;
- (iii) Plan assets and liabilities;
- (iv) The names and positions of persons administering the plan;
- (v) The names and positions of persons investing plan assets;
- (vi) The form and nature of investments;
- (vii) For each defined contribution plan, a full description of investment policies and options available to plan participants; and
- (viii) For each defined benefit plan, the levels of benefits of participants in the plan, the number of members who are eligible for a benefit, and the total present value of such members' benefits, as well as the funding sources which will pay for such benefits.

If a plan contains no current active participants, the association may file in place of such report a statement with the Public Employees Retirement Board indicating the number of retirees still drawing benefits, and the sources and amount of funding for such benefits.

(b) If such retirement plan is a defined benefit plan which was open to new members on January 1, 2004, in addition to the reports required by section 13-2402, the association shall cause to be prepared an annual report and shall file the same with the Public Employees Retirement Board and the Nebraska Retirement Systems Committee of the Legislature and submit to the Auditor of Public Accounts a copy of such report. The Auditor of Public Accounts may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. If the association does not submit a copy of the report to the Auditor of Public Accounts within six months after the end of the plan year, the Auditor of Public Accounts may audit, or cause to be audited, the association. All costs of the audit shall be paid by the association. The report shall consist of a full actuarial analysis of each such retirement plan established pursuant to this section. The analysis shall be prepared by an independent private organization or public entity employing actuaries who are members in good standing of the American Academy of Actuaries, and which organization or entity has demonstrated expertise to perform this type of analysis and is unrelated to any organization offering investment advice or which provides investment management services to the retirement plan. The report to the Nebraska Retirement Systems Committee shall be submitted electronically.

Source: Laws 1969, c. 9, § 28, p. 118; Laws 1975, LB 404, § 5; Laws 1983, LB 36, § 4; Laws 1985, LB 387, § 1; Laws 1991, LB 15, § 2; Laws 1994, LB 480, § 10; Laws 1998, LB 1191, § 2; Laws 1999, LB 436, § 5; Laws 1999, LB 795, § 1; Laws 2000, LB 891, § 1; Laws 2011, LB474, § 1; Laws 2014, LB759, § 2.
Effective date July 18, 2014.

Cross References

Interlocal Cooperation Act, see section 13-801.

ARTICLE 38

**MARKETING, DEVELOPMENT, AND PROMOTION
OF AGRICULTURAL PRODUCTS**

(a) NEBRASKA AGRICULTURAL PRODUCTS MARKETING ACT

Section

2-3812. Nebraska Agricultural Products Marketing Cash Fund; created; use; investment.

(a) NEBRASKA AGRICULTURAL PRODUCTS MARKETING ACT

2-3812 Nebraska Agricultural Products Marketing Cash Fund; created; use; investment.

There is hereby created the Nebraska Agricultural Products Marketing Cash Fund. The fund shall consist of administrative costs collected under subsection (4) of section 54-742 and money appropriated by the Legislature which is received as gifts or grants or collected as fees or charges from any source, including federal, state, public, and private. The fund shall be utilized for the purpose of carrying out the Nebraska Agricultural Products Marketing Act and for purposes of subsection (4) of section 54-742. Any money in such 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 1982, LB 942, § 1; Laws 1988, LB 807, § 7; Laws 1995, LB 7, § 21; Laws 2013, LB423, § 1.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

ARTICLE 39

MILK

(c) DAIRY INDUSTRY DEVELOPMENT ACT

Section

2-3951. Nebraska Dairy Industry Development Board; created; members; qualifications.

2-3951.01. Board members; appointment; terms; officers; expenses.

2-3951.02. Board members; nomination and appointment.

2-3951.03. Board members; vacancies.

2-3951.04. Board members; nominations; notification; procedure.

2-3962. Board; report; contents.

(d) NEBRASKA MILK ACT

2-3965. Act, how cited; provisions adopted by reference; copies.

2-3966. Terms, defined.

2-3971. Permit fees; inspection fees; other fees; rate.

2-3975. Director; surveys of milksheds; make and publish results.

2-3976. Pure Milk Cash Fund; created; use; investment.

2-3977. Field representative; powers; field representative permit; applicant; qualifications.

2-3981. Dairy plants, milk for manufacturing purposes, and pickup tankers; quality tests; standards.

2-3982. Classification for sediment content; sediment standards; determination; effect.

Section

- 2-3982.01. Grade A Pasteurized Milk Ordinance requirements; facility in existence prior to July 1, 2013; other facilities; requirements applicable.
- 2-3986. Milk in farm bulk tanks; cooled; temperature.
- 2-3988. Milk utensils; sanitation requirements.
- 2-3989. Water supply requirements; testing.

(e) DAIRY STUDY

- 2-3993. Report on dairy production and processing; Department of Agriculture; duties; Agriculture Committee of Legislature; hearing.

(c) DAIRY INDUSTRY DEVELOPMENT ACT

2-3951 Nebraska Dairy Industry Development Board; created; members; qualifications.

The Nebraska Dairy Industry Development Board is hereby created. Members of the board shall (1) be residents of Nebraska, (2) be at least twenty-one years of age, (3) have been actually engaged in the production of milk in this state for at least five years, and (4) derive a substantial portion of their income from the production of milk in Nebraska. Board members shall be nominated and appointed as provided in sections 2-3951.01 to 2-3951.04.

Source: Laws 1992, LB 275, § 4; Laws 2004, LB 836, § 2; Laws 2013, LB70, § 1.

2-3951.01 Board members; appointment; terms; officers; expenses.

(1) Members of the board shall, as nearly as possible, be representative of all first purchasers of milk and individual producer-processors in the state and, to the extent practicable, result in equitable representation of the various interests of milk producers both in terms of the manner in which milk is marketed and geographic distribution of milk production units in the state.

(2) The terms of the members of the board shall be three years, except that the first term of the initial and additional members of the board shall be staggered so that one-third of the members are appointed each year. The number of years for the first term of new and additional members shall be determined by the Governor. Once duly appointed and qualified, no member's term shall be shortened or terminated by any subsequent certification by the Department of Agriculture of milk production units from which a first purchaser of milk purchases milk.

(3) The Director of Agriculture or his or her designee shall be an ex officio member of the board but shall have no vote in board matters.

(4) Members of the board shall elect from among the members a chairperson, a vice-chairperson, and such other officers as they deem necessary and appropriate.

(5) Members of the board shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

Source: Laws 2004, LB 836, § 3; Laws 2013, LB70, § 2.

2-3951.02 Board members; nomination and appointment.

(1) Members of the board shall be nominated and appointed as follows:

(a) Each first purchaser of milk which purchases milk from at least twenty-one milk producers may submit to the Governor the names of up to two

nominees for each forty milk production units, or major portion thereof, from which the first purchaser purchases milk. The Governor shall appoint one member for each forty production units, or major portion thereof, from nominees submitted pursuant to this subdivision, except that if milk production units certified by the Department of Agriculture have decreased so that each board member appointed pursuant to this subdivision represents less than a major portion of forty production units, the Governor shall maintain representation of one member for each forty production units, or major portion thereof, by not filling a vacancy caused by a member's term expiring; and

(b) All other first purchasers of milk and individual producer-processors who are not included among milk production units claimed by a first purchaser of milk entitled to submit nominees under subdivision (1)(a) of this section shall be combined as a group for the purpose of submitting nominees, and each first purchaser and individual producer-processor of the group may nominate up to two nominees. The Governor shall appoint two members from nominees submitted pursuant to this subdivision.

(2) Whenever the number of members of the board as determined by subsection (1) of this section results in less than seven members, the Governor shall appoint a member or members from the state at large to maintain membership of the board at seven members. Whenever such appointment is required, the board shall call for and submit a list of two or more nominees for each additional member needed to the Governor, and the Governor shall appoint a member or members from the nominees submitted pursuant to this subsection.

(3) Nominations in the case of term expiration or new or at-large membership and for all other vacancies shall be provided according to the process prescribed in section 2-3951.04. The Governor may choose the members of the board from the nominees submitted or may reject all nominees. If the Governor rejects all nominees, names of nominees shall again be provided to the Governor until the appointment is filled.

Source: Laws 2004, LB 836, § 4; Laws 2013, LB70, § 3.

2-3951.03 Board members; vacancies.

(1) A vacancy on the board exists in the event of the death, incapacity, removal, or resignation of any member; when a member ceases to be a resident of Nebraska; when a member ceases to be a producer in Nebraska; or when the member's term expires. Members whose terms have expired shall continue to serve until their successors are appointed and qualified, except that if such a vacancy will not be filled, as determined by the Governor under section 2-3951.02, the member shall not serve after the expiration of his or her term.

(2) For purposes of filling vacancies on the board, the Governor shall appoint one member from up to two nominees submitted by the vacating member's nominator under section 2-3951.02. In the event of a vacancy, the board shall certify to the vacating member's nominator that such a vacancy exists and shall request nominations to fill the vacancy for the remainder of the unexpired term or for a new term, as the case may be.

Source: Laws 2004, LB 836, § 5; Laws 2013, LB70, § 4.

2-3951.04 Board members; nominations; notification; procedure.

(1) When nominations for board members are required, written notification shall be given to each producer represented or to be represented by such member, including an at-large member. The first purchaser or purchasers of milk shall notify each producer from whom the first purchaser buys milk that each producer may submit written nominations. If the group represented is a combination of first purchasers of milk and individual producer-processors or if the member is an at-large member, the individual producer-processors shall receive notification from the Department of Agriculture.

(2) Nominations shall be in writing and shall contain an acknowledgment and consent by the producer being nominated. The nomination shall be returned by the producer to the first purchaser of milk or to the department from whom the producer received notification within fifteen days after the receipt of the notification. For nominations to replace a member whose term is to expire or for a new member, the producers shall receive notification between August 1 and August 15 preceding the expiration of the term of the member or the beginning of the term of a new member. For all other vacancies, the producers shall receive notification within thirty days after the member vacates his or her position on the board or within thirty days after the board calls for an at-large member or members as provided in section 2-3951.02.

(3) The first purchasers of milk, the department, or the board shall submit nominations to the Governor by September 30, in the case of term expiration or new or at-large member, or forty-five days after the member vacates his or her position for all other vacancies. The Governor shall make the appointments within thirty days after receipt of the nominations.

(4) All nominees shall meet the qualifications provided in section 2-3951.

Source: Laws 2004, LB 836, § 6; Laws 2013, LB70, § 5.

2-3962 Board; report; contents.

The board shall prepare a report on or before October 1 of each year setting forth the income received from the assessments collected in accordance with section 2-3958 for the preceding fiscal year, and the report shall include:

(1) The expenditure of funds by the board during the year for the administration of the Dairy Industry Development Act;

(2) A brief description of all contracts requiring the expenditure of funds by the board;

(3) The action taken by the board on all such contracts;

(4) An explanation of all programs relating to the discovery, promotion, and development of markets and industries for the utilization of dairy products and the direct expense associated with each program;

(5) The name and address of each member of the board; and

(6) A brief description of the rules, regulations, and orders adopted and promulgated by the board.

The board shall submit the report electronically to the Clerk of the Legislature and shall make the report available to the public upon request.

Source: Laws 1992, LB 275, § 15; Laws 2013, LB222, § 1.

(d) NEBRASKA MILK ACT

2-3965 Act, how cited; provisions adopted by reference; copies.

(1) Sections 2-3965 to 2-3992 and the publications adopted by reference in subsections (2) and (3) of this section shall be known and may be cited as the Nebraska Milk Act.

(2) The Legislature adopts by reference the following official documents of the National Conference on Interstate Milk Shipments as published by the United States Department of Health and Human Services, United States Public Health Service/Food and Drug Administration:

(a) Grade A Pasteurized Milk Ordinance, 2011 Revision, as delineated in subsection (3) of this section;

(b) Methods of Making Sanitation Ratings of Milk Shippers, 2011 Revision;

(c) Procedures Governing the Cooperative State-Public Health Service/Food and Drug Administration Program of the National Conference on Interstate Milk Shipments, 2011 Revision; and

(d) Evaluation of Milk Laboratories, 2011 Revision.

(3) All provisions of the Grade A Pasteurized Milk Ordinance, 2011 Revision, including footnotes relating to requirements for cottage cheese, and the appendixes with which the ordinance requires mandatory compliance are adopted with the following exceptions:

(a) Section 9 of the ordinance is replaced by section 2-3969;

(b) Section 15 of the ordinance is replaced by section 2-3970;

(c) Section 16 of the ordinance is replaced by section 2-3974;

(d) Section 17 of the ordinance is not adopted;

(e) Section 3 of the ordinance, Administrative Procedures, Issuance of Permits, is adopted with the following modifications:

(i) The department may suspend a permit for a definite period of time or place the holder of a permit on probation upon evidence of violation by the holder of any of the provisions of the Nebraska Milk Act; and

(ii) Decisions of the department may be appealed and such appeals shall be in accordance with the Administrative Procedure Act; and

(f) Section 1 of the ordinance, Definitions, is adopted except for paragraph W.

(4) Copies of the Ordinance, the Appendixes, and the publications, adopted by reference, shall be filed in the offices of the Secretary of State, Clerk of the Legislature, and Department of Agriculture. The copies filed with the Clerk of the Legislature shall be filed electronically.

Source: Laws 1980, LB 632, § 1; Laws 1986, LB 900, § 1; Laws 1990, LB 856, § 2; Laws 1992, LB 366, § 2; Laws 1997, LB 201, § 1; Laws 2001, LB 198, § 1; R.S.Supp.,2006, § 2-3901; Laws 2007, LB111, § 1; Laws 2013, LB67, § 1; Laws 2013, LB222, § 2.

Cross References

Administrative Procedure Act, see section 84-920.

2-3966 Terms, defined.

For purposes of the Nebraska Milk Act, unless the context otherwise requires:

(1) 3-A Sanitary Standards means the standards for dairy equipment promulgated jointly by the Sanitary Standards Subcommittee of the Dairy Industry Committee, the Committee on Sanitary Procedure of the International Association for Food Protection, and the Milk Safety Team, Food and Drug Administration, Public Health Service, Center for Food Safety and Applied Nutrition, Department of Health and Human Services in effect on January 1, 2013;

(2) Acceptable milk means milk that qualifies under sections 2-3979 to 2-3982 as to sight and odor and that is classified acceptable for somatic cells, bacterial content, drug residues, and sediment content;

(3) Components of milk means whey, whey and milk protein concentrate, whey cream, cream, butter, skim milk, condensed milk, ultra-filtered milk, milk powder, dairy blends that are at least fifty-one percent dairy components, and any similar milk byproduct;

(4) C-I-P or cleaned-in-place means the procedure by which sanitary pipelines or pieces of dairy equipment are mechanically cleaned in place by circulation;

(5) Dairy products means products allowed to be made from milk for manufacturing purposes and not required to be of Grade A quality;

(6) Department means the Department of Agriculture;

(7) Director means the Director of Agriculture or his or her duly authorized agent or designee;

(8) Field representative means an individual qualified and trained in the sanitary methods of production and handling of milk as set forth in the Nebraska Milk Act and who is generally employed by a processing or manufacturing milk plant or cooperative for the purpose of quality control work;

(9) First purchaser means a person who purchases raw milk directly from the farm for processing or for resale to a processor, who purchases milk products or components of milk for processing or resale to a processor, or who utilizes milk from the first purchaser's own farm for the manufacturing of milk products or dairy products;

(10) Grade A Pasteurized Milk Ordinance means the documents delineated in subsection (3) of section 2-3965;

(11) Milk for manufacturing purposes means milk produced for processing and manufacturing into products not required by law to be of Grade A quality;

(12) Milk distributor means a person who distributes milk, fluid milk, milk products, or dairy products whether or not the milk is shipped within or into the state. The term does not include a milk plant, a bulk milk hauler/sampler, or a milk producer, as such terms are defined in the Grade A Pasteurized Milk Ordinance, or a food establishment, as defined in the Nebraska Pure Food Act;

(13) Probational milk means milk classified undergrade for somatic cells, bacterial content, or sediment content that may be accepted by plants for specific time periods; and

(14) Reject milk means milk that does not qualify under sections 2-3979 to 2-3982.

Source: Laws 1969, c. 5, § 3, p. 69; R.S.1943, (1976), § 81-263.89; Laws 1980, LB 632, § 14; Laws 1981, LB 333, § 1; Laws 1986, LB 900, § 12; Laws 1988, LB 871, § 19; Laws 1990, LB 856, § 6; Laws

1993, LB 121, § 77; Laws 1993, LB 268, § 1; Laws 2001, LB 198, § 7; R.S.Supp.,2006, § 2-3914; Laws 2007, LB111, § 2; Laws 2013, LB67, § 2.

Cross References

Nebraska Pure Food Act, see section 81-2,239.

2-3971 Permit fees; inspection fees; other fees; rate.

(1)(a) As a condition precedent to the issuance of a permit pursuant to the Nebraska Milk Act, the annual permit fees shall be paid to the department on or before August 1 of each year as follows:

- (i) Milk plant processing 100,000 or less pounds per month...\$100.00;
- (ii) Milk plant processing 100,001 to 2,000,000 pounds per month...\$500.00;
- (iii) Milk plant processing more than 2,000,000 pounds per month...\$1,000.00;
- (iv) Receiving station.....\$200.00;
- (v) Plant fabricating single-service articles...\$300.00;
- (vi) Milk distributor.....\$150.00;
- (vii) Transfer station.....\$100.00;
- (viii) Milk tank truck cleaning facility....\$100.00;
- (ix) Bulk milk hauler/sampler.....\$25.00;
- (x) Field representative.....\$25.00;
- (xi) Grade A Milk producer.....No Fee; and
- (xii) Manufacturing milk producer.....No Fee.

(b) On or before each August 1 a Milk Transportation Company shall pay twenty-five dollars for each milk tank truck in service on July 1 of the current year, but in no case shall the fee be less than one hundred dollars.

(2)(a) All milk or components of milk produced or processed in Nebraska and milk or components of milk shipped in for processing shall be subject to the payment of inspection fees as provided in this subsection.

(b) There shall be three categories of inspection fees as follows:

(i) The inspection fee for raw milk purchased directly off the farm by first purchasers shall have a maximum inspection fee of two and five-tenths cents per hundredweight for raw milk and shall be paid by first purchasers;

(ii) The inspection fee for milk processed by a milk plant shall be seventy-five percent of the fee paid by first purchasers and shall be paid by the milk plant; and

(iii) The inspection fee for components of milk processed shall be fifty percent of the fee paid by first purchasers and shall be paid by the milk plant.

(c) All fees shall be paid on or before the last day of the month for milk or components of milk produced or processed during the preceding month. Any unpaid fee shall be increased one and one-half percent each month beginning with the day following the date the fee was due. Any remaining amount due, including any unpaid charges previously made pursuant to this section, shall be increased at the same rate on the corresponding day of each succeeding month until paid. The purpose of increasing the fees is to cover the administrative

costs associated with collecting fees, and all money collected as increased fees shall be remitted to the State Treasurer for credit to the Pure Milk Cash Fund.

(d) The director may raise or lower the inspection fees each year, but the fees shall not exceed the maximum fees set out in subdivision (b) of this subsection. The director shall determine the fees based on the estimated annual revenue and fiscal year-end fund balance determined as follows:

(i) The estimated annual revenue shall not be greater than one hundred seven percent of the program cash fund appropriations allocated for the Nebraska Milk Act;

(ii) The estimated fiscal year-end cash fund balance shall not be greater than seventeen percent of the program cash fund appropriations allocated for the act; and

(iii) All fee increases or decreases shall be equally distributed between categories to maintain the percentages set forth in subdivision (b) of this subsection.

(3) If any person required to have a permit pursuant to the act has been operating prior to applying for a permit, an additional fee of one hundred dollars shall be paid upon application.

Source: Laws 1980, LB 632, § 6; Laws 1986, LB 900, § 6; Laws 1992, LB 366, § 4; Laws 1997, LB 752, § 58; Laws 2001, LB 198, § 3; R.S.Supp.,2006, § 2-3906; Laws 2007, LB111, § 7; Laws 2013, LB67, § 3.

2-3975 Director; surveys of milksheds; make and publish results.

The director shall make and publish the results of periodic surveys of milksheds to determine the degree of compliance with the sanitary requirements for the production, processing, handling, distribution, sampling, and hauling of milk and milk products as provided in the Nebraska Milk Act. The director shall have the power to adopt and promulgate reasonable rules and regulations in accordance with the procedure defined in the Administrative Procedure Act for the interpretation and enforcement of this section. Such a survey or rating of a milkshed shall follow the procedures prescribed by the United States Department of Health and Human Services, United States Food and Drug Administration, in its documents, as delineated in section 2-3965, entitled Methods of Making Sanitation Ratings of Milk Shippers and Procedures Governing the Cooperative State-Public Health Service/Food and Drug Administration Program of the National Conference on Interstate Milk Shipments.

Source: Laws 1980, LB 632, § 10; Laws 1986, LB 900, § 9; Laws 1990, LB 856, § 4; Laws 1995, LB 406, § 1; Laws 1997, LB 201, § 4; Laws 2001, LB 198, § 6; R.S.Supp.,2006, § 2-3910; Laws 2007, LB111, § 11; Laws 2013, LB67, § 4.

Cross References

Administrative Procedure Act, see section 84-920.

2-3976 Pure Milk Cash Fund; created; use; investment.

All fees paid to the department in accordance with the Nebraska Milk Act shall be remitted to the State Treasurer for credit to the Pure Milk Cash Fund, which fund is hereby created. All money credited to the fund shall be appropri-

ated to the uses of the department to aid in defraying the expenses of administering the act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1980, LB 632, § 11; Laws 1986, LB 900, § 10; Laws 1995, LB 7, § 23; R.S.1943, (1997), § 2-3911; Laws 2007, LB111, § 12; Laws 2013, LB67, § 5.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

2-3977 Field representative; powers; field representative permit; applicant; qualifications.

(1) Milk plants or any entity purchasing raw milk from producers holding a permit under the Nebraska Milk Act may employ, contract with, or otherwise provide for the services of a competent and qualified field representative who may:

- (a) Inform new producers about the requirements of dairy farm sanitation and assist dairy producers with milk quality problems;
- (b) Collect and submit samples at the request of the department; and
- (c) Advise the department of any circumstances that could be of public health significance.

(2) An applicant for a field representative permit shall be trained in the sanitation practices for the sampling, care of samples, and milk hauling requirements of the Nebraska Milk Act. Prior to obtaining a field representative permit, the applicant shall take and pass an examination approved by the department and shall pay the permit fee set forth in section 2-3971. The permit shall expire on July 31 of the year following issuance.

Source: Laws 2007, LB111, § 13; Laws 2013, LB67, § 6.

2-3981 Dairy plants, milk for manufacturing purposes, and pickup tankers; quality tests; standards.

(1) All dairy plants using milk for manufacturing purposes shall run the quality tests set out in this section in a state-certified laboratory and report the results to the department upon request. The test methods shall be those stated in laboratory procedures.

(2) Milk for manufacturing purposes shall be classified for bacterial content by the standard plate count or plate loop count. Bacterial count limits of individual producer milk shall not exceed five hundred thousand per milliliter.

(3) Bacterial counts for milk for manufacturing purposes shall be run at least four times in six consecutive months at irregular intervals at times designated by the director on representative samples of each producer's milk. Whenever any two out of four consecutive bacterial counts exceed five hundred thousand per milliliter, the producer shall be sent a written notice by the department. Such notice shall be in effect so long as two of the last four consecutive samples exceed the limit of the standard set out in subsection (2) of this section. A producer sample shall be taken between three and twenty-one days after the second excessive count. If that sample indicates an excessive bacterial count,

the producer's milk shall be rejected until subsequent testing indicates a bacterial count of five hundred thousand per milliliter or less.

(4) All standards and procedures of the Grade A Pasteurized Milk Ordinance relating to somatic cells shall apply to milk for manufacturing purposes.

(5) The industry shall test all producer's milk and bulk milk pickup tankers for drug residues in accordance with Appendix N, Drug Residue Testing and Farm Surveillance, of the Grade A Pasteurized Milk Ordinance.

Source: Laws 1980, LB 632, § 17; Laws 1986, LB 900, § 14; Laws 1988, LB 871, § 20; Laws 1993, LB 268, § 3; Laws 1997, LB 201, § 5; Laws 2001, LB 198, § 9; R.S.Supp.,2006, § 2-3917; Laws 2007, LB111, § 17; Laws 2013, LB67, § 7.

2-3982 Classification for sediment content; sediment standards; determination; effect.

(1) Milk for manufacturing purposes shall be classified for sediment content, regardless of the results of the appearance and odor examination described in section 2-3980, according to sediment standards as follows:

(a) No. 1: Acceptable, not to exceed fifty-hundredths milligrams or its equivalent;

(b) No. 2: Acceptable, not to exceed one and fifty-hundredths milligrams or its equivalent;

(c) No. 3: Probational, not over ten days, not to exceed two and fifty-hundredths milligrams or its equivalent; and

(d) No. 4: Reject, over two and fifty-hundredths milligrams or its equivalent.

(2) Methods for determining the sediment content of the milk of individual producers shall be the methods described in 7 C.F.R. 58.134, as such section existed on July 1, 2011.

(3) Sediment testing shall be performed at least four times every six months at irregular intervals as designated by the director.

(4) If the sediment disc is classified as No. 1, No. 2, or No. 3, the producer's milk may be accepted. If the sediment disc is classified as No. 4, the milk shall be rejected. A producer's milk that is classified as No. 3 may be accepted for a period not to exceed ten calendar days. If at the end of ten days the producer's milk does not meet acceptable sediment classification No. 1 or No. 2, it shall be rejected from the market. If the sediment disc is classified as No. 4, the milk shall be rejected and no further shipments accepted unless the milk meets the requirements of No. 3 or better.

Source: Laws 1986, LB 900, § 15; Laws 1993, LB 268, § 4; Laws 2001, LB 198, § 10; R.S.Supp.,2006, § 2-3917.01; Laws 2007, LB111, § 18; Laws 2013, LB67, § 8.

2-3982.01 Grade A Pasteurized Milk Ordinance requirements; facility in existence prior to July 1, 2013; other facilities; requirements applicable.

A facility producing milk for manufacturing purposes in existence prior to July 1, 2013, which does not meet all of the requirements of the Grade A Pasteurized Milk Ordinance shall be acceptable for use only if it meets the requirements of sections 2-3983 to 2-3989. After July 1, 2013, all new facilities that produce milk and facilities that produce milk that are under new owner-

ship shall be required to meet the requirements of the Grade A Pasteurized Milk Ordinance.

Source: Laws 2013, LB67, § 9.

2-3986 Milk in farm bulk tanks; cooled; temperature.

Milk for manufacturing purposes in farm bulk tanks shall be cooled to forty degrees Fahrenheit or lower within two hours after milking and maintained at fifty degrees Fahrenheit or lower until transferred to the transport tank. Milk offered for sale for manufacturing purposes shall be in a farm bulk tank that meets all 3-A Sanitary Standards.

Source: Laws 1969, c. 5, § 12, p. 75; R.S.1943, (1976), § 81-263.98; Laws 1980, LB 632, § 22; Laws 1986, LB 900, § 18; Laws 1993, LB 268, § 8; R.S.1943, (1997), § 2-3922; Laws 2007, LB111, § 22; Laws 2013, LB67, § 10.

2-3988 Milk utensils; sanitation requirements.

At a facility producing milk for manufacturing purposes, utensils, milk cans, milking machines, including pipeline systems, and other equipment used in the handling of milk shall be maintained in good condition, shall be free from rust, open seams, milkstone, or any unsanitary condition, and shall be washed, rinsed, and drained after each milking, stored in suitable facilities, and sanitized immediately before use. New or replacement can lids shall be umbrella type. All new utensils, new farm bulk tanks, and equipment shall meet 3-A Sanitary Standards and comply with applicable rules and regulations of the department. Equipment manufactured in conformity with 3-A Sanitary Standards complies with the sanitary design and construction standards of the Nebraska Milk Act.

Source: Laws 1969, c. 5, § 14, p. 76; R.S.1943, (1976), § 81-263.100; Laws 1980, LB 632, § 24; Laws 1986, LB 900, § 20; Laws 1993, LB 268, § 10; Laws 2001, LB 198, § 11; R.S.Supp.,2006, § 2-3924; Laws 2007, LB111, § 24; Laws 2013, LB67, § 11.

2-3989 Water supply requirements; testing.

The water supply at a facility producing milk for manufacturing purposes shall be safe, clean, and ample for the cleaning of dairy utensils and equipment. The water supply shall meet the bacteriological standards established by the Department of Health and Human Services at all times. Water samples shall be taken, analyzed, and found to be in compliance with the requirements of the Nebraska Milk Act prior to the issuance of a permit to the producer and whenever any major change to the well or water source occurs. Wells or water sources which do not meet the construction standards of the Department of Health and Human Services shall be tested annually, and wells or water sources which do meet the construction standards of the Department of Health and Human Services shall be tested every three years. Whenever major alterations or repairs occur or a well or water source repeatedly recontaminates, the water supply shall be unacceptable until such time as the construction standards are met and an acceptable supply is demonstrated. All new producers issued permits under the Nebraska Milk Act shall be required to meet the

construction standards established by the Department of Health and Human Services for private water supplies.

Source: Laws 1969, c. 5, § 15, p. 76; R.S.1943, (1976), § 81-263.101; Laws 1980, LB 632, § 25; Laws 1986, LB 900, § 21; Laws 1989, LB 38, § 5; Laws 1993, LB 268, § 11; Laws 1996, LB 1044, § 40; R.S.1943, (1997), § 2-3925; Laws 2007, LB111, § 25; Laws 2007, LB296, § 19; Laws 2013, LB67, § 12.

(e) DAIRY STUDY

2-3993 Report on dairy production and processing; Department of Agriculture; duties; Agriculture Committee of Legislature; hearing.

(1) On or before November 15, 2014, the Director of Agriculture shall provide a report to the Legislature, in electronic format, that contains:

(a) A quantitative and qualitative description of dairy production in Nebraska, including an overview on the numbers, sizes, and ownership characteristics of dairy operations in the state, current quantity and value of milk production, trends in milk production, and measures of productivity of dairy production in Nebraska;

(b) A comparison of volume and value of milk production and trends in milk production in Nebraska to that of neighboring states and nationally;

(c) A listing and description of milk processing facilities in Nebraska and a description of marketing affiliations and final consumer markets and destinations, including self-processing and direct marketing, for milk produced in Nebraska;

(d) An evaluation of the potential for expanded milk production in Nebraska with respect to (i) the ability of agricultural, institutional, and commercial assets within the state to support expanded production, (ii) the capacity of instate processors to utilize increased instate milk production, (iii) the potential for expansion of self-processing and direct marketing of Nebraska milk and dairy products, (iv) serving new or expanding markets outside of Nebraska, and (v) the potential for investment in new or expanded dairy processing facilities;

(e) A discussion of constraints to the establishment of new milk production facilities, expansion of milk production, and relocation of dairy operations into Nebraska;

(f) A review of public and private programs and initiatives to stimulate expanded milk production in Nebraska and to recruit milk production to relocate to Nebraska; and

(g) A compilation and overview of state incentives and outreach and marketing programs for the recruitment or relocation of dairy production and processing or the stimulation of investment in new or expanded dairy production and processing for states surrounding Nebraska.

(2) In the report, the Director of Agriculture may include any recommendations to the Legislature regarding actions state government may take to aid and encourage expansion of milk production and markets for milk production in Nebraska. It is the intent of the Legislature that the Agriculture Committee of

the Legislature shall hold a public hearing to receive the report and to take public comment on the report and any recommendations.

Source: Laws 2014, LB941, § 1.
Effective date July 18, 2014.

ARTICLE 49 CLIMATE ASSESSMENT

Section

2-4902. Climate Assessment Response Committee; duties.

2-4902 Climate Assessment Response Committee; duties.

The Climate Assessment Response Committee shall:

(1) Provide timely and systematic data collection, analysis, and dissemination of information about drought and other severe climate occurrences to the Governor and to other interested persons;

(2) Provide the Governor and other interested persons with information and advice relevant to requests for federal disaster declarations and to the use of funds and other types of assistance available to the state because of such declarations;

(3) Establish criteria for startup and shutdown of various assessment and response activities by state and federal agencies during drought and other climate-related emergencies;

(4) Provide an organizational structure that assures information flow and defines the duties and responsibilities of all agencies during times of drought and climate-related emergencies;

(5) Maintain a current inventory of state and federal agency responsibilities in assessing and responding to drought and other climate-related emergencies;

(6) Provide a mechanism for the improvement of methods of assessing impacts of drought on agriculture and industry;

(7) Provide such other coordination and communication among federal and state agencies as is deemed appropriate by such committee;

(8) Provide the Governor and other interested persons with information and research on the impacts of cyclical climate change in Nebraska, including impacts on physical, ecological, and economic areas, and attempt to anticipate the unintended consequences of climate adaptation and mitigation;

(9) Facilitate communication between stakeholders and the state about cyclical climate change impacts and response strategies;

(10) By December 1, 2014, provide a report on cyclical climate change in Nebraska to the Governor and electronically to the Legislature which includes key points, overarching recommendations, and options that emerge from other reports and recommendations submitted to the Climate Assessment Response Committee; and

(11) Perform such other climate-related assessment and response functions as are desired by the Governor.

Source: Laws 1992, LB 274, § 2; Laws 2013, LB583, § 1; Laws 2014, LB1008, § 1.
Effective date July 18, 2014.

ARTICLE 57

INDUSTRIAL HEMP

Section

2-5701. Postsecondary institution or Department of Agriculture; industrial hemp; grown or cultivated for purposes of research; sites; certification.

2-5701 Postsecondary institution or Department of Agriculture; industrial hemp; grown or cultivated for purposes of research; sites; certification.

(1) A postsecondary institution in this state or the Department of Agriculture may grow or cultivate industrial hemp if the industrial hemp is grown or cultivated for purposes of research conducted under an agricultural pilot program or other agricultural or academic research.

(2) Sites used for growing or cultivating industrial hemp must be certified by, and registered with, the Department of Agriculture.

(3) The Department of Agriculture shall adopt and promulgate rules and regulations with respect to the growth or cultivation of industrial hemp and the certification and registration of sites growing or cultivating industrial hemp as authorized under this section.

(4) For purposes of this section:

(a) Agricultural pilot program means a pilot program to study the growth, cultivation, or marketing of industrial hemp;

(b) Industrial hemp means the plant *Cannabis sativa* L. and any part of such plant, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than three-tenths percent on a dry weight basis; and

(c) Postsecondary institution means a postsecondary institution as defined in section 85-2403 that also meets the requirements of 20 U.S.C. 1001, as such section existed on January 1, 2014.

Source: Laws 2014, LB1001, § 1.
Effective date July 18, 2014.

CHAPTER 3 AERONAUTICS

Article.

1. General Provisions. 3-106, 3-159.
3. Airport Zoning. 3-301 to 3-333.
5. City Airport Authority. 3-502.
8. Nebraska State Airline Authority. Repealed.

ARTICLE 1

GENERAL PROVISIONS

Section

- 3-106. Department; office; location; aircraft; purchase; use; employees; department; report; contents.
- 3-159. Authorization to purchase new aircraft; sale of aircraft.

3-106 Department; office; location; aircraft; purchase; use; employees; department; report; contents.

(1) Suitable offices shall be provided for the department in the State Capitol. It may maintain offices at such other places in the state as it may designate and may incur the necessary expense for office furniture, stationery, printing, and other incidental or necessary expenses for the enforcement of the State Aeronautics Department Act and the general promotion of aeronautics within the state.

(2) The department may purchase aircraft for the use of state government and may sell any state aircraft that is not needed or suitable for state uses. State aircraft shall be subject at all times to the written orders of the Governor for use and service in any branch of the state government. The department shall establish an hourly rate for use of a state aircraft by a state official or agency. The hourly rate shall not include an amount to recover the cost of acquisition by purchase, but shall include amounts for items such as variable fuel and oil costs, routine maintenance costs, landing fees, and preventive maintenance reserves.

(3) The department may employ such clerical and other employees and assistants as it may deem necessary for the proper transaction of its business.

(4) It is the intent of the Legislature that the use of state-owned, chartered, or rented aircraft by the department shall be for the sole purpose of state business. The department shall electronically file with the Clerk of the Legislature a quarterly report on the department's use of all state-owned, chartered, or rented aircraft that includes the following information for each trip: The name of the agency or other entity traveling; the name of each individual passenger; all purposes of the trip; the destination and intermediate stops; the miles flown; and the duration of the trip.

Source: Laws 1945, c. 5, § 5, p. 82; Laws 2014, LB1016, § 2.
Effective date March 29, 2014.

3-159 Authorization to purchase new aircraft; sale of aircraft.

The Executive Board of the Legislative Council pursuant to the authority granted in Laws 2013, LB194, section 9, commissioned an independent study to enable the Legislature to determine whether the state should purchase or otherwise acquire an aircraft for state purposes and what type of aircraft should be acquired, if any. After completion and review of the study, the Legislature authorizes the Department of Aeronautics to purchase a new aircraft. It is the intent of the Legislature to fund the purchase with General Funds and other funds. The Legislature also directs the department, upon taking possession of a new aircraft, to sell the state's 1982 Piper Cheyenne aircraft, with the proceeds retained by the department for use for preventive maintenance funding for the new aircraft.

Source: Laws 2014, LB1016, § 1.
Effective date March 29, 2014.

ARTICLE 3 AIRPORT ZONING

Section

- 3-301. Terms, defined.
- 3-302. Airport hazard; public nuisance; prevention.
- 3-303. Airport hazard; zoning regulations; modifications and exceptions.
- 3-304. Joint airport zoning board; airport zoning regulation; filing.
- 3-304.01. Joint airport zoning board; members; term.
- 3-306. Zoning regulations; conflict; stringent limitation or requirement prevails.
- 3-307. Zoning regulations; adoption; notice; hearing.
- 3-308. Zoning regulations; procedure for adoption; commission; appointment; preliminary report; public hearings; final report.
- 3-309. Zoning regulations; requirements; reasonable.
- 3-310. Zoning regulations; nonconforming use; exception.
- 3-311. Zoning regulations; new or changed structure; nonconforming use; permit.
- 3-312. Zoning regulations; property inconsistent with regulations; variance; allowance; exception.
- 3-313. Zoning regulations; permit or variance; hazard marking and lighting.
- 3-314. Transferred to section 3-319.01.
- 3-315. Repealed. Laws 2013, LB 140, § 23.
- 3-316. Repealed. Laws 2013, LB 140, § 23.
- 3-317. Repealed. Laws 2013, LB 140, § 23.
- 3-318. Repealed. Laws 2013, LB 140, § 23.
- 3-319. Zoning regulations; provide for administration and enforcement.
- 3-319.01. Zoning regulations; appeal; hearing; procedure; board; duties.
- 3-320. Zoning regulations; board of adjustment; members; terms; powers.
- 3-321. Repealed. Laws 2013, LB 140, § 23.
- 3-322. Repealed. Laws 2013, LB 140, § 23.
- 3-324. Board of adjustment; judicial review; petition; grounds.
- 3-325. Repealed. Laws 2013, LB 140, § 23.
- 3-326. Repealed. Laws 2013, LB 140, § 23.
- 3-327. Repealed. Laws 2013, LB 140, § 23.
- 3-329. Judicial review; effect of decision on other structures.
- 3-330. Violation; penalty; injunctions.
- 3-331. Acquisition of property interest; purchase; grant; condemnation; procedure.
- 3-333. Act, how cited.

3-301 Terms, defined.

For purposes of the Airport Zoning Act, unless the context otherwise requires:

(1)(a) Airport means an area of land or water that is used or intended to be used for the landing and takeoff of aircraft and includes any related buildings and facilities;

(b) Airport includes only public-use airports with state or federally approved airport layout plans and military airports with military service-approved military layout plans;

(2) Airport hazard means any structure or tree or use of land that penetrates any approach, operation, transition, or turning zone;

(3) Airport hazard area means any area of land or water upon which an airport hazard might be established if not prevented as provided in the act, but such area shall not extend in any direction a distance in excess of the limits provided for approach, operation, transition, and turning zones;

(4) Airport layout plan means a scaled drawing of existing and proposed land, buildings, and facilities necessary for the operation and development of an airport prepared in accordance with state rules and regulations and federal regulations and guidelines;

(5) Approach zone means a zone that extends from the end of each operation zone and is centered along the extended runway centerlines. Approach zone dimensions are as follows:

(a) For an existing or proposed instrument runway:

(i) An approach zone extends ten miles from the operation zone, measured along the extended runway centerline. The approach zone is one thousand feet wide at the end of the zone nearest the runway and expands uniformly to sixteen thousand eight hundred forty feet wide at the farthest end of the zone; and

(ii) The height limit of an approach zone begins at the elevation of the runway end for which it is the approach and rises one foot vertically for every fifty feet horizontally, except that the height limit shall not exceed one hundred fifty feet above the nearest existing or proposed runway end elevation within three miles of the end of the operation zone at that runway end. At three miles from such operation zone, the height limit resumes sloping one foot vertically for every fifty feet horizontally and continues to the ten-mile limit; and

(b) For an existing or proposed visual runway:

(i) An approach zone extends from the operation zone to the limits of the turning zone, measured along the extended runway centerline. The approach zone is five hundred feet wide at the end of the zone nearest the runway and expands uniformly so that at a point on the extended runway centerline three miles from the operation zone, the approach zone is three thousand seven hundred feet wide; and

(ii) The height limit of an approach zone begins at the elevation of the runway end for which it is the approach and rises one foot vertically for every forty feet horizontally, except that the height limit shall not exceed one hundred fifty feet above the nearest existing or proposed runway end elevation within three miles of the end of the operation zone at that runway end;

(6) Electric facility means an overhead electrical line, including poles or other supporting structures, owned or operated by an electric supplier as defined in section 70-1001.01, for the transmission or distribution of electrical power to the electric supplier's customers;

(7) Existing runway means an instrument runway or a visual runway that is paved or made of turf that has been constructed or is under construction;

(8) Instrument runway means an existing runway with precision or nonprecision instrument approaches as developed and published by the Federal Aviation Administration or an existing or proposed runway with future precision or nonprecision instrument approaches reflected on the airport layout plan. After September 6, 2013, an airport shall not designate an existing or proposed runway as an instrument runway if the runway was not previously designated as such without the approval of the airport's governing body after a public hearing on such designation;

(9) Operation zone means a zone that is longitudinally centered on each existing or proposed runway. Operation zone dimensions are as follows:

(a) For existing and proposed paved runways, the operation zone extends two hundred feet beyond the ends of each runway. For existing and proposed turf runways, the operation zone begins and ends at the same points as the runway begins and ends;

(b) For existing and proposed instrument runways, the operation zone is one thousand feet wide, with five hundred feet on either side of the runway centerline. For all other existing and proposed runways, the operation zone is five hundred feet wide, with two hundred fifty feet on either side of the runway centerline; and

(c) The height limit of the operation zone is the same as the height of the runway centerline elevation on an existing or proposed runway or the surface of the ground, whichever is higher;

(10) Person means any individual, firm, partnership, limited liability company, corporation, company, association, joint-stock association, or body politic and includes any trustee, receiver, assignee, or other similar representative thereof;

(11) Political subdivision means any municipality, city, village, or county;

(12) Proposed runway means an instrument runway or a visual runway that has not been constructed and is not under construction but that is depicted on the airport layout plan that has been conditionally or unconditionally approved by, or has been submitted for approval to, the Federal Aviation Administration;

(13) Runway means a defined area at an airport that is prepared for the landing and takeoff of aircraft along its length;

(14) Structure means any object constructed or installed by man, including, but without limitation, buildings, towers, smokestacks, and overhead transmission or distribution lines;

(15) Transition zone means a zone that extends outward at a right angle to the runway centerline and upward at a rate of one foot vertically for every seven feet horizontally. The height limit of a transition zone begins at the height limit of the adjacent approach zone or operation zone and ends at a height of one hundred fifty feet above the highest elevation on the existing or proposed runway;

(16) Tree means any object of natural growth;

(17) Turning zone's outer limit means the area located at a distance of three miles as a radius from the corners of the operation zone of each runway and connecting adjacent arcs with tangent lines, excluding any area within the approach zone, operation zone, or transition zone. The height limit of the turning zone is one hundred fifty feet above the highest elevation on the existing or proposed runway; and

(18) Visual runway means a runway intended solely for the operation of aircraft using visual approach procedures, with no straight-in instrument approach procedure and no instrument designation indicated on an airport layout plan approved by the Federal Aviation Administration, a military service-approved military layout plan, or any planning documents submitted to the Federal Aviation Administration by a competent authority.

Source: Laws 1945, c. 233, § 1, p. 682; Laws 1993, LB 121, § 84; Laws 2013, LB140, § 1.

3-302 Airport hazard; public nuisance; prevention.

(1) It is hereby found that an airport hazard endangers the lives and property of the users of an airport and occupants of land in its vicinity and also, if of the obstruction type, in effect reduces the size of the area available for the landing, takeoff, and maneuvering of aircraft, thus tending to destroy or impair the utility of the airport and the public investment therein.

(2) Accordingly, it is hereby declared that (a) the creation or establishment of an airport hazard is a public nuisance and an injury to the community served by the airport in question, (b) it is necessary in the interest of the public health, public safety, and general welfare that the creation or establishment of airport hazards be prevented, and (c) the prevention of airport hazards should be accomplished, to the extent legally possible, by the exercise of the police power, without compensation.

(3) It is further declared that both the prevention of the creation or establishment of airport hazards and the elimination, removal, alteration, mitigation, or marking and lighting of existing airport hazards are public purposes for which political subdivisions may raise and expend public funds and acquire land or property interests therein.

Source: Laws 1945, c. 233, § 2, p. 683; Laws 2013, LB140, § 2.

3-303 Airport hazard; zoning regulations; modifications and exceptions.

In order to prevent the creation or establishment of airport hazards, every political subdivision that has an airport hazard area within the area of its zoning jurisdiction shall adopt, administer, and enforce, under the police power and in the manner and upon the conditions prescribed in the Airport Zoning Act, airport zoning regulations for such airport hazard area. The regulations shall meet the minimum regulations as prescribed by the Department of Aeronautics and may divide such area into zones and, within such zones, specify the land uses permitted and regulate and restrict the height to which structures may be erected and trees allowed to grow, except that a political subdivision or a joint airport zoning board provided for in section 3-304 may include modifications or exceptions to the airport zoning regulations adopted under the Airport Zoning Act that the political subdivision or joint airport zoning board deems appropriate. Such modifications and exceptions shall not be considered a conflict for the purposes of section 3-306. The authority of a political subdivision to adopt airport zoning regulations shall not be conditional upon prior adoption of a comprehensive development plan or a comprehensive zoning ordinance.

Source: Laws 1945, c. 233, § 3(1), p. 683; Laws 1961, c. 9, § 1, p. 96; Laws 2010, LB512, § 1; Laws 2013, LB140, § 3.

3-304 Joint airport zoning board; airport zoning regulation; filing.

If an airport is owned or controlled by a political subdivision and any airport hazard area appertaining to such airport is located outside of the political subdivision's zoning jurisdiction, the political subdivision owning or controlling the airport and the political subdivision or political subdivisions within whose zoning jurisdiction the airport hazard area or areas are located may, by ordinance or resolution duly adopted, create a joint airport zoning board, which board shall have the same power to adopt, by resolution approved by a majority of the board, airport zoning regulations applicable to an airport hazard area as that vested by section 3-303 in any political subdivision within whose zoning jurisdiction such area is located. Any airport zoning regulation, or any amendment thereto, adopted by a joint airport zoning board shall be filed with the official or administrative agency responsible for the enforcement of zoning regulations in each of the political subdivisions participating in the creation of the joint airport zoning board and shall be enforced as provided in section 3-319.

Source: Laws 1945, c. 233, § 3(2), p. 683; Laws 1961, c. 9, § 2, p. 96; Laws 1984, LB 837, § 1; Laws 2010, LB512, § 2; Laws 2013, LB140, § 4.

3-304.01 Joint airport zoning board; members; term.

If a joint airport zoning board is created pursuant to section 3-304, such board shall have two representatives appointed by each political subdivision participating in its creation as members thereof and also a chairperson elected by a majority of the members so appointed. The term of each member shall be four years.

Source: Laws 2013, LB140, § 5.

3-306 Zoning regulations; conflict; stringent limitation or requirement prevails.

In the event of any conflict between any airport zoning regulations adopted under the Airport Zoning Act and any other regulations applicable to the same area, whether the conflict be with respect to the height of structures or trees, the use of land, or any other matter, and whether such other regulations were adopted by the political subdivision which adopted the airport zoning regulations or by some other political subdivision, the more stringent limitation or requirement shall govern and prevail.

Source: Laws 1945, c. 233, § 4(2), p. 684; Laws 2013, LB140, § 6.

3-307 Zoning regulations; adoption; notice; hearing.

No airport zoning regulations shall be adopted, amended, or changed under the Airport Zoning Act except by the action of the legislative body of the political subdivision in question, or the joint airport zoning board provided for in section 3-304, after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. At least ten days' notice of the hearing shall be published in an official paper, or a paper of general circulation, in the political subdivision or subdivisions in which the airport hazard area is located.

Source: Laws 1945, c. 233, § 5(1), p. 684; Laws 2013, LB140, § 7.

3-308 Zoning regulations; procedure for adoption; commission; appointment; preliminary report; public hearings; final report.

Prior to the initial zoning of any airport hazard area under the Airport Zoning Act, the political subdivision or joint airport zoning board which is to adopt the regulations shall appoint a commission, to be known as the airport zoning commission, to recommend the boundaries of the various zones to be established and the regulations to be adopted therefor. Such commission shall make a preliminary report and hold public hearings thereon before submitting its final report. The legislative body of the political subdivision or the joint airport zoning board shall not hold its public hearings or take other action until it has received the final report of such commission. If a city or county planning commission or a joint or interjurisdictional planning commission already exists, it may be appointed as the airport zoning commission.

Source: Laws 1945, c. 233, § 5(2), p. 685; Laws 2013, LB140, § 8.

3-309 Zoning regulations; requirements; reasonable.

All airport zoning regulations adopted under the Airport Zoning Act shall be reasonable and not impose any requirement or restriction which is not reasonably necessary to effectuate the purposes of the act. In determining what regulations it may adopt, each political subdivision and joint airport zoning board shall consider, among other things, the character of the flying operations expected to be conducted at the airport, the nature of the terrain within the airport hazard area, the character of the neighborhood, and the uses to which the property to be zoned is put and adaptable. If an airport layout plan has been submitted for approval to the Federal Aviation Administration with a proposed instrument runway depicted thereon and such airport layout plan is conditionally or unconditionally approved without such proposed instrument runway, the political subdivision shall adopt or revise, as necessary, airport zoning regulations to protect any approach zone for a visual runway only.

Source: Laws 1945, c. 233, § 6(1), p. 685; Laws 2013, LB140, § 9.

3-310 Zoning regulations; nonconforming use; exception.

(1) No airport zoning regulations adopted under the Airport Zoning Act shall require the removal, lowering, or other change or alteration of any existing structure or tree not conforming to the regulations when adopted or amended or otherwise interfere with the continuance of any nonconforming use, except as provided in section 3-311.

(2) Any structure that has not yet been constructed but that has received, prior to August 1, 2013, zoning approval from the political subdivision exercising zoning jurisdiction over such structure may be constructed and shall thereafter be considered an existing structure for purposes of this section.

Source: Laws 1945, c. 233, § 6(2), p. 685; Laws 2013, LB140, § 10.

3-311 Zoning regulations; new or changed structure; nonconforming use; permit.

(1) Airport zoning regulations adopted under the Airport Zoning Act may require that a permit be obtained before any new structure or use may be constructed or established and before any existing use or structure may be substantially changed, altered, or repaired.

(2) Except as provided in subsection (3) of this section for certain electric facilities, all airport zoning regulations adopted under the act shall provide that before any nonconforming structure or tree may be replaced, substantially altered or repaired, rebuilt, allowed to grow higher, or replanted, a permit authorizing any replacement, alteration, repair, reconstruction, growth, or replanting must be secured from the administrative agency authorized to administer and enforce the regulations. A permit shall be granted under this subsection if the applicant shows that the replacement, alteration, repair, reconstruction, growth, or replanting of the nonconforming structure, tree, or nonconforming use would not result in an increase in height or a greater hazard to air navigation than the condition that existed when the applicable regulation was adopted. For nonconforming structures other than electric facilities, no permit under this subsection shall be required for repairs necessitated by fire, explosion, act of God, or the common enemy or for repairs which do not involve expenditures exceeding more than sixty percent of the fair market value of the nonconforming structure, so long as the height of the nonconforming structure is not increased over its preexisting height.

(3) An electric supplier owning or operating an electric facility made nonconforming by the adoption of airport zoning regulations under the Airport Zoning Act may, without a permit or other approval by the political subdivision adopting such regulations, repair, reconstruct, or replace such electric facility if the height of such electric facility is not increased over its preexisting height. Any construction, repair, reconstruction, or replacement of an electric facility, the height of which will exceed the preexisting height of such electric facility, shall require a permit from the political subdivision adopting such regulations. The permit shall be granted only upon a showing that the excess height of the electric facility will not establish or create an airport hazard or become a greater hazard to air navigation than the electric facility that previously existed.

Source: Laws 1945, c. 233, § 7(1), p. 685; Laws 2013, LB140, § 11.

3-312 Zoning regulations; property inconsistent with regulations; variance; allowance; exception.

Any person desiring to erect any structure, increase the height of any structure, permit the growth of any tree, or otherwise use his or her property in a manner inconsistent with the airport zoning regulations adopted under the Airport Zoning Act may apply to the board of adjustment for a variance from the zoning regulations in question. Such variances shall be allowed only if the board of adjustment makes the same findings for the granting of variances generally as set forth in subsection (2) of section 19-910, except that if the applicant demonstrates that the proposed structure or alteration of a structure does not require any modification or revision to any approach or approach procedure as approved or written by the Federal Aviation Administration on either an existing or proposed runway and the applicant provides signed documentation from the Federal Aviation Administration that the proposed structure or alteration of the structure will not require any modification or revision of any airport minimums, such documentation may constitute evidence of undue hardship and the board of adjustment may grant the requested variance without such findings. Any variance may be allowed subject to any

reasonable conditions that the board of adjustment may deem necessary to effectuate the purposes of the act.

Source: Laws 1945, c. 233, § 7(2), p. 686; Laws 2013, LB140, § 12.

3-313 Zoning regulations; permit or variance; hazard marking and lighting.

In granting any permit under or variance from any airport zoning regulation adopted under the Airport Zoning Act, the administrative agency or board of adjustment may, if it deems it advisable to effectuate the purposes of the act and reasonable in the circumstances, so condition such permit or variance as to require the owner of the structure or tree in question to permit the political subdivision, at its own expense, to install, operate, and maintain thereon such markers and lights as may be necessary to indicate to flyers the presence of an airport hazard.

Source: Laws 1945, c. 233, § 7(3), p. 686; Laws 2013, LB140, § 13.

3-314 Transferred to section 3-319.01.

3-315 Repealed. Laws 2013, LB 140, § 23.

3-316 Repealed. Laws 2013, LB 140, § 23.

3-317 Repealed. Laws 2013, LB 140, § 23.

3-318 Repealed. Laws 2013, LB 140, § 23.

3-319 Zoning regulations; provide for administration and enforcement.

All airport zoning regulations adopted under the Airport Zoning Act shall provide for the administration and enforcement of such regulations by an administrative agency which may be an agency created by such regulations or any official, board, or other existing agency of the political subdivision adopting the regulations. In the case of airport zoning regulations adopted by a joint airport zoning board, each of the political subdivisions which participated in the creation of the joint airport zoning board shall create or designate an official or an administrative agency to administer and enforce the airport zoning regulations within its respective zoning jurisdiction. The duties of any official or administrative agency designated pursuant to the act shall include that of reviewing and acting upon all applications for permits under the airport zoning regulations, but such agency shall not have or exercise any of the powers herein delegated to the board of adjustment. In no event shall such official or administrative agency be or include any member of the board of adjustment.

Source: Laws 1945, c. 233, § 9, p. 687; Laws 2013, LB140, § 14.

3-319.01 Zoning regulations; appeal; hearing; procedure; board; duties.

(1) Any person aggrieved or taxpayer affected by any decision of an administrative agency made in its administration of airport zoning regulations adopted under the Airport Zoning Act, or any governing body of a political subdivision which is of the opinion that a decision of such an administrative agency is an improper application of airport zoning regulations of concern to such governing body, may appeal to the board of adjustment authorized to hear and decide appeals from the decisions of such administrative agency.

(2) Any appeal taken under this section shall be taken within a reasonable amount of time, as provided by the rules of the board, by filing with the agency from which the appeal is taken and with the board, a notice of appeal specifying the grounds thereof. The agency from which the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.

(3) An appeal shall stay any proceeding in furtherance of the action appealed from, unless the agency from which the appeal is taken certifies to the board, after the notice of appeal has been filed with it, that by reason of the facts stated in the certificate a stay would, in its opinion, cause imminent peril to life or property. In such cases the proceedings shall not be stayed except by an order of the board after notice to the agency from which the appeal is taken and upon due cause shown.

(4) The board shall fix a reasonable time for the hearing of appeals, give public notice thereof, give due notice to the parties in interest, and decide the appeal within sixty days after the date of filing such appeal. Any party may appear in person or by an agent or attorney at the hearing.

Source: Laws 1945, c. 233, § 8(1), p. 686; R.S.1943, (2012), § 3-314; Laws 2013, LB140, § 15.

3-320 Zoning regulations; board of adjustment; members; terms; powers.

(1) All airport zoning regulations adopted under the Airport Zoning Act shall provide for a board of adjustment to have and exercise the following powers:

(a) To hear and decide appeals from any order, requirement, decision, or determination made by the administrative agency in the enforcement of the airport zoning regulations;

(b) To hear and decide any special exceptions to the terms of the airport zoning regulations upon which such board may be required to pass under such regulations; and

(c) To hear and decide petitions for variances from the strict application of airport zoning regulations.

(2) A board of adjustment shall consist of five regular members, each to be appointed for a term of three years by the political subdivision or joint airport zoning board adopting the regulations. Any member thereof may be removed by the appointing authority for cause, upon written charges and after a public hearing. The concurring vote of four members of the board shall be necessary to reverse any order, requirement, decision, or determination of the administrative agency or to decide in favor of the applicant on any matter upon which the board is required to pass under the airport zoning regulations or to effect any variation in such regulations.

(3) The board of adjustment may, consistent with the Airport Zoning Act, reverse or affirm wholly or partly or modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as it deems right and proper under the circumstances.

(4) A board of adjustment, board of zoning appeals, or similar zoning appeals board that exists on September 6, 2013, may be designated as and shall

exercise the power of the board of adjustment for airport zoning regulations as required by this section.

Source: Laws 1945, c. 233, § 10(1), p. 688; Laws 2013, LB140, § 16.

3-321 Repealed. Laws 2013, LB 140, § 23.

3-322 Repealed. Laws 2013, LB 140, § 23.

3-324 Board of adjustment; judicial review; petition; grounds.

Any (1) person aggrieved or taxpayer affected by any decision of a board of adjustment, (2) governing body of a political subdivision, or (3) joint airport zoning board, which is of the opinion that a decision of a board of adjustment is arbitrary or capricious, illegal, or unsupported by evidence, may obtain judicial review of such decision by filing a petition in error in the district court of the county in which the structure or tree that is the subject of the decision is located. The filing of and proceeding on the petition in error shall be in accordance with sections 25-1901 to 25-1937.

Source: Laws 1945, c. 233, § 11(1), p. 689; Laws 2013, LB140, § 17.

3-325 Repealed. Laws 2013, LB 140, § 23.

3-326 Repealed. Laws 2013, LB 140, § 23.

3-327 Repealed. Laws 2013, LB 140, § 23.

3-329 Judicial review; effect of decision on other structures.

In any case in which airport zoning regulations adopted under the Airport Zoning Act, although generally reasonable, are held by a court to interfere with the use or enjoyment of a particular structure or parcel of land to such an extent or to be so onerous in their application to such a structure or parcel of land as to constitute a taking or deprivation of that property in violation of the Constitution of Nebraska or the Constitution of the United States, such holding shall not affect the application of such regulations to other structures and parcels of land.

Source: Laws 1945, c. 233, § 11(6), p. 690; Laws 2013, LB140, § 18.

3-330 Violation; penalty; injunctions.

Each violation of the Airport Zoning Act or of any regulations, orders, or rulings promulgated or made pursuant to the act shall constitute a Class IV misdemeanor. Each day a violation continues to exist shall constitute a separate offense. In addition, the political subdivision or agency adopting zoning regulations under the act may institute, in any court of competent jurisdiction, an action to prevent, restrain, correct, or abate any violation of (1) the act, (2) airport zoning regulations adopted under the act, or (3) any order or ruling made in connection with the administration or enforcement of the act or such regulations. The court in such proceedings shall adjudge to the plaintiff such relief by way of injunction, which may be mandatory or otherwise, as may be proper under all the facts and circumstances of the case in order to fully

effectuate the purposes of the act and of the regulations adopted and orders and rulings made pursuant thereto.

Source: Laws 1945, c. 233, § 12, p. 690; Laws 1977, LB 40, § 30; Laws 2013, LB140, § 19.

3-331 Acquisition of property interest; purchase; grant; condemnation; procedure.

In any case in which (1) it is desired to remove, lower, or otherwise terminate a nonconforming structure or use, (2) the approach protection necessary cannot, because of constitutional limitations, be provided by airport zoning regulations under the Airport Zoning Act, or (3) it appears advisable that the necessary approach protection be provided by acquisition of property rights rather than by airport zoning regulations, the political subdivision within which the property or nonconforming use is located or the political subdivision owning or operating the airport or served by it may acquire by purchase, grant, or condemnation, such air right, aviation easement, or other estate or interest in the property or nonconforming structure or use in question as may be necessary to effectuate the purposes of the act. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724.

Source: Laws 1945, c. 233, § 13, p. 691; Laws 1951, c. 101, § 30, p. 460; Laws 2013, LB140, § 20.

3-333 Act, how cited.

Sections 3-301 to 3-333 shall be known and may be cited as the Airport Zoning Act.

Source: Laws 1945, c. 233, § 15, p. 691; Laws 2013, LB140, § 21.

ARTICLE 5

CITY AIRPORT AUTHORITY

Section

3-502. Airport authority; created; board; members; expenses; delegation of authority; period of corporate existence; jurisdiction.

3-502 Airport authority; created; board; members; expenses; delegation of authority; period of corporate existence; jurisdiction.

(1) Any city may create an airport authority to be managed and controlled by a board. The board, when and if appointed, shall have full and exclusive jurisdiction and control over all facilities owned or thereafter acquired by such city for the purpose of aviation operation, air navigation, and air safety operation.

(2) The Cities Airport Authorities Act shall not become operative as to any city unless the mayor and city council in their discretion activate the airport authority by the mayor appointing and the council approving the board members as provided in this section. Each such board shall be a body corporate and politic, constituting a public corporation and an agency of the city for which such board is established.

(3) Each board in cities of the primary, first, and second classes and in villages shall consist of five members to be appointed by the mayor with the approval of the city council to serve until their successors elected pursuant to

section 32-547 take office. Members of such board shall be residents of the city for which such authority is created. Any vacancy on such board shall be filled by appointment by the mayor, with the approval of the city council, to serve the unexpired portion of the term. A member of such board may be removed from office for incompetence, neglect of duty, or malfeasance in office. An action for the removal of such officer may be brought, upon resolution of the city council, in the district court of the county in which such city is located.

(4) Each board in cities of the metropolitan class shall consist of five members who shall be nominated by the mayor and approved by the city council and shall serve for terms of five years. Any vacancy on such board shall be filled by appointment by the mayor, with the approval of the city council, and such appointee shall serve the unexpired portion of the term of the member whose office was vacated. Any member of such board may be removed from office by the mayor, for incompetence, neglect of duty, or malfeasance in office, with the consent and approval of the city council.

(5) The members of the board hereby created shall not be entitled to compensation for their services but shall be entitled to reimbursement of expenses paid or incurred in the performance of the duties imposed upon them by the Cities Airport Authorities Act, to be paid as provided in section 23-1112 for county officers and employees. A majority of the members of the board then in office shall constitute a quorum. The board may delegate to one or more of the members, or to its officers, agents, and employees, such powers and duties as it may deem proper.

(6) The board and its corporate existence shall continue only for a period of twenty years from the date of appointment of the members thereof and thereafter until all its liabilities have been met and its bonds have been paid in full or such liabilities and bonds have otherwise been discharged. When all liabilities incurred by the authority of every kind and character have been met and all its bonds have been paid in full or such liabilities and bonds have otherwise been discharged, all rights and properties of the authority shall pass to and be vested in the city. The authority shall have and retain full and exclusive jurisdiction and control over all projects under its jurisdiction, with the right and duty to charge and collect revenue therefrom, for the benefit of the holders of any of its bonds or other liabilities. Upon the authority's ceasing to exist, all its remaining rights and properties shall pass to and vest in the city.

Source: Laws 1957, c. 9, § 2, p. 111; Laws 1959, c. 12, § 1, p. 120; Laws 1965, c. 19, § 1, p. 153; Laws 1967, c. 14, § 1, p. 102; Laws 1967, c. 15, § 1, p. 106; Laws 1969, c. 25, § 1, p. 218; Laws 1971, LB 164, § 1; Laws 1972, LB 661, § 1; Laws 1977, LB 201, § 1; Laws 1981, LB 204, § 13; Laws 1988, LB 975, § 1; Laws 1994, LB 76, § 461; Laws 2013, LB87, § 1.

ARTICLE 8

NEBRASKA STATE AIRLINE AUTHORITY

Section

- 3-801. Repealed. Laws 2013, LB 78, § 23.
- 3-802. Repealed. Laws 2013, LB 78, § 23.
- 3-803. Repealed. Laws 2013, LB 78, § 23.
- 3-804. Repealed. Laws 2013, LB 78, § 23.
- 3-805. Repealed. Laws 2013, LB 78, § 23.

3-801 Repealed. Laws 2013, LB 78, § 23.

3-802 Repealed. Laws 2013, LB 78, § 23.

3-803 Repealed. Laws 2013, LB 78, § 23.

3-804 Repealed. Laws 2013, LB 78, § 23.

3-805 Repealed. Laws 2013, LB 78, § 23.

CHAPTER 7

ATTORNEYS AT LAW

Article.

2. Legal Education for Public Service and Rural Practice Loan Repayment Assistance Act. 7-201 to 7-210.

ARTICLE 2

LEGAL EDUCATION FOR PUBLIC SERVICE AND RURAL PRACTICE LOAN REPAYMENT ASSISTANCE ACT

Section

- 7-201. Act, how cited.
- 7-202. Legislative findings.
- 7-203. Terms, defined.
- 7-204. Legal Education for Public Service and Rural Practice Loan Repayment Assistance Board; created; members.
- 7-206. Legal education for public legal service and rural practice loan repayment assistance program; rules and regulations; contents.
- 7-207. Commission on Public Advocacy; applications; board; recommendations; certification of recipients.
- 7-208. Commission on Public Advocacy; solicit and receive donations.
- 7-209. Legal Education for Public Service and Rural Practice Loan Repayment Assistance Fund; created; investment.
- 7-210. Commission on Public Advocacy; identify designated legal profession shortage areas; considerations.

7-201 Act, how cited.

Sections 7-201 to 7-210 shall be known and may be cited as the Legal Education for Public Service and Rural Practice Loan Repayment Assistance Act.

Source: Laws 2008, LB1014, § 19; Laws 2014, LB907, § 1.
Operative date July 18, 2014.

7-202 Legislative findings.

The Legislature finds that many attorneys graduate from law school with substantial educational debt that prohibits many from considering public legal service work or work in less-populated rural areas of Nebraska. A need exists for public legal service entities and rural clients to hire competent attorneys. The public is better served by competent and qualified attorneys working in the area of public legal service and serving underserved rural areas. Programs providing educational loan repayment assistance will encourage law students and other attorneys to seek employment in the area of public legal service and in designated legal profession shortage areas in rural Nebraska and will enable public legal service entities and rural communities to attract and retain qualified attorneys.

Source: Laws 2008, LB1014, § 20; Laws 2014, LB907, § 2.
Operative date July 18, 2014.

7-203 Terms, defined.

For purposes of the Legal Education for Public Service and Rural Practice Loan Repayment Assistance Act:

(1) Board means the Legal Education for Public Service and Rural Practice Loan Repayment Assistance Board;

(2) Designated legal profession shortage area means a rural area 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, and determined by the board to be underserved by available legal representation;

(3) Educational loans means loans received as an educational benefit, scholarship, or stipend toward a juris doctorate degree and either (a) made, insured, or guaranteed by a governmental unit or (b) made under a program funded in whole or in part by a governmental unit or nonprofit institution; and

(4) Public legal service means providing legal service to indigent persons while employed by a tax-exempt charitable organization.

Source: Laws 2008, LB1014, § 21; Laws 2014, LB907, § 3.

Operative date July 18, 2014.

7-204 Legal Education for Public Service and Rural Practice Loan Repayment Assistance Board; created; members.

The Legal Education for Public Service and Rural Practice Loan Repayment Assistance Board is created. The board shall consist of the director of Legal Aid of Nebraska, the deans of Creighton School of Law and the University of Nebraska College of Law, a student from each law school selected by the dean of the law school, at least one of whom intends to work for a tax-exempt charitable organization primarily doing public legal service and at least one of whom is from or intends to practice in a designated legal profession shortage area, a member of the Nebraska State Bar Association who practices in a designated legal profession shortage area selected by the president of the association, and the chief counsel of the Commission on Public Advocacy.

Source: Laws 2008, LB1014, § 22; Laws 2014, LB907, § 4.

Operative date July 18, 2014.

7-206 Legal education for public legal service and rural practice loan repayment assistance program; rules and regulations; contents.

The board shall develop and recommend to the Commission on Public Advocacy rules and regulations that will govern the legal education for public legal service and rural practice loan repayment assistance program. The rules and regulations shall include:

(1) Recipients shall be either: (a) Full-time, salaried attorneys working for a tax-exempt charitable organization and whose primary duties are public legal service or (b) full-time attorneys primarily serving in a designated legal profession shortage area;

(2) Loan applicants shall pay an application fee established by the rules and regulations at a level anticipated to cover all or most of the administrative costs of the program. All application fees shall be remitted to the State Treasurer for credit to the Legal Education for Public Service and Rural Practice Loan

Repayment Assistance Fund. Every effort shall be made to minimize administrative costs and the application fee;

(3) The maximum annual loan amount, which initially shall not exceed six thousand dollars per year per recipient, shall be an amount which is sufficient to fulfill the purposes of recruiting and retaining public legal service attorneys in occupations and areas with unmet needs, including public legal service attorneys with skills in languages other than English and attorneys committed to working in designated legal profession shortage areas. The board may recommend adjustments of the loan amount annually to the commission to account for inflation and other relevant factors;

(4) Loans shall be made only to refinance existing educational loans;

(5) Information on the potential tax consequences of income from discharge of indebtedness;

(6) Recipients shall agree to practice the equivalent of at least three years of full-time practice in public legal service or a designated legal profession shortage area; and

(7) Other criteria for loan eligibility, application, payment, and repayment assistance necessary to carry out the purposes of the Legal Education for Public Service and Rural Practice Loan Repayment Assistance Act.

Source: Laws 2008, LB1014, § 24; Laws 2014, LB907, § 5.

Operative date July 18, 2014.

7-207 Commission on Public Advocacy; applications; board; recommendations; certification of recipients.

The Commission on Public Advocacy shall accept applications for loan repayment assistance on an annual basis from qualified persons and shall present those applications to the board for its consideration. The board shall make recommendations for loans to the commission, and the commission shall certify the eligible recipients and the loan amount per recipient. The loans awarded to the recipients shall come from funds appropriated by the Legislature and any other funds that may be available from the Legal Education for Public Service and Rural Practice Loan Repayment Assistance Fund.

Source: Laws 2008, LB1014, § 25; Laws 2014, LB907, § 7.

Operative date July 18, 2014.

7-208 Commission on Public Advocacy; solicit and receive donations.

The Commission on Public Advocacy may solicit and receive donations from law schools, corporations, nonprofit organizations, bar associations, bar foundations, law firms, individuals, or other sources for purposes of the Legal Education for Public Service and Rural Practice Loan Repayment Assistance Act. The donations shall be remitted to the State Treasurer for credit to the Legal Education for Public Service and Rural Practice Loan Repayment Assistance Fund.

Source: Laws 2008, LB1014, § 26; Laws 2014, LB907, § 8.

Operative date July 18, 2014.

7-209 Legal Education for Public Service and Rural Practice Loan Repayment Assistance Fund; created; investment.

The Legal Education for Public Service and Rural Practice Loan Repayment Assistance Fund is created. The fund shall consist of funds appropriated or transferred by the Legislature, funds donated to the legal education for public legal service and rural practice loan repayment assistance program pursuant to section 7-208, and application fees collected under the Legal Education for Public Service and Rural Practice Loan Repayment Assistance Act. Any money in the Legal Education for Public Service Loan Repayment Fund on July 18, 2014, shall be transferred to the Legal Education for Public Service and Rural Practice Loan Repayment Assistance 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, LB1014, § 27; Laws 2014, LB907, § 9.
Operative date July 18, 2014.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

7-210 Commission on Public Advocacy; identify designated legal profession shortage areas; considerations.

The Commission on Public Advocacy shall periodically determine and identify designated legal profession shortage areas within Nebraska. The board shall develop and recommend to the commission legal profession shortage areas. In making such recommendations, the board shall consider, after consultation with other appropriate agencies concerned with legal and rural services and with appropriate professional organizations, factors including, but not limited to:

- (1) The latest reliable statistical data available regarding the number of attorneys practicing in an area and the population served by such attorneys;
- (2) Distances between client populations and attorney locations;
- (3) Particular local needs for legal services;
- (4) Capacity of local attorneys providing services and scope of practice being provided; and
- (5) Past and future demographic trends in an area.

Source: Laws 2014, LB907, § 6.
Operative date July 18, 2014.

CHAPTER 8

BANKS AND BANKING

Article.

1. General Provisions. 8-103 to 8-1,140.
2. Trust Companies. 8-204, 8-213.
3. Building and Loan Associations. 8-355.
6. Assessments and Fees. 8-601, 8-602.
7. State-Federal Cooperation Acts; Capital Notes.
(a) Federal Banking Act of 1933. 8-702 to 8-706.
9. Bank Holding Companies. 8-915.
10. Nebraska Sale of Checks and Funds Transmission Act. Transferred or Repealed.
11. Securities Act of Nebraska. 8-1101 to 8-1120.
14. Disclosure of Confidential Information. 8-1401 to 8-1404.
21. Interstate Branching and Merger Act. 8-2104.
23. Interstate Trust Company Office Act. 8-2306, 8-2311.
27. Nebraska Money Transmitters Act. 8-2701 to 8-2748.
28. Real Estate Financing Enforcement and Servicing. 8-2801.

ARTICLE 1

GENERAL PROVISIONS

Section

- 8-103. Director of Banking and Finance; financial institutions; supervision and examination; director and department employees; prohibited acts; exception; penalty.
- 8-108. Director of Banking and Finance; financial institution examination; powers; procedure; charge.
- 8-135. Deposits; withdrawal methods authorized; section; how construed.
- 8-155. Repealed. Laws 2014, LB 714, § 1.
- 8-156. Repealed. Laws 2014, LB 714, § 1.
- 8-157.01. Financial institution; electronic terminals; use; user financial institution.
- 8-162.02. State-chartered bank; fiduciary account controlled by trust department; collateral; public funds exempt.
- 8-167.01. Banks; publication requirements not applicable; when.
- 8-1,140. Federally chartered bank; bank organized under laws of Nebraska; rights, privileges, benefits, and immunities; exception.

8-103 Director of Banking and Finance; financial institutions; supervision and examination; director and department employees; prohibited acts; exception; penalty.

(1) The director shall have charge of and full supervision over the examination of banks and the enforcement of compliance with the statutes by banks and their holding companies in their business and functions and shall constructively aid and assist banks in maintaining proper banking standards and efficiency. The director shall also have charge of and full supervision over the examination of and the enforcement of compliance with the statutes by trust companies, building and loan associations, and credit unions in their business and functions and shall constructively aid and assist trust companies, building and loan associations, and credit unions in maintaining proper standards and efficiency.

(2) If the director is financially interested directly or indirectly in any financial institution doing business in Nebraska, subject to his or her jurisdic-

tion, the financial institution shall be under the direct supervision of the Governor, and as to such financial institution, the Governor shall exercise all the supervisory powers otherwise vested in the Director of Banking and Finance by the laws of this state, and reports of examination by state bank examiners, foreign state bank examiners, examiners of the Federal Reserve Board, examiners of the Office of the Comptroller of the Currency, examiners of the Federal Deposit Insurance Corporation, and examiners of the Consumer Financial Protection Bureau shall be transmitted to the Governor.

(3)(a) No person employed by the department shall be permitted to borrow money from any financial institution doing business in Nebraska subject to the jurisdiction of the department, except that persons employed by the department may borrow money in the normal course of business from the Nebraska State Employees Credit Union. If the credit union is acquired by, or merged into, a Nebraska state-chartered credit union, persons employed by the department may borrow money in the normal course of business from the successor credit union.

(b) In the event a loan to a person employed by the department is sold or otherwise transferred to a financial institution doing business in Nebraska and subject to the jurisdiction of the department, no violation of this section occurs if (i) the person employed by the department did not solicit the sale or transfer of the loan and (ii) the person employed by the department gives notice to the director of such sale or transfer. The director, in his or her discretion, may require such person to make all reasonable efforts to seek another lender.

(4) Any person who intentionally violates this section or who aids, abets, or assists in a violation of this section shall be guilty of a Class IV felony.

Source: Laws 1933, c. 18, § 2, p. 135; C.S.Supp.,1941, § 8-1,123; R.S. 1943, § 8-102; Laws 1963, c. 29, § 3, p. 135; Laws 1967, c. 20, § 1, p. 122; Laws 1985, LB 653, § 1; Laws 1988, LB 375, § 2; Laws 1996, LB 1053, § 1; Laws 2002, LB 1094, § 2; Laws 2003, LB 131, § 3; Laws 2013, LB213, § 1.

8-108 Director of Banking and Finance; financial institution examination; powers; procedure; charge.

(1) The director, his or her deputy, or any duly appointed examiner shall have power to make a thorough examination into all the books, papers, and affairs of any bank or other institution in Nebraska subject to the department's jurisdiction, or its holding company, if any, and in so doing to administer oaths and affirmations, to examine on oath or affirmation the officers, agents, and clerks of such institution or its holding company, if any, touching the matter which they may be authorized and directed to inquire into and examine, and to subpoena the attendance of any person or persons in this state to testify under oath or affirmation in relation to the affairs of such institution or its holding company, if any. Such powers shall include, but not be limited to, the authority to examine and monitor by electronic means the books, papers, and affairs of any financial institution or the holding company of a financial institution. The examination may be in the presence of at least two members of the board of directors of the institution or its holding company, if any, undergoing such examination, and it shall be the duty of the examiner to incorporate in his or her report the names of the directors in whose presence the examination was made.

(2) The director may accept any examination or report from the Federal Deposit Insurance Corporation, the Federal Reserve Board, the Comptroller of the Currency, the Consumer Financial Protection Bureau, or a foreign state agency.

(3) The director may provide any such examination or report to the Federal Deposit Insurance Corporation, the Federal Reserve Board, the Comptroller of the Currency, the Consumer Financial Protection Bureau, or a foreign state agency. The department shall have power to examine the books, papers, and affairs of any electronic data processing center which has contracted with a financial institution to conduct the financial institution's electronic data processing business. The department may charge the electronic data processing center for the time spent by examiners in such examination at the rate set forth in section 8-606 for examiners' time spent in examinations of financial institutions.

Source: Laws 1909, c. 10, § 8, p. 69; R.S.1913, § 287; Laws 1919, c. 190, tit. V, art. XVI, § 6, p. 687; C.S.1922, § 7987; Laws 1923, c. 191, § 8, p. 441; C.S.1929, § 8-118; Laws 1933, c. 18, § 13, p. 142; C.S.Supp.,1941, § 8-118; R.S.1943, § 8-115; Laws 1963, c. 29, § 8, p. 137; Laws 1985, LB 653, § 2; Laws 1988, LB 375, § 3; Laws 1992, LB 757, § 2; Laws 2007, LB124, § 1; Laws 2013, LB213, § 2.

8-135 Deposits; withdrawal methods authorized; section; how construed.

(1) All persons, regardless of age, may become depositors in any bank and shall be subject to the same duties and liabilities respecting their deposits. Whenever a deposit is accepted by any bank in the name of any person, regardless of age, the deposit may be withdrawn by the depositor by any of the following methods:

(a) Check or other instrument in writing. The check or other instrument in writing constitutes a receipt or acquittance if the check or other instrument in writing is signed by the depositor and constitutes a valid release and discharge to the bank for all payments so made; or

(b) Electronic means through:

(i) Preauthorized direct withdrawal;

(ii) An automatic teller machine;

(iii) A debit card;

(iv) A transfer by telephone;

(v) A network, including the Internet; or

(vi) Any electronic terminal, computer, magnetic tape, or other electronic means.

(2) This section shall not be construed to affect the rights, liabilities, or responsibilities of participants in an electronic fund transfer under the federal Electronic Fund Transfer Act, 15 U.S.C. 1693 et seq., as the act existed on January 1, 2013, and shall not affect the legal relationships between a minor and any person other than the bank.

Source: Laws 1963, c. 27, § 1, p. 132; Laws 1963, c. 29, § 35, p. 148; Laws 2005, LB 533, § 6; Laws 2013, LB213, § 3.

8-155 Repealed. Laws 2014, LB 714, § 1.

8-156 Repealed. Laws 2014, LB 714, § 1.

8-157.01 Financial institution; electronic terminals; use; user financial institution.

(1) Any financial institution which has a main chartered office or approved branch located in the State of Nebraska may establish and maintain any number of automatic teller machines at which all banking transactions, defined as receiving deposits of every kind and nature and crediting such to customer accounts, cashing checks and cash withdrawals, transfer of funds from checking accounts to savings accounts, transfer of funds from savings accounts to checking accounts, transfer of funds from either checking accounts and savings accounts to accounts of other customers, payment transfers from customer accounts into accounts maintained by other customers of the financial institution or the financial institution, including preauthorized draft authority, preauthorized loans, and credit transactions, receiving payments payable at the financial institution or otherwise, and account balance inquiry, may be conducted. Any other transaction incidental to the business of the financial institution or which will provide a benefit to the financial institution's customers or the general public may be conducted at an automatic teller machine upon thirty days' prior written notice to the director if the director does not object to the proposed other transaction within the thirty-day notice period. Neither such automatic teller machines nor the transactions conducted thereat shall be construed as the establishment of a branch or as branch banking. Such automatic teller machines shall be made available on a nondiscriminating basis for use by customers of any financial institution which has a main chartered office or approved branch located in the State of Nebraska which becomes a user financial institution. It shall not be deemed discrimination if an automatic teller machine does not offer the same transaction services as other automatic teller machines or if there are no fees charged between affiliate financial institutions for the use of automatic teller machines.

(2) Any financial institution may become a user financial institution by agreeing to pay the establishing financial institution its automatic teller machine usage fee. Such agreement shall be implied by the use of such automatic teller machines. Nothing in this subsection shall prohibit a user financial institution from agreeing to responsibilities and benefits which might be contained in a standardized agreement. The establishing financial institution or its designated data processing center shall be responsible for transmitting transactions originating from its automatic teller machine to a switch, but nothing contained in this section shall be construed to require routing of all transactions to a switch. All automatic teller machines must be made available on a nondiscriminating basis, for use by customers of any financial institution which has a main chartered office or approved branch located in the State of Nebraska which becomes a user financial institution, through methods, fees, and processes that the establishing financial institution has provided for switching transactions. The director, upon notice and after a hearing, may terminate or suspend the use of any automatic teller machine if he or she determines that it is not available on a nondiscriminating basis for use by customers of any financial institution which has a main chartered office or approved branch located in the State of Nebraska which becomes a user financial institution or that transactions originated by customers of user financial institutions are not

being routed to a switch or other data processing centers. Nothing in this section may be construed to prohibit nonbank employees from assisting in transactions originated at the automatic teller machines, and such assistance shall not be deemed to be engaging in the business of banking. Such nonbank employees may be trained in the use of the automatic teller machines by financial institution employees.

(3) An establishing financial institution shall not be deemed to make an automatic teller machine available on a nondiscriminating basis if, through personnel services offered, advertising on or off the automatic teller machine's premises, or otherwise, it discriminates in the use of the automatic teller machine against any user financial institution which has a main chartered office or approved branch located in the State of Nebraska.

(4) Any consumer initiating an electronic funds transfer at an automatic teller machine for which an automatic teller machine surcharge will be imposed shall receive notice in accordance with the provisions of 15 U.S.C. 1693b(d)(3)(A) and (B), as such section existed on January 1, 2013. Such notice shall appear on the screen of the automatic teller machine or appear on a paper notice issued from such machine after the transaction is initiated and before the consumer is irrevocably committed to completing the transaction.

(5) A point-of-sale terminal may be established at any point within this state. A financial institution may contract with a seller of goods and services or any other third party for the operation of point-of-sale terminals. A point-of-sale terminal shall be made available on a nondiscriminating basis for use by customers of any financial institution which has a main chartered office or approved branch located in the State of Nebraska which becomes a user financial institution. Nothing in this subsection shall prohibit payment of fees to a financial institution which issues an access device used to initiate electronic funds transfer transactions at a point-of-sale terminal.

(6) A seller of goods and services or any other third party on whose premises one or more point-of-sale terminals are established shall not be, solely by virtue of such establishment, a financial institution and shall not be subject to the laws governing, or other requirements imposed on, financial institutions, except for the requirement that it faithfully perform its obligations in connection with any transaction originated at any point-of-sale terminal on its premises. The acquiring financial institution shall be responsible for compliance with all applicable standards, rules, and regulations governing point-of-sale transactions.

(7) Any financial institution, upon a request of the director, shall file with the director a current listing of all point-of-sale terminals established by the financial institution within this state. For purposes of this subsection, point-of-sale terminal shall include a group of one or more of such terminals established at a single business location. Such listing shall contain any reasonable descriptive information pertaining to the point-of-sale terminal as required by the director. Neither the establishment of such point-of-sale terminal nor any transactions conducted thereat shall be construed as the establishment of a branch or as branch banking. Following establishment of a point-of-sale terminal, the director, upon notice and after a hearing, may terminate or suspend the use of such point-of-sale terminal if he or she determines that it is not made available on a nondiscriminating basis for use by customers of any financial institution which has a main chartered office or approved branch located in the State of Nebraska which becomes a user financial institution, that the necessary

information is not on file with the director, or that transactions originated by customers of user financial institutions are not being routed to a switch or other data processing center. Nothing in this section shall be construed to prohibit nonbank employees from assisting in transactions originated at the point-of-sale terminals, and such assistance shall not be deemed to be engaging in the business of banking.

(8) Transactions at point-of-sale terminals may include:

(a) Check guarantees;

(b) Account balance inquiries;

(c) Transfers of funds from a customer's account for payment to a seller's account for goods and services on whose premises the point-of-sale terminal is located in payment for the goods and services;

(d) Cash withdrawals by a customer from the customer's account or accounts;

(e) Transfers between accounts of the same customers at the same financial institution; and

(f) Such other transactions as the director, upon application, notice, and hearing, may approve.

(9)(a) Automatic teller machines may be established and maintained by a financial institution which has a main chartered office or approved branch located in the State of Nebraska, by a group of two or more of such financial institutions, or by a combination of such financial institution or financial institutions and a third party.

(b) Point-of-sale terminals may be established and maintained by a financial institution which has a main chartered office or approved branch located in the State of Nebraska, by a group of two or more of such financial institutions, or by a combination of such financial institutions and a third party. No one, through personnel services offered, advertising on or off the point-of-sale terminal premises, or otherwise, may discriminate in the use of the point-of-sale terminal against any other user financial institution.

(10) All financial institutions shall be given an equal opportunity for the use of and access to a switch, and no discrimination shall exist or preferential treatment be given in either the operation of such switch or the charges for use thereof. The operation of such switch shall be with the approval of the director. Approval of such switch shall be given by the director when he or she determines that its design and operation are such as to provide access thereto and use thereof by any financial institution without discrimination as to access or cost of its use. Any switch established in Nebraska and approved by the director prior to January 1, 1993, shall be deemed to be approved for purposes of this section.

(11) Use of an automatic teller machine or a point-of-sale terminal through access to a switch and use of any switch shall be made available on a nondiscriminating basis to any financial institution. A financial institution shall only be permitted use of the switch if the financial institution conforms to reasonable technical operating standards which have been established by the switch.

(12) To assure maximum safety and security against malfunction, fraud, theft, and other accidents or abuses and to assure that all such access devices will have the capability of activating all automatic teller machines and point-of-sale

terminals established in this state, no automatic teller machine or point-of-sale terminal shall accept an access device which does not conform to such specifications as are generally accepted. No automatic teller machine or point-of-sale terminal shall be established or operated which does not accept an access device which conforms with such specifications.

An automatic teller machine shall bear a logo type or other identification symbol designed to advise customers that the automatic teller machine may be activated by any access device which complies with the generally accepted specifications. A point-of-sale terminal shall either bear or the premises on which the point-of-sale terminal is established shall contain a visible logo type or other identification symbol designed to advise customers that the point-of-sale terminal may be activated by any access device which complies with the generally accepted specifications. An automatic teller machine or point-of-sale terminal may also bear, at the option of the establishing or acquiring financial institution, any of the following:

(a) The names of all individual financial institutions using such automatic teller machines or point-of-sale terminals in alphabetical order, except that the establishing or acquiring financial institution may be listed first, and in a uniform typeface, size, and color; or

(b) The logo type or symbol of any association, corporation, or other entity or organization formed by one or more of the financial institutions using such automatic teller machines or point-of-sale terminals.

(13) If the director, upon notice and hearing, determines at any time that the design or operation of a switch or provision for use thereof does discriminate against any financial institution in providing access thereto and use thereof either through access thereto or by virtue of the cost of its use, he or she may revoke his or her approval of such switch operation and immediately order the discontinuance of the operation of such switch.

(14) If it is determined by the director, after notice and hearing, that discrimination against any financial institution has taken place, that one financial institution has been preferred over another, or that any financial institution or person has not complied with any of the provisions of this section, he or she shall immediately issue a cease and desist order or an order for compliance within ten days after the date of the order, and upon noncompliance with such order, the offending financial institution shall be subject to sections 8-1,134 to 8-1,139 and to having the privileges granted in this section revoked.

(15) For purposes of this section:

(a) Access means the ability to utilize an automatic teller machine or a point-of-sale terminal to conduct permitted banking transactions or purchase goods and services electronically;

(b) Access device means a code, a transaction card, or any other means of access to a customer's account, or any combination thereof, that may be used by a customer for the purpose of initiating an electronic funds transfer at an automatic teller machine or a point-of-sale terminal;

(c) Account means a checking account, a savings account, a share account, or any other customer asset account held by a financial institution. Such an account may also include a line of credit which a financial institution has agreed to extend to its customer;

(d) Acquiring financial institution means any financial institution establishing a point-of-sale terminal;

(e) Affiliate financial institution means any financial institution which is a subsidiary of the same bank holding company;

(f) Electronic funds transfer means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, that is initiated through a point-of-sale terminal, an automatic teller machine, or a personal terminal for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account;

(g) Establishing financial institution means any financial institution establishing an automatic teller machine which has a main chartered office or approved branch located in the State of Nebraska;

(h) Financial institution means a state-chartered or federally chartered bank, savings bank, building and loan association, savings and loan association, or credit union, or a subsidiary of any such entity;

(i) Foreign financial institution means a financial institution located outside the United States;

(j) Personal identification number means a combination of numerals or letters selected for a customer of a financial institution, a merchant, or any other third party which is used in conjunction with an access device to initiate an electronic funds transfer transaction;

(k) Personal terminal means a personal computer and telephone, wherever located, operated by a customer of a financial institution for the purpose of initiating a transaction affecting an account of the customer; and

(l) User financial institution means any financial institution which desires to avail itself of and provide its customers with automatic teller machine or point-of-sale terminal services.

(16) Nothing in this section prohibits ordinary clearinghouse transactions between financial institutions.

(17) Nothing in this section requires any federally chartered establishing financial institution to obtain the approval of the director for the establishment of any automatic teller machine.

(18) Nothing in this section shall prevent any financial institution which has a main chartered office or an approved branch located in the State of Nebraska from participating in a national automatic teller machine program to allow its customers to use automatic teller machines located outside of the State of Nebraska which are established by out-of-state financial institutions or foreign financial institutions or to allow customers of out-of-state financial institutions or foreign financial institutions to use its automatic teller machines located in the State of Nebraska. Such participation and any automatic teller machine usage fees charged or received pursuant to the national automatic teller machine program or usage fees charged for the use of its automatic teller machines by customers of out-of-state financial institutions or foreign financial institutions shall not be considered for purposes of determining if an automatic teller machine located in the State of Nebraska has been made available on a nondiscriminating basis for use by customers of any financial institution which has a main chartered office or approved branch located in the State of Nebraska which becomes a user financial institution.

(19) An agreement to operate or share an automatic teller machine may not prohibit, limit, or restrict the right of the operator or owner of the automatic teller machine to charge a customer conducting a transaction using an account from a foreign financial institution an access fee or surcharge not otherwise prohibited under state or federal law.

Source: Laws 1987, LB 615, § 3; Laws 1992, LB 470, § 2; Laws 1993, LB 81, § 8; Laws 1993, LB 423, § 2; Laws 1999, LB 396, § 9; Laws 2000, LB 932, § 3; Laws 2002, LB 1089, § 3; Laws 2003, LB 131, § 4; Laws 2004, LB 999, § 2; Laws 2009, LB75, § 1; Laws 2009, LB327, § 4; Laws 2013, LB100, § 1.

8-162.02 State-chartered bank; fiduciary account controlled by trust department; collateral; public funds exempt.

(1) A state-chartered bank may deposit or have on deposit funds of a fiduciary account controlled by the bank's trust department unless prohibited by applicable law.

(2) To the extent that the funds are awaiting investment or distribution and are not insured or guaranteed by the Federal Deposit Insurance Corporation, a state-chartered bank shall set aside collateral as security under the control of appropriate fiduciary officers and bank employees. The bank shall place pledged assets of fiduciary accounts in the joint custody or control of not fewer than two of the fiduciary officers or employees of the bank designated for that purpose by the board of directors. The bank may maintain the investments of a fiduciary account off-premises if consistent with applicable law and if the bank maintains adequate safeguards and controls. The market value of the collateral shall at all times equal or exceed the amount of the uninsured or unguaranteed fiduciary funds awaiting investment or distribution.

(3) A state-chartered bank may satisfy the collateral requirements of this section with any of the following: (a) Direct obligations of the United States or other obligations fully guaranteed by the United States as to principal and interest; (b) readily marketable securities of the classes in which banks, trust companies, or other corporations exercising fiduciary powers are permitted to invest fiduciary funds under applicable state law; and (c) surety bonds, to the extent the surety bonds provide adequate security, unless prohibited by applicable law.

(4) A state-chartered bank, acting in its fiduciary capacity, may deposit funds of a fiduciary account that are awaiting investment or distribution with an affiliated insured depository institution unless prohibited by applicable law. The bank may set aside collateral as security for a deposit by or with an affiliate of fiduciary funds awaiting investment or distribution, as it would if the deposit was made at the bank, unless such action is prohibited by applicable law.

(5) Public funds deposited in and held by a state-chartered bank are not subject to this section.

(6) This section does not apply to a fiduciary account in which, pursuant to the terms of the governing instrument, full investment authority is retained by the grantor or is vested in persons or entities other than the state-chartered bank and the bank, acting in its fiduciary capacity, does not have the power to exert any influence over investment decisions.

Source: Laws 2009, LB327, § 2; Laws 2014, LB788, § 2.
Effective date July 18, 2014.

8-167.01 Banks; publication requirements not applicable; when.

The publication requirements of section 8-167 shall not apply to any bank that makes a disclosure statement available to any member of the general public upon request in compliance with the disclosure of financial information provisions of 12 C.F.R. part 350, as such part existed on January 1, 2013.

Source: Laws 1995, LB 384, § 18; Laws 2013, LB213, § 4.

8-1,140 Federally chartered bank; bank organized under laws of Nebraska; rights, privileges, benefits, and immunities; exception.

Notwithstanding any of the other provisions of the Nebraska Banking Act or any other Nebraska statute, any bank incorporated under the laws of this state and organized under the provisions of the act, or under the laws of this state as they existed prior to May 9, 1933, shall directly, or indirectly through a subsidiary or subsidiaries, have all the rights, powers, privileges, benefits, and immunities which may be exercised as of January 1, 2014, by a federally chartered bank doing business in Nebraska, including the exercise of all powers and activities that are permitted for a financial subsidiary of a federally chartered bank. Such rights, powers, privileges, benefits, and immunities shall not relieve such bank from payment of state taxes assessed under any applicable laws of this state.

Source: Laws 1999, LB 396, § 5; Laws 2000, LB 932, § 4; Laws 2001, LB 53, § 2; Laws 2002, LB 957, § 7; Laws 2003, LB 217, § 9; Laws 2004, LB 999, § 3; Laws 2005, LB 533, § 11; Laws 2006, LB 876, § 12; Laws 2007, LB124, § 6; Laws 2008, LB851, § 7; Laws 2009, LB327, § 6; Laws 2010, LB890, § 6; Laws 2011, LB74, § 1; Laws 2012, LB963, § 4; Laws 2013, LB213, § 5; Laws 2014, LB712, § 1.

Effective date April 11, 2014.

ARTICLE 2**TRUST COMPANIES**

Section

- 8-204. Directors; qualifications; duties; vacancies.
8-213. Pledged securities of insolvent trust companies or out-of-state entity acting in fiduciary capacity; transfer to fiduciary; conditions.

8-204 Directors; qualifications; duties; vacancies.

The control of the business affairs of a trust company shall be vested in a board of directors of not less than five persons who shall be selected at such time and in such manner as may be provided by the articles of incorporation of the trust company and in conformity with the Nebraska Trust Company Act. Any vacancy on the board shall be filled within ninety days by appointment by the remaining directors, and any director so appointed shall serve until the next election of directors, except that if the vacancy leaves a minimum of five directors, appointment shall be optional. The board shall select from among its number a president and secretary and shall appoint trust officers and committees as it deems necessary. The officers and committee members shall hold their positions at the discretion of the board of directors. The board of directors shall hold at least one regular meeting in each calendar quarter and shall

prepare and maintain complete and accurate minutes of the proceedings at such meetings.

The board of directors shall make or cause to be made each year a thorough examination of the books, records, funds, and securities held for the trust company and customer accounts. The examination may be conducted by the members of the board of directors or the board may accept an annual audit by an accountant or accounting firm approved by the Department of Banking and Finance. Any such examination or audit must comply in scope with minimum standards established by the department.

Unless the department otherwise approves, a majority of the members of the board of directors of any trust company shall be residents of this state. Reasonable efforts shall be made to acquire members of the board of directors from the county in which the trust company is located. Directors of trust companies shall be persons of good moral character and known integrity, business experience, and responsibility. No person shall act as such member of the board of directors of any trust company until the corporation applies for and obtains approval from the Department of Banking and Finance.

Source: Laws 1911, c. 31, § 4, p. 188; R.S.1913, § 741; Laws 1919, c. 190, tit. V, art. XVIII, § 4, p. 718; C.S.1922, § 8065; C.S.1929, § 8-203; R.S.1943, § 8-204; Laws 1993, LB 81, § 17; Laws 2013, LB213, § 6.

8-213 Pledged securities of insolvent trust companies or out-of-state entity acting in fiduciary capacity; transfer to fiduciary; conditions.

In the case of national banks and federal savings associations doing business as trust companies, trust companies, federally chartered trust companies, out-of-state trust companies authorized under the Interstate Trust Company Office Act or otherwise doing business in this state, and out-of-state entities acting in a fiduciary capacity in this state, which upon insolvency are not liquidated by the Department of Banking and Finance, upon the appointment of a receiver, trustee in bankruptcy, or other liquidating agent, the department shall turn over to the receiver, trustee in bankruptcy, or other liquidating agent any securities pledged to it by the national bank, federal savings association, trust company, federally chartered trust company, out-of-state trust company authorized under the Interstate Trust Company Office Act or otherwise doing business in this state, or any out-of-state entity acting in a fiduciary capacity in this state, upon:

(1) The entry of an order by a court having jurisdiction over a receiver, trustee in bankruptcy, or other liquidating agent of the national bank, federal savings association, trust company, federally chartered trust company, out-of-state trust company authorized under the Interstate Trust Company Office Act or otherwise doing business in this state, or any out-of-state entity acting in a fiduciary capacity in this state, ordering the department to turn over to a receiver, trustee in bankruptcy, or other liquidating agent the securities pledged to the department; and

(2) The publication of a notice for three successive weeks in some legal newspaper published in the county or, if none is published in the county, in a legal newspaper of general circulation in the county in which the principal place of business of the national bank, federal savings association, trust company, federally chartered trust company, out-of-state trust company authorized

under the Interstate Trust Company Office Act or otherwise doing business in this state, or any out-of-state entity acting in a fiduciary capacity in this state, is located that all claims for the trust liabilities must be filed with the receiver, trustee in bankruptcy, or other liquidating agent within thirty days. In the case of national banks the notice provided for in 12 U.S.C. 193, and in the case of trust companies liquidated in bankruptcy court, the notice provided for in 11 U.S.C. 342, shall be sufficient without further notice being given and shall be in lieu of the notice required in this subdivision. In the case of out-of-state trust companies authorized under the Interstate Trust Company Office Act or otherwise doing business in this state, or in the case of any out-of-state entity acting in a fiduciary capacity in this state, an additional notice shall be published in each county in Nebraska where the out-of-state trust company or out-of-state entity maintains an office, does business, or acts in a fiduciary capacity, or maintained an office, conducted business, or acted in a fiduciary capacity, within one year prior to the insolvency.

Source: Laws 1933, c. 20, § 1, p. 190; Laws 1939, c. 3, § 2, p. 60; C.S.Supp.,1941, § 8-212; R.S.1943, § 8-213; Laws 1986, LB 960, § 2; Laws 1993, LB 81, § 27; Laws 1998, LB 1321, § 42; Laws 2005, LB 533, § 13; Laws 2012, LB963, § 7; Laws 2013, LB213, § 7.

Cross References

Interstate Trust Company Office Act, see section 8-2301.

ARTICLE 3

BUILDING AND LOAN ASSOCIATIONS

Section

8-355. Federal savings and loan; associations organized under laws of Nebraska; rights, privileges, benefits, and immunities; exception.

8-355 Federal savings and loan; associations organized under laws of Nebraska; rights, privileges, benefits, and immunities; exception.

Notwithstanding any of the provisions of Chapter 8, article 3, or any other Nebraska statute, except as provided in section 8-345.02, any association incorporated under the laws of the State of Nebraska and organized under the provisions of such article shall have all the rights, powers, privileges, benefits, and immunities which may be exercised as of January 1, 2014, by a federal savings and loan association doing business in Nebraska. Such rights, powers, privileges, benefits, and immunities shall not relieve such association from payment of state taxes assessed under any applicable laws of this state.

Source: Laws 1971, LB 185, § 1; Laws 1972, LB 1288, § 1; Laws 1973, LB 351, § 1; Laws 1974, LB 784, § 1; Laws 1975, LB 201, § 1; Laws 1976, LB 763, § 2; Laws 1977, LB 224, § 1; Laws 1978, LB 717, § 6; Laws 1979, LB 154, § 2; Laws 1980, LB 865, § 1; Laws 1981, LB 71, § 1; Laws 1982, LB 646, § 1; Laws 1983, LB 144, § 1; Laws 1984, LB 923, § 1; Laws 1985, LB 128, § 1; Laws 1986, LB 1052, § 1; Laws 1987, LB 115, § 1; Laws 1988, LB 858, § 1; Laws 1989, LB 207, § 1; Laws 1990, LB 1016, § 1; Laws 1991, LB 98, § 1; Laws 1992, LB 470, § 4; Laws 1992, LB 985, § 1; Laws 1993, LB 288, § 1; Laws 1994, LB 876, § 1; Laws

1995, LB 41, § 1; Laws 1996, LB 949, § 1; Laws 1997, LB 35, § 1; Laws 1998, LB 1321, § 67; Laws 1999, LB 396, § 12; Laws 2000, LB 932, § 16; Laws 2001, LB 53, § 6; Laws 2002, LB 957, § 8; Laws 2003, LB 217, § 11; Laws 2004, LB 999, § 4; Laws 2005, LB 533, § 19; Laws 2006, LB 876, § 13; Laws 2007, LB124, § 7; Laws 2008, LB851, § 11; Laws 2009, LB327, § 9; Laws 2010, LB890, § 8; Laws 2011, LB74, § 2; Laws 2012, LB963, § 11; Laws 2013, LB213, § 8; Laws 2014, LB712, § 2.
Effective date April 11, 2014.

ARTICLE 6

ASSESSMENTS AND FEES

Section

- 8-601. Director of Banking and Finance; employees; financial institutions; levy of assessment authorized.
8-602. Department of Banking and Finance; services; schedule of fees.

8-601 Director of Banking and Finance; employees; financial institutions; levy of assessment authorized.

The Director of Banking and Finance may employ deputies, examiners, attorneys, and other assistants as may be necessary for the administration of the provisions and purposes of the Nebraska Money Transmitters Act; Chapter 8, articles 1, 2, 3, 5, 6, 7, 8, 9, 13, 14, 15, 16, 19, 20, 21, 23, 24, and 25; Chapter 21, article 17; and Chapter 45, articles 1, 2, 3, 7, 9, and 10. The director may levy upon financial institutions, namely, the banks, trust companies, building and loan associations, savings and loan associations, savings banks, and credit unions, organized under the laws of this state, and holding companies, if any, of such financial institutions, an assessment each year based upon the asset size of the financial institution, except that in determining the asset size of a holding company, the assets of any financial institution or holding company otherwise assessed pursuant to this section and the assets of any nationally chartered financial institution shall be excluded. The assessment shall be a sum determined by the director in accordance with section 8-606 and approved by the Governor.

Source: Laws 1937, c. 20, § 1, p. 128; C.S.Supp.,1941, § 8-701; R.S.1943, § 8-601; Laws 1955, c. 15, § 1, p. 83; Laws 1973, LB 164, § 20; Laws 1976, LB 561, § 2; Laws 1980, LB 966, § 2; Laws 1986, LB 910, § 1; Laws 2002, LB 1094, § 6; Laws 2003, LB 131, § 7; Laws 2007, LB124, § 8; Laws 2013, LB616, § 49.

Cross References

Nebraska Money Transmitters Act, see section 8-2701.

8-602 Department of Banking and Finance; services; schedule of fees.

The Director of Banking and Finance shall charge and collect fees for certain services rendered by the Department of Banking and Finance according to the following schedule:

(1) For filing and examining articles of incorporation, articles of association, and bylaws, except credit unions, one hundred dollars, and for credit unions, fifty dollars;

(2) For filing and examining an amendment to articles of incorporation, articles of association, and bylaws, except credit unions, fifty dollars, and for credit unions, fifteen dollars;

(3) For issuing to banks, credit card banks, trust companies, and building and loan associations a charter, authority, or license to do business in this state, a sum which shall be determined on the basis of one dollar and fifty cents for each one thousand dollars of authorized capital, except that the minimum fee in each case shall be two hundred twenty-five dollars;

(4) For issuing an executive officer's or loan officer's license, fifty dollars at the time of the initial license and fifteen dollars on or before January 15 each year thereafter, except credit unions for which the fee shall be twenty-five dollars at the time of the initial license and fifteen dollars on or before January 15 each year thereafter;

(5) For affixing certificate and seal, five dollars;

(6) For making substitution of securities held by it and issuing a receipt, fifteen dollars;

(7) For issuing a certificate of approval to a credit union, ten dollars;

(8) For investigating the applications required by sections 8-117, 8-120, 8-331, and 8-2402 and the documents required by section 8-201, the cost of such examination, investigation, and inspection, including all legal expenses and the cost of any hearing transcript, with a minimum fee under (a) sections 8-117, 8-120, and 8-2402 of two thousand five hundred dollars, (b) section 8-331 of two thousand dollars, and (c) section 8-201 of one thousand dollars. The department may require the applicant to procure and give a surety bond in such principal amount as the department may determine and conditioned for the payment of the fees provided in this subdivision;

(9) For registering a statement of intention to engage in the business of making personal loans pursuant to section 8-816, fifty dollars;

(10) For the handling of pledged securities as provided in sections 8-210 and 8-2727 at the time of the initial deposit of such securities, one dollar and fifty cents for each thousand dollars of securities deposited and a like amount on or before January 15 each year thereafter. The fees shall be paid by the entity pledging the securities;

(11) For investigating an application to move its location within the city or village limits of its original license or charter for banks, trust companies, and building and loan associations, two hundred fifty dollars;

(12) For investigating an application under subdivision (6) of section 8-115.01, five hundred dollars;

(13) For investigating an application for approval to establish or acquire a branch pursuant to section 8-157 or 8-2103 or to establish a mobile branch pursuant to section 8-157, two hundred fifty dollars;

(14) For investigating a notice of acquisition of control under subsection (1) of section 8-1502, five hundred dollars;

(15) For investigating an application for a cross-industry merger under section 8-1510, five hundred dollars;

(16) For investigating an application for a merger of two state banks, a merger of a state bank and a national bank in which the state bank is the

surviving entity, or an interstate merger application in which the Nebraska state chartered bank is the resulting bank, five hundred dollars;

(17) For investigating an application or a notice to establish a branch trust office, five hundred dollars;

(18) For investigating an application or a notice to establish a representative trust office, five hundred dollars;

(19) For investigating an application to establish a credit union branch under section 21-1725.01, two hundred fifty dollars;

(20) For investigating an applicant under section 8-1513, five thousand dollars; and

(21) For investigating a request to extend a conditional bank charter under section 8-117, one thousand dollars.

Source: Laws 1937, c. 20, § 2, p. 129; C.S.Supp.,1941, § 8-702; R.S.1943, § 8-602; Laws 1957, c. 10, § 5, p. 132; Laws 1961, c. 15, § 8, p. 113; Laws 1967, c. 23, § 2, p. 127; Laws 1969, c. 43, § 1, p. 252; Laws 1972, LB 1194, § 1; Laws 1973, LB 164, § 21; Laws 1976, LB 561, § 3; Laws 1987, LB 642, § 1; Laws 1992, LB 470, § 5; Laws 1992, LB 757, § 11; Laws 1993, LB 81, § 54; Laws 1995, LB 599, § 4; Laws 1998, LB 1321, § 68; Laws 1999, LB 396, § 13; Laws 2000, LB 932, § 17; Laws 2002, LB 1089, § 7; Laws 2002, LB 1094, § 7; Laws 2003, LB 131, § 8; Laws 2003, LB 217, § 14; Laws 2004, LB 999, § 5; Laws 2005, LB 533, § 20; Laws 2007, LB124, § 9; Laws 2009, LB327, § 10; Laws 2010, LB891, § 3; Laws 2011, LB74, § 3; Laws 2012, LB963, § 12; Laws 2013, LB616, § 50.

ARTICLE 7

STATE-FEDERAL COOPERATION ACTS; CAPITAL NOTES

(a) FEDERAL BANKING ACT OF 1933

Section

8-702. Banking institutions; maintain insurance or provide notice; notice requirements; violation; penalty; proof of compliance filed with Department of Banking and Finance; employment of mortgage loan originators; requirements; automatic forfeiture of charter.

8-705. Examinations, reports of other examiners; Director of Banking and Finance may accept.

8-706. Examinations, reports of Director of Banking and Finance; may be furnished to other examiners.

(a) FEDERAL BANKING ACT OF 1933

8-702 Banking institutions; maintain insurance or provide notice; notice requirements; violation; penalty; proof of compliance filed with Department of Banking and Finance; employment of mortgage loan originators; requirements; automatic forfeiture of charter.

(1) Except as provided in subsection (2) of this section, any banking institution organized under the laws of this state shall, before a charter may be issued, enter into such contracts, incur such obligations, and generally do and perform any and all such acts and things whatsoever as may be necessary or appropriate in order to obtain membership in the Federal Deposit Insurance Corpora-

tion and provide for insurance of deposits in the banking institution. Any banking institution may take advantage of any and all memberships, loans, subscriptions, contracts, grants, rights, or privileges which may at any time be available or inure to banking institutions or to their depositors, creditors, stockholders, conservators, receivers, or liquidators by virtue of those provisions of section 8 of the Federal Banking Act of 1933 (section 12B of the Federal Reserve Act, as amended) which establish the Federal Deposit Insurance Corporation and provide for the insurance of deposits or of any other provisions of that or of any other act or resolution of Congress to aid, regulate, or safeguard banking institutions and their depositors, including any amendments of the same or any substitutions therefor. Any banking institution may also subscribe for and acquire any stock, debentures, bonds, or other types of securities of the Federal Deposit Insurance Corporation and comply with the lawful regulations and requirements from time to time issued or made by such corporation.

(2)(a) A banking institution which has not complied with subsection (1) of this section and which was in operation on September 4, 2005, may continue to operate if it provides notice to depositors and holders of savings certificates, certificates of indebtedness, or other similar instruments that such deposits or instruments are not insured. Such notice shall be given (i) on the date any such deposit, savings certificate, certificate of indebtedness, or similar instrument is created for deposits made and instruments created on or after October 1, 1984, and (ii) annually on October 1 thereafter as follows: **AS PROVIDED BY THE LAWS OF THE STATE OF NEBRASKA YOU ARE HEREBY NOTIFIED THAT YOUR DEPOSIT, SAVINGS CERTIFICATE, CERTIFICATE OF INDEBTEDNESS, OR OTHER SIMILAR INSTRUMENT IS NOT INSURED.** Any advertising conducted by such banking institution shall in each case state: **THE DEPOSITS, SAVINGS CERTIFICATES, CERTIFICATES OF INDEBTEDNESS, OR SIMILAR INSTRUMENTS OF THIS INSTITUTION ARE NOT INSURED.** The banking institution shall also display such notice in one or more prominent places in all facilities in which the institution operates. All such notices and statements shall be given in large or contrasting type in such a manner that such notices shall be conspicuous. Each willful failure to give the notice prescribed in subdivision (2)(a) of this section shall constitute a Class II misdemeanor. All officers and directors of any such banking institution shall be jointly and severally responsible for the issuance of the notices described in subdivision (2)(a) of this section in the form and manner described. The banking institution shall annually by November 1 file proof of compliance with subdivision (2)(a) of this section with the Department of Banking and Finance.

(b) Any banking institution described in subdivision (a) of this subsection that employs mortgage loan originators, as defined in section 45-702, shall register such employees with the Nationwide Mortgage Licensing System and Registry, as defined in section 45-702, by furnishing the following information concerning the employees' identities to the Nationwide Mortgage Licensing System and Registry:

(i) Fingerprints for submission to the Federal Bureau of Investigation, and any governmental agency or entity authorized to receive such information, for a state and national criminal history background check; and

(ii) Personal history and experience, including authorization for the Nationwide Mortgage Licensing System and Registry to obtain information related to any administrative, civil, or criminal findings by any governmental jurisdiction.

(3) The charter of any banking institution which fails to comply with the provisions of this section shall be automatically forfeited and such banking institution shall be liquidated and dissolved, either voluntarily by its board of directors under the supervision of the department or involuntarily by the department as in cases of insolvency, except that such charter shall not be automatically forfeited for failure to comply with subdivision (2)(b) of this section if the banking institution cures such violation within sixty days after receipt of notice of such violation from the Department of Banking and Finance. Any banking institution whose charter is automatically forfeited under the provisions of this subsection which continues to engage in the business for which it had been chartered after such forfeiture, as well as the directors and officers thereof, shall be subject to the penalties provided by law for illegally engaging in the business of banking.

Source: Laws 1935, c. 8, § 2, p. 73; C.S.Supp.,1941, § 8-402; R.S.1943, § 8-702; Laws 1963, c. 31, § 2, p. 190; Laws 1983, LB 252, § 5; Laws 1984, LB 899, § 3; Laws 2005, LB 533, § 22; Laws 2009, LB328, § 2; Laws 2010, LB892, § 1; Laws 2011, LB75, § 1; Laws 2013, LB213, § 9.

8-705 Examinations, reports of other examiners; Director of Banking and Finance may accept.

The Director of Banking and Finance is authorized to accept in his or her discretion, in lieu of any examination authorized by the laws of this state to be conducted by his or her department of a banking institution, the examination that may have been made of such banking institution within a reasonable period by the Federal Deposit Insurance Corporation, the Federal Reserve Board, the Comptroller of the Currency, the Consumer Financial Protection Bureau, or a foreign state agency if a copy of the examination is furnished to the director. The director may also in his or her discretion accept any report relative to the condition of a banking institution which may have been obtained by the Federal Deposit Insurance Corporation, the Federal Reserve Board, the Comptroller of the Currency, the Consumer Financial Protection Bureau, or a foreign state agency within a reasonable period in lieu of a report authorized by the laws of this state to be required of such institution by his or her department if a copy of such report is furnished to the director.

As used in this section, unless the context otherwise requires, foreign state agency shall mean any duly constituted regulatory or supervisory agency which has authority over financial institutions and which is created under the laws of any other state, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Virgin Islands or which is operating under the code of law for the District of Columbia.

Source: Laws 1935, c. 8, § 5, p. 74; C.S.Supp.,1941, § 8-405; R.S.1943, § 8-705; Laws 1988, LB 375, § 4; Laws 2013, LB213, § 10.

8-706 Examinations, reports of Director of Banking and Finance; may be furnished to other examiners.

The Director of Banking and Finance may furnish to the Federal Deposit Insurance Corporation, the Federal Reserve Board, the Comptroller of the Currency, the Consumer Financial Protection Bureau, or a foreign state agency, or to any official or examiner thereof, a copy or copies of any or all

examinations made of any such banking institution and of any or all reports made by it and shall give access and disclose to the Federal Deposit Insurance Corporation, the Federal Reserve Board, the Comptroller of the Currency, the Consumer Financial Protection Bureau, or a foreign state agency, or to any official or examiner thereof, any and all information possessed by the office of the director with reference to the conditions or affairs of any such insured institution. Nothing in this section shall be construed to limit the duty of any banking institution in this state, deposits in which are to any extent insured under the provisions of section 8 of the Banking Act of 1933 (section 12B of the Federal Reserve Act, as amended), or of any amendment of or substitution for the same, to comply with the provisions of such act, its amendments or substitutions, or the requirements of the Federal Deposit Insurance Corporation relative to examinations and reports, nor to limit the powers of the director with reference to examinations and reports under existing law.

As used in this section, unless the context otherwise requires, foreign state agency shall mean any duly constituted regulatory or supervisory agency which has authority over financial institutions and which is created under the laws of any other state, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Virgin Islands or which is operating under the code of law for the District of Columbia.

Source: Laws 1935, c. 8, § 6, p. 74; C.S.Supp.,1941, § 8-406; R.S.1943, § 8-706; Laws 1988, LB 375, § 5; Laws 2013, LB213, § 11.

ARTICLE 9

BANK HOLDING COMPANIES

Section

8-915. Examinations; costs; reports in lieu of examination; director; powers.

8-915 Examinations; costs; reports in lieu of examination; director; powers.

The director may make examinations of any bank holding company with one or more state-chartered bank subsidiaries and each state-chartered bank subsidiary thereof, the cost of which shall be assessed, in the manner set forth in sections 8-605 and 8-606, against and paid for by such bank holding company. The director may accept reports of examination made by the Federal Reserve Board, the Comptroller of the Currency, the Consumer Financial Protection Bureau, the Federal Deposit Insurance Corporation, or a foreign state agency in lieu of making an examination by the department. The director may provide reports of examination conducted by the department or other confidential information to any of such regulatory entities. The director may contract with any of such regulatory entities to conduct and pay for such an examination for the department. The director may contract with any of such regulatory entities to conduct and receive payment for such an examination for any of such regulatory entities. The director may enter into cooperative agreements with any or all of such regulatory entities to foster the purposes of the Nebraska Bank Holding Company Act of 1995.

Source: Laws 1995, LB 384, § 26; Laws 2007, LB124, § 15; Laws 2013, LB213, § 12.

ARTICLE 10

NEBRASKA SALE OF CHECKS AND FUNDS TRANSMISSION ACT

Section

- 8-1001. Repealed. Laws 2013, LB 616, § 53.
- 8-1001.01. Repealed. Laws 2013, LB 616, § 53.
- 8-1002. Repealed. Laws 2013, LB 616, § 53.
- 8-1003. Repealed. Laws 2013, LB 616, § 53.
- 8-1004. Repealed. Laws 2013, LB 616, § 53.
- 8-1005. Repealed. Laws 2013, LB 616, § 53.
- 8-1006. Repealed. Laws 2013, LB 616, § 53.
- 8-1007. Repealed. Laws 2013, LB 616, § 53.
- 8-1008. Repealed. Laws 2013, LB 616, § 53.
- 8-1009. Repealed. Laws 2013, LB 616, § 53.
- 8-1010. Repealed. Laws 2013, LB 616, § 53.
- 8-1011. Repealed. Laws 2013, LB 616, § 53.
- 8-1012. Repealed. Laws 2013, LB 616, § 53.
- 8-1012.01. Repealed. Laws 2013, LB 616, § 53.
- 8-1013. Repealed. Laws 2013, LB 616, § 53.
- 8-1014. Repealed. Laws 2013, LB 616, § 53.
- 8-1016. Repealed. Laws 2013, LB 616, § 53.
- 8-1017. Repealed. Laws 2013, LB 616, § 53.
- 8-1018. Repealed. Laws 2013, LB 616, § 53.
- 8-1019. Repealed. Laws 2013, LB 616, § 53.

8-1001 Repealed. Laws 2013, LB 616, § 53.

8-1001.01 Repealed. Laws 2013, LB 616, § 53.

8-1002 Repealed. Laws 2013, LB 616, § 53.

8-1003 Repealed. Laws 2013, LB 616, § 53.

8-1004 Repealed. Laws 2013, LB 616, § 53.

8-1005 Repealed. Laws 2013, LB 616, § 53.

8-1006 Repealed. Laws 2013, LB 616, § 53.

8-1007 Repealed. Laws 2013, LB 616, § 53.

8-1008 Repealed. Laws 2013, LB 616, § 53.

8-1009 Repealed. Laws 2013, LB 616, § 53.

8-1010 Repealed. Laws 2013, LB 616, § 53.

8-1011 Repealed. Laws 2013, LB 616, § 53.

8-1012 Repealed. Laws 2013, LB 616, § 53.

8-1012.01 Repealed. Laws 2013, LB 616, § 53.

8-1013 Repealed. Laws 2013, LB 616, § 53.

8-1014 Repealed. Laws 2013, LB 616, § 53.

8-1016 Repealed. Laws 2013, LB 616, § 53.

8-1017 Repealed. Laws 2013, LB 616, § 53.

8-1018 Repealed. Laws 2013, LB 616, § 53.

8-1019 Repealed. Laws 2013, LB 616, § 53.

ARTICLE 11

SECURITIES ACT OF NEBRASKA

Section

- 8-1101. Terms, defined.
- 8-1104. Registration of securities; exceptions.
- 8-1105. Repealed. Laws 2013, LB 214, § 13.
- 8-1108. Registration of securities; requirements; fees; effective date; reports; director, powers.
- 8-1108.01. Securities; sale without registration; cease and desist order; fine; lien; hearing.
- 8-1108.02. Federal covered security; filing; director; powers; sales; requirements.
- 8-1109. Registration of securities; denial, suspension, or revocation; grounds.
- 8-1111. Transactions exempt from registration.
- 8-1114. Unlawful representation concerning merits of registration or exemption.
- 8-1118. Violations; damages; statute of limitations.
- 8-1120. Administration of act; Director of Banking and Finance; powers and duties; use of information for personal benefit prohibited; Securities Act Cash Fund; created; use; investment; transfers; document filed, when.

8-1101 Terms, defined.

For purposes of the Securities Act of Nebraska, unless the context otherwise requires:

(1) Agent means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect sales of securities, but agent does not include an individual who represents (a) an issuer in (i) effecting a transaction in a security exempted by subdivision (6), (7), or (8) of section 8-1110, (ii) effecting certain transactions exempted by section 8-1111, (iii) effecting transactions in a federal covered security as described in section 18(b)(3) of the Securities Act of 1933, or (iv) effecting transactions with existing employees, limited liability company members, partners, or directors of the issuer or any of its subsidiaries if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state or (b) a broker-dealer in effecting transactions described in section 15(h)(2) of the Securities Exchange Act of 1934. A partner, limited liability company member, officer, or director of a broker-dealer is an agent only if he or she otherwise comes within this definition;

(2) Broker-dealer means any person engaged in the business of effecting transactions in securities for the account of others or for his or her own account. Broker-dealer does not include (a) an issuer-dealer, agent, bank, savings institution, or trust company, (b) an issuer effecting a transaction in its own security exempted by subdivision (5) of section 8-1110 or which qualifies as a federal covered security pursuant to section 18(b)(1) of the Securities Act of 1933, (c) a person who has no place of business in this state if he or she effects transactions in this state exclusively with or through the issuers of the securities involved in the transactions, other broker-dealers, or banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees, or (d) a person who has no place of business in this

state if during any period of twelve consecutive months he or she does not direct more than five offers to sell or to buy into this state in any manner to persons other than those specified in subdivision (2)(c) of this section;

(3) Director means the Director of Banking and Finance of the State of Nebraska except as further provided in section 8-1120;

(4) Federal covered adviser means a person who is (a) registered under section 203 of the Investment Advisers Act of 1940 or (b) is excluded from the definition of investment adviser under section 202 of the Investment Advisers Act of 1940;

(5) Federal covered security means any security described as a covered security under section 18(b) of the Securities Act of 1933 or rules and regulations promulgated thereunder;

(6) Guaranteed means guaranteed as to payment of principal, interest, or dividends;

(7) Investment adviser means any person who for compensation engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities or who for compensation and as a part of a regular business issues or promulgates analyses or reports concerning securities. Investment adviser also includes financial planners and other persons who, as an integral component of other financially related services, provide the foregoing investment advisory services to others for compensation and as part of a business or who hold themselves out as providing the foregoing investment advisory services to others for compensation. Investment adviser does not include (a) an investment adviser representative, (b) a bank, savings institution, or trust company, (c) a lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of his or her profession, (d) a broker-dealer or its agent whose performance of these services is solely incidental to its business as a broker-dealer and who receives no special compensation for them, (e) an issuer-dealer, (f) a publisher of any bona fide newspaper, news column, news letter, news magazine, or business or financial publication or service, whether communicated in hard copy form, by electronic means, or otherwise which does not consist of the rendering of advice on the basis of the specific investment situation of each client, (g) a person who has no place of business in this state if (i) his or her only clients in this state are other investment advisers, federal covered advisers, broker-dealers, banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees, or (ii) during the preceding twelve-month period, he or she has had five or fewer clients who are residents of this state other than those persons specified in subdivision (g)(i) of this subdivision, (h) any person that is a federal covered adviser, or (i) such other persons not within the intent of this subdivision as the director may by rule, regulation, or order designate;

(8) Investment adviser representative means any partner, limited liability company member, officer, or director or any person occupying a similar status or performing similar functions of a partner, limited liability company member, officer, or director or other individual, except clerical or ministerial personnel, who is employed by or associated with an investment adviser that is registered

or required to be registered under the Securities Act of Nebraska or who has a place of business located in this state and is employed by or associated with a federal covered adviser, and who (a) makes any recommendations or otherwise renders advice regarding securities, (b) manages accounts or portfolios of clients, (c) determines which recommendation or advice regarding securities should be given, (d) solicits, offers, or negotiates for the sale of or sells investment advisory services, or (e) supervises employees who perform any of the foregoing;

(9) Issuer means any person who issues or proposes to issue any security, except that (a) with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors, or persons performing similar functions, or of the fixed, restricted management, or unit type, the term issuer means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued and (b) with respect to a fractional or pooled interest in a viatical settlement contract, issuer means the person who creates, for the purpose of sale, the fractional or pooled interest. In the case of a viatical settlement contract that is not fractionalized or pooled, issuer means the person effecting a transaction with a purchaser of such contract;

(10) Issuer-dealer means (a) any issuer located in the State of Nebraska or (b) any issuer which registered its securities by qualification who proposes to sell to the public of the State of Nebraska the securities that it issues without the benefit of another registered broker-dealer. Such securities shall have been approved for sale in the State of Nebraska pursuant to section 8-1104;

(11) Nonissuer means not directly or indirectly for the benefit of the issuer;

(12) Person means an individual, a corporation, a partnership, a limited liability company, an association, a joint-stock company, a trust in which the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government;

(13) Sale or sell includes every contract of sale of, contract to sell, or disposition of a security or interest in a security for value. Offer or offer to sell includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value. Any security given or delivered with or as a bonus on account of any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value. A purported gift of assessable stock shall be considered to involve an offer and sale. Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, shall be considered to include an offer of the other security;

(14) Securities Act of 1933, Securities Exchange Act of 1934, Investment Advisers Act of 1940, Investment Company Act of 1940, and Commodity Exchange Act means the federal statutes of those names as amended on or before January 1, 2013;

(15) Security means any note, stock, treasury stock, bond, debenture, units of beneficial interest in a real estate trust, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certifi-

cate, preorganization certificate or subscription, transferable share, investment contract, viatical settlement contract or any fractional or pooled interest in such contract, membership interest in any limited liability company organized under Nebraska law or any other jurisdiction unless otherwise excluded from this definition, voting-trust certificate, certificate of deposit for a security, certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease, in general any interest or instrument commonly known as a security, or any certificate of interest or participation in, temporary or interim certificate for, guarantee of, or warrant or right to subscribe to or purchase any of the foregoing. Security does not include any insurance or endowment policy or annuity contract issued by an insurance company. Security also does not include a membership interest in a limited liability company when all of the following exist: (a) The member enters into a written commitment to be engaged actively and directly in the management of the limited liability company; and (b) all members of the limited liability company are actively engaged in the management of the limited liability company;

(16) State means any state, territory, or possession of the United States as well as the District of Columbia and Puerto Rico; and

(17) Viatical settlement contract means an agreement for the purchase, sale, assignment, transfer, devise, or bequest of all or any portion of the death benefit or ownership of a life insurance policy or contract for consideration which is less than the expected death benefit of the life insurance policy or contract. Viatical settlement contract does not include (a) the assignment, transfer, sale, devise, or bequest of a death benefit of a life insurance policy or contract made by the viator to an insurance company or to a viatical settlement provider or broker licensed pursuant to the Viatical Settlements Act, (b) the assignment of a life insurance policy or contract to a bank, savings bank, savings and loan association, credit union, or other licensed lending institution as collateral for a loan, or (c) the exercise of accelerated benefits pursuant to the terms of a life insurance policy or contract and consistent with applicable law.

Source: Laws 1965, c. 549, § 1, p. 1763; Laws 1973, LB 167, § 1; Laws 1977, LB 263, § 1; Laws 1978, LB 760, § 1; Laws 1989, LB 60, § 1; Laws 1991, LB 305, § 2; Laws 1993, LB 216, § 1; Laws 1993, LB 121, § 96; Laws 1994, LB 884, § 10; Laws 1995, LB 119, § 1; Laws 1996, LB 1053, § 7; Laws 1997, LB 335, § 1; Laws 2001, LB 52, § 43; Laws 2001, LB 53, § 19; Laws 2011, LB76, § 1; Laws 2013, LB214, § 1.

Cross References

Viatical Settlements Act, see section 44-1101.

8-1104 Registration of securities; exceptions.

It shall be unlawful for any person to offer or sell any security in this state unless (1) such security is registered by coordination under section 8-1106 or by qualification under section 8-1107, (2) the security is exempt under section 8-1110 or is sold in a transaction exempt under section 8-1111, or (3) the security is a federal covered security.

Source: Laws 1965, c. 549, § 4, p. 1773; Laws 1997, LB 335, § 3; Laws 2013, LB214, § 2.

8-1105 Repealed. Laws 2013, LB 214, § 13.**8-1108 Registration of securities; requirements; fees; effective date; reports; director, powers.**

(1) A registration statement may be filed by the issuer, by any other person on whose behalf the offering is to be made, or by a registered broker-dealer. Any document filed under the Securities Act of Nebraska or a predecessor act within five years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the document is currently accurate. The director may by rule and regulation or order permit the omission of any item of information or document from any registration statement.

(2) The director may require as a condition of registration by qualification (a) that the proceeds from the sale of the registered security be impounded until the issuer receives a specified amount, (b) that the applicant comply with the federal Securities Act of 1933 if it appears to the director to be in the public interest or that the registered security is or will be offered in such manner as to be subject to such act, (c) such reasonable conditions, restrictions, or limitations upon the offering as may be in the public interest, or (d) that any security issued within the past three years, or to be issued, to a promoter for a consideration substantially different from the public offering price or to any person for a consideration other than cash, be delivered in escrow to him or her or to some other depository satisfactory to him or her under an escrow agreement that the owners of such securities shall not be entitled to sell or transfer such securities or to withdraw such securities from escrow until all other stockholders who have paid for their stock in cash shall have been paid a dividend or dividends aggregating not less than six percent of the initial offering price shown to the satisfaction of the director to have been actually earned on the investment in any common stock so held. The director shall not reject a depository solely because of location in another state. In case of dissolution or insolvency during the time such securities are held in escrow, the owners of such securities shall not participate in the assets until after the owners of all other securities shall have been paid in full.

(3) For the registration of securities by coordination or qualification, there shall be paid to the director a registration fee of one-tenth of one percent of the aggregate offering price of the securities which are to be offered in this state, but the fee shall in no case be less than one hundred dollars. When a registration statement is withdrawn before the effective date or a preeffective stop order is entered under section 8-1109, the director shall retain one hundred dollars of the fee. Any issuer who sells securities in this state in excess of the aggregate amount of securities registered may, at the discretion of the director and while such registration is still effective, apply to register the excess securities sold to persons within this state by paying a registration fee of three-tenths of one percent for the difference between the initial fee paid and the fee required in this subsection. Registration of the excess securities, if granted, shall be effective retroactively to the date of the existing registration.

(4) When securities are registered by coordination or qualification, they may be offered and sold by a registered broker-dealer. Every registration shall remain effective for one year or until sooner revoked by the director or sooner terminated upon request of the registrant with the consent of the director. All outstanding securities of the same class as a registered security shall be

considered to be registered for the purpose of any nonissuer transaction. A registration statement which has become effective may not be withdrawn for one year from its effective date if any securities of the same class are outstanding.

(5) The director may require the person who filed the registration statement to file reports, not more often than quarterly, to keep reasonably current the information contained in the registration statement and to disclose the progress of the offering with respect to registered securities which are being offered and sold directly by or for the account of the issuer.

(6) A registration of securities shall be effective for a period of one year or such shorter period as the director may determine.

Source: Laws 1965, c. 549, § 8, p. 1781; Laws 1988, LB 1157, § 1; Laws 1991, LB 305, § 4; Laws 1997, LB 335, § 4; Laws 2013, LB214, § 3.

8-1108.01 Securities; sale without registration; cease and desist order; fine; lien; hearing.

(1) Whenever it appears to the director that the sale of any security is subject to registration under the Securities Act of Nebraska and is being offered or has been offered for sale without such registration, he or she may order the issuer or offerer of such security to cease and desist from the further offer or sale of such security unless and until it has been registered under the act.

(2) Whenever it appears to the director that any person is acting as a broker-dealer, issuer-dealer, agent, investment adviser, or investment adviser representative without registration as such or acting as a federal covered adviser without making a notice filing under the act, he or she may order such person to cease and desist from such activity unless and until he or she has been registered as such or has made the required notice filing under the act.

(3) Whenever it appears to the director that any person is violating section 8-1102, he or she may order the person to cease and desist from such activity.

(4) The director may, after giving reasonable notice and an opportunity for a hearing under this section, impose a fine not to exceed twenty-five thousand dollars per violation, in addition to costs of the investigation, upon a person found to have engaged in any act or practice which would constitute a violation of the act or any rule, regulation, or order issued under the act, except that the director shall not impose a fine upon any person in connection with a transaction made pursuant to subdivision (23) of section 8-1111 for any statement of a material fact made or for an omission of a material fact required to be stated or necessary to make the statement made not misleading unless such statement or omission was made with the intent to defraud or mislead. The fine and costs shall be in addition to all other penalties imposed by the laws of this state. The director shall collect the fines and costs and remit them to the State Treasurer. The State Treasurer shall credit the costs to the Securities Act Cash Fund and distribute the fines in accordance with Article VII, section 5, of the Constitution of Nebraska. Imposition of any fine and payment of costs under this subsection may be appealed pursuant to section 8-1119. If a person fails to pay the fine or costs of the investigation referred to in this subsection, a lien in the amount of the fine and costs shall be imposed upon all of the assets and property of such person in this state and may be recovered by suit by the director and remitted to the State Treasurer. The State Treasurer shall credit the costs to the

Securities Act Cash Fund and distribute the fines in accordance with Article VII, section 5, of the Constitution of Nebraska. Failure of the person to pay a fine and costs shall also constitute a forfeiture of his or her right to do business in this state under the Securities Act of Nebraska.

(5) After such an order has been made under subsection (1), (2), (3), or (4) of this section, if a request for a hearing is filed in writing within fifteen business days of the issuance of the order by the person to whom such order was directed, a hearing shall be held by the director within thirty business days after receipt of the request, unless both parties consent to a later date or the hearing officer sets a later date for good cause. If no hearing is requested within fifteen business days of the issuance of the order and none is ordered by the director, the order shall automatically become a final order and shall 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, shall enter his or her written findings of fact and conclusions of law and may affirm, modify, or vacate the order.

Source: Laws 1974, LB 721, § 5; Laws 1987, LB 650, § 1; Laws 1990, LB 956, § 8; Laws 1993, LB 216, § 5; Laws 1997, LB 335, § 5; Laws 2001, LB 53, § 21; Laws 2013, LB205, § 1.

8-1108.02 Federal covered security; filing; director; powers; sales; requirements.

(1) The director, by rule and regulation or order, may require the filing of any or all of the following documents with respect to a federal covered security under section 18(b)(2) of the Securities Act of 1933:

(a) Prior to the initial offer of such federal covered security in this state, all documents that are part of a federal registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933, together with a consent to service of process signed by the issuer and with a filing fee as prescribed by section 8-1108.03;

(b) After the initial offer of such federal covered security in this state, all documents which are part of any amendment to the federal registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933; and

(c) A sales report of the total amount of such federal covered securities offered or sold in this state, together with the filing fee prescribed by section 8-1108.03.

(2) With respect to any security that is a federal covered security under section 18(b)(4)(E) of the Securities Act of 1933, the director, by rule and regulation or order, may require the issuer to file a notice on SEC Form D and a consent to service of process signed by the issuer no later than fifteen days after the first sale of such federal covered security in this state, together with a filing fee of two hundred dollars.

(3) The director, by rule and regulation or order, may require the filing of any document filed with the Securities and Exchange Commission under the Securities Act of 1933 with respect to a federal covered security under section 18(b)(3) or (4), except section 18(b)(4)(E), of the Securities Act of 1933, together with a filing fee of two hundred dollars.

(4) The director may issue a stop order suspending the offer and sale of a federal covered security, except a federal covered security under section 18(b)(1) of the Securities Act of 1933, if he or she finds that (a) the order is in the public interest and (b) there is a failure to comply with any condition established under this section or with any other applicable provision of the Securities Act of Nebraska.

(5) The director, by rule and regulation or order, may waive any or all of the provisions of this section, except that the director does not have the authority to waive the payment of fees as required by this section.

(6) No person may bring an action pursuant to section 8-1118 based on the failure of an issuer to file any notice or pay any fee required by this section.

(7) All federal covered securities offered or sold in this state must be sold through a registered agent of a broker-dealer registered under the Securities Act of Nebraska or by persons duly exempted or excluded from such registration, except that this subsection shall not apply to the offer or sale of a federal covered security under section 18(b)(4)(E) of the Securities Act of 1933 if no commission or other remuneration is paid directly or indirectly for soliciting any prospective buyer.

Source: Laws 1997, LB 335, § 9; Laws 2013, LB214, § 4.

8-1109 Registration of securities; denial, suspension, or revocation; grounds.

The director may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, a registration statement to register securities by coordination if he or she finds that the order is in the public interest and that:

(1) Any such registration statement registering securities, as of its effective date or as of any earlier date in the case of an order denying effectiveness, is incomplete in any material respect or contains any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(2) Any provision of the Securities Act of Nebraska or any rule, order, or condition lawfully imposed under the act has been violated, in connection with the offering by the person filing the registration statement, the issuer, any partner, limited liability company member, officer, or director of the issuer, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling or controlled by the issuer, but only if the person filing the registration statement is directly or indirectly controlled by or acting for the issuer or any underwriter;

(3) The security registered or sought to be registered is the subject of a permanent or temporary injunction of any court of competent jurisdiction entered under any other federal or state act applicable to the offering. The director may not institute a proceeding against an effective registration statement under this subdivision more than one year from the date of the injunction relied on, and he or she may not enter an order under this subdivision on the basis of an injunction entered under any other state act unless the injunction was based on facts which would currently constitute a ground for a stop order under this section;

(4) When a security is sought to be registered by coordination, there has been a failure to comply with the undertaking required by subdivision (2)(g) of section 8-1106;

(5) The applicant or registrant has failed to pay the proper registration fee. The director may enter only a denial order under this subdivision and shall vacate any such order when the deficiency has been corrected. The director may not enter an order against an effective registration statement on the basis of a fact or transaction known to him or her when the registration statement became effective;

(6) The authority of the applicant or registrant to do business has been denied or revoked by any other governmental agency;

(7) The issuer's or registrant's literature, circulars, or advertising is misleading, incorrect, incomplete, or calculated to deceive the purchaser or investor;

(8) All or substantially all the enterprise or business of the issuer, promoter, or guarantor has been found to be unlawful by a final order of a court or administrative agency of competent jurisdiction; or

(9) There is a refusal to furnish information required by the director within a reasonable time to be fixed by the director.

Source: Laws 1965, c. 549, § 9, p. 1783; Laws 1967, c. 29, § 2, p. 144; Laws 1973, LB 167, § 4; Laws 1977, LB 263, § 4; Laws 1987, LB 27, § 1; Laws 1993, LB 121, § 98; Laws 1994, LB 884, § 13; Laws 2013, LB214, § 5.

8-1111 Transactions exempt from registration.

Except as provided in this section, 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)(a) Any nonissuer transaction by a registered agent of a registered broker-dealer, and any resale transaction by a sponsor of a unit investment trust registered under the Investment Company Act of 1940, in a security of a class that has been outstanding in the hands of the public for at least ninety days if, at the time of the transaction:

(i) The issuer of the security is actually engaged in business and not in the organization stage or in bankruptcy or receivership and is not a blank check, blind pool, or shell company whose primary plan of business is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person or persons;

(ii) The security is sold at a price reasonably related to the current market price of the security;

(iii) The security does not constitute the whole or part of an unsold allotment to, or a subscription or participation by, the broker-dealer as an underwriter of the security;

(iv) A nationally recognized securities manual designated by rule and regulation or order of the director or a document filed with the Securities and Exchange Commission which is publicly available through the Electronic Data Gathering, Analysis, and Retrieval System (EDGAR) contains:

(A) A description of the business and operations of the issuer;

(B) The names of the issuer's officers and the names of the issuer's directors, if any, or, in the case of a non-United-States issuer, the corporate equivalents of such persons in the issuer's country of domicile;

(C) An audited balance sheet of the issuer as of a date within eighteen months or, in the case of a reorganization or merger when parties to the reorganization or merger had such audited balance sheet, a pro forma balance sheet; and

(D) An audited income statement for each of the issuer's immediately preceding two fiscal years, or for the period of existence of the issuer if in existence for less than two years, or, in the case of a reorganization or merger when the parties to the reorganization or merger had such audited income statement, a pro forma income statement; and

(v) The issuer of the security has a class of equity securities listed on a national securities exchange registered under the Securities Exchange Act of 1934 or designated for trading on the National Association of Securities Dealers Automated Quotation System (NASDAQ), unless:

(A) The issuer of the security is a unit investment trust registered under the Investment Company Act of 1940;

(B) The issuer of the security has been engaged in continuous business, including predecessors, for at least three years; or

(C) The issuer of the security has total assets of at least two million dollars based on an audited balance sheet as of a date within eighteen months or, in the case of a reorganization or merger when parties to the reorganization or merger had such audited balance sheet, a pro forma balance sheet; or

(b) Any nonissuer transaction in a security by a registered agent of a registered broker-dealer if:

(i) The issuer of the security is actually engaged in business and not in the organization stage or in bankruptcy or receivership and is not a blank check, blind pool, or shell company whose primary plan of business is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person or persons; and

(ii) The security is senior in rank to the common stock of the issuer both as to payment of dividends or interest and upon dissolution or liquidation of the issuer and such security has been outstanding at least three years and the issuer or any predecessor has not defaulted within the current fiscal year or the three immediately preceding fiscal years in the payment of any dividend, interest, principal, or sinking fund installment on the security when due and payable;

(3) Any nonissuer transaction effected by or through a registered agent of a registered broker-dealer pursuant to an unsolicited order or offer to buy, but the director may by rule or regulation 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, 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, 15 U.S.C. 1701 et seq., as the act existed on January 1, 2013;

(6) Any transaction by an executor, personal representative, administrator, sheriff, marshal, receiver, 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, to an individual accredited investor, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity. For purposes of this subdivision, the term "individual accredited investor" means (a) any director, executive officer, or general partner of the issuer of the securities being offered or sold, or any director, executive officer, or general partner of a general partner of that issuer, (b) any manager of a limited liability company that is the issuer of the securities being offered or sold, (c) any natural person whose individual net worth, or joint net worth with that person's spouse, at the time of his or her purchase, exceeds one million dollars, excluding the value of the primary residence of such person, or (d) any natural person who had an individual income in excess of two hundred thousand dollars in each of the two most recent years or joint income with that person's spouse in excess of three hundred thousand dollars in each of those years and has a reasonable expectation of reaching the same income level in the current year;

(9)(a) Any transaction pursuant to an offering in which sales are made to not more than fifteen persons, other than those designated in subdivisions (8), (11), and (17) of this section, in this state during any period of twelve consecutive months if (i) the seller reasonably believes that all the buyers are purchasing for investment, (ii) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer except to a registered agent of a registered broker-dealer, (iii) 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 (iv) no general or public advertisements or solicitations are made.

(b) If a seller (i) makes sales pursuant to this subdivision for five consecutive twelve-month periods or (ii) makes sales of at least one million dollars from an offering or offerings pursuant to this subdivision, the seller shall, within ninety days after the earlier of either such occurrence, file with the director audited financial statements and a sales report which lists the names and addresses of all purchasers and holders of the seller's securities and the amount of securities held by such persons. Subsequent thereto, such seller shall file audited financial statements and sales reports with the director each time an additional one million dollars in securities is sold pursuant to this subdivision or after the elapse of each additional sixty-month period during which sales are made pursuant to this subdivision;

(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;

(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 registered agent of a registered broker-dealer or registered issuer-dealer, (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, (d) a filing fee of two hundred dollars is paid at the time of filing the notice, and (e) 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. For purposes of this subdivision, not involving a public offering means 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;

(17) The issuance of any investment contract issued in connection with an employee's stock purchase, savings, pension, profit-sharing, or similar benefit

plan if no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer except to a registered agent of a registered broker-dealer;

(18) Any interest in a common trust fund or similar fund maintained by a bank or trust company organized and supervised under the laws of any state or a bank organized under the laws of the United States for the collective investment and reinvestment of funds contributed to such common trust fund or similar fund by the bank or trust company in its capacity as trustee, personal representative, administrator, or guardian and any interest in a collective investment fund or similar fund maintained by the bank or trust company for the collective investment of funds contributed to such collective investment fund or similar fund by the bank or trust company in its capacity as trustee or agent which interest is issued in connection with an employee's savings, pension, profit-sharing, or similar benefit plan or a self-employed person's retirement plan, if a notice generally describing the terms of the collective investment fund or similar fund is filed by the bank or trust company with the director within thirty days after the establishment of the fund. Failure to give the notice may be cured by an order issued by the director in his or her discretion;

(19) Any transaction in which a United States Series EE Savings Bond is given or delivered with or as a bonus on account of any purchase of any item or thing;

(20) Any transaction in this state not involving a public offering by a Nebraska issuer selling solely to Nebraska residents, when (a) 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, (b) no commission or remuneration is paid directly or indirectly for soliciting any prospective buyer, except to a registered agent of a registered broker-dealer or registered issuer-dealer, (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 no later than twenty days prior to any sales 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, (d) a filing fee of two hundred dollars is paid at the time of filing the notice, and (e) there is no general or public advertising or solicitation;

(21) Any transaction by a person who is an organization described in section 501(c)(3) of the Internal Revenue Code as defined in section 49-801.01 involving an offering of interests in a fund described in section 3(c)(10)(B) of the Investment Company Act of 1940 solely to persons who are organizations described in section 501(c)(3) of the Internal Revenue Code as defined in section 49-801.01 when (a) there is no general or public advertising or solicitation, (b) 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 (c) any such transaction is effected by a trustee, director, officer, employee, or volunteer of the seller who is either a volunteer or is engaged in the overall fundraising

activities of a charitable organization and receives no commission or other special compensation based on the number or the value of interests sold in the fund;

(22) Any offer or sale of any viatical settlement contract or any fractionalized or pooled interest therein in a transaction that meets all of the following criteria:

(a) Sales of such securities are made only to the following purchasers:

(i) A natural person who, either individually or jointly with the person's spouse, (A) has a minimum net worth of two hundred fifty thousand dollars and had taxable income in excess of one hundred twenty-five thousand dollars in each of the two most recent years and has a reasonable expectation of reaching the same income level in the current year or (B) has a minimum net worth of five hundred thousand dollars. Net worth shall be determined exclusive of home, home furnishings, and automobiles;

(ii) A corporation, partnership, or other organization specifically formed for the purpose of acquiring securities offered by the issuer in reliance upon this exemption if each equity owner of the corporation, partnership, or other organization is a person described in subdivision (22)(a)(i) of this section;

(iii) A pension or profit-sharing trust of the issuer, a self-employed individual retirement plan, or an individual retirement account, if the investment decisions made on behalf of the trust, plan, or account are made solely by persons described in subdivision (22)(a)(i) of this section; or

(iv) An organization described in section 501(c)(3) of the Internal Revenue Code as defined in section 49-801.01, or a corporation, Massachusetts or similar business trust, or partnership with total assets in excess of five million dollars according to its most recent audited financial statements;

(b) The amount of the investment of any purchaser, except a purchaser described in subdivision (a)(ii) of this subdivision, does not exceed five percent of the net worth, as determined by this subdivision, of that purchaser;

(c) Each purchaser represents that the purchaser is purchasing for the purchaser's own account or trust account, if the purchaser is a trustee, and not with a view to or for sale in connection with a distribution of the security;

(d)(i) Each purchaser receives, on or before the date the purchaser remits consideration pursuant to the purchase agreement, the following information in writing:

(A) The name, principal business and mailing addresses, and telephone number of the issuer;

(B) The suitability standards for prospective purchasers as set forth in subdivision (a) of this subdivision;

(C) A description of the issuer's type of business organization and the state in which the issuer is organized or incorporated;

(D) A brief description of the business of the issuer;

(E) If the issuer retains ownership or becomes the beneficiary of the insurance policy, an audit report from an independent certified public accountant together with a balance sheet and related statements of income, retained earnings, and cash flows that reflect the issuer's financial position, the results of the issuer's operations, and the issuer's cash flows as of a date within fifteen months before the date of the initial issuance of the securities described in this

subdivision. The financial statements shall be prepared in conformity with generally accepted accounting principles. If the date of the audit report is more than one hundred twenty days before the date of the initial issuance of the securities described in this subdivision, the issuer shall provide unaudited interim financial statements;

(F) The names of all directors, officers, partners, members, or trustees of the issuer;

(G) A description of any order, judgment, or decree that is final as to the issuing entity of any state, federal, or foreign governmental agency or administrator, or of any state, federal, or foreign court of competent jurisdiction (I) revoking, suspending, denying, or censuring for cause any license, permit, or other authority of the issuer or of any director, officer, partner, member, trustee, or person owning or controlling, directly or indirectly, ten percent or more of the outstanding interest or equity securities of the issuer, to engage in the securities, commodities, franchise, insurance, real estate, or lending business or in the offer or sale of securities, commodities, franchises, insurance, real estate, or loans, (II) permanently restraining, enjoining, barring, suspending, or censuring any such person from engaging in or continuing any conduct, practice, or employment in connection with the offer or sale of securities, commodities, franchises, insurance, real estate, or loans, (III) convicting any such person of, or pleading nolo contendere by any such person to, any felony or misdemeanor involving a security, commodity, franchise, insurance, real estate, or loan, or any aspect of the securities, commodities, franchise, insurance, real estate, or lending business, or involving dishonesty, fraud, deceit, embezzlement, fraudulent conversion, or misappropriation of property, or (IV) holding any such person liable in a civil action involving breach of a fiduciary duty, fraud, deceit, embezzlement, fraudulent conversion, or misappropriation of property. This subdivision does not apply to any order, judgment, or decree that has been vacated or overturned or is more than ten years old;

(H) Notice of the purchaser's right to rescind or cancel the investment and receive a refund;

(I) A statement to the effect that any projected rate of return to the purchaser from the purchase of a viatical settlement contract or any fractionalized or pooled interest therein is based on an estimated life expectancy for the person insured under the life insurance policy; that the return on the purchase may vary substantially from the expected rate of return based upon the actual life expectancy of the insured that may be less than, may be equal to, or may greatly exceed the estimated life expectancy; and that the rate of return would be higher if the actual life expectancy were less than, and lower if the actual life expectancy were greater than, the estimated life expectancy of the insured at the time the viatical settlement contract was closed;

(J) A statement that the purchaser should consult with his or her tax advisor regarding the tax consequences of the purchase of the viatical settlement contract or any fractionalized or pooled interest therein; and

(K) Any other information as may be prescribed by rule of the director; and

(ii) The purchaser receives in writing at least five business days prior to closing the transaction:

(A) The name, address, and telephone number of the issuing insurance company and the name, address, and telephone number of the state or foreign country regulator of the insurance company;

(B) The total face value of the insurance policy and the percentage of the insurance policy the purchaser will own;

(C) The insurance policy number, issue date, and type;

(D) If a group insurance policy, the name, address, and telephone number of the group and, if applicable, the material terms and conditions of converting the policy to an individual policy, including the amount of increased premiums;

(E) If a term insurance policy, the term and the name, address, and telephone number of the person who will be responsible for renewing the policy if necessary;

(F) That the insurance policy is beyond the state statute for contestability and the reason therefor;

(G) The insurance policy premiums and terms of premium payments;

(H) The amount of the purchaser's money that will be set aside to pay premiums;

(I) The name, address, and telephone number of the person who will be the insurance policyowner and the person who will be responsible for paying premiums;

(J) The date on which the purchaser will be required to pay premiums and the amount of the premium, if known; and

(K) Any other information as may be prescribed by rule of the director;

(e) The purchaser may rescind or cancel the purchase for any reason by giving written notice of rescission or cancellation to the issuer or the issuer's agent within (i) fifteen calendar days after the date the purchaser remits the required consideration or receives the disclosure required under subdivision (d)(i) of this subdivision and (ii) five business days after the date the purchaser receives the disclosure required by subdivision (d)(ii) of this subdivision. No specific form is required for the rescission or cancellation. The notice is effective when personally delivered, deposited in the United States mail, or deposited with a commercial courier or delivery service. The issuer shall refund all the purchaser's money within seven calendar days after receiving the notice of rescission or cancellation;

(f) A notice of the issuer's intent to sell securities pursuant to this subdivision, signed by a duly authorized officer of the issuer and notarized, together with a filing fee of two hundred dollars, is filed with the Department of Banking and Finance before any offers or sales of securities are made under this subdivision. Such notice shall include:

(i) The issuer's name, the issuer's type of organization, the state in which the issuer is organized, the date the issuer intends to begin selling securities within or from this state, and the issuer's principal business;

(ii) A consent to service of process; and

(iii) An audit report of an independent certified public accountant together with a balance sheet and related statements of income, retained earnings and cash flows that reflect the issuer's financial position, the results of the issuer's operations, and the issuer's cash flows as of a date within fifteen months before the date of the notice prescribed in this subdivision. The financial statements shall be prepared in conformity with generally accepted accounting principles and shall be examined according to generally accepted auditing standards. If the date of the audit report is more than one hundred twenty days before the

date of the notice prescribed in this subdivision, the issuer shall provide unaudited interim financial statements;

(g) No commission or remuneration is paid directly or indirectly for soliciting any prospective purchaser, except to a registered agent of a registered broker-dealer or registered issuer-dealer; and

(h) At least ten days before use within this state, the issuer files with the department all advertising and sales materials that will be published, exhibited, broadcast, or otherwise used, directly or indirectly, in the offer or sale of a viatical settlement contract in this state; or

(23) Any transaction in this state not involving a public offering by a Nebraska issuer selling solely to Nebraska residents when:

(a) The proceeds from all sales of securities by the issuer in any two-year period do not exceed two hundred fifty thousand dollars and at least eighty percent of the proceeds are used in Nebraska;

(b) No commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer except to a registered agent of a registered broker-dealer;

(c) The issuer, any partner or limited liability company member of the issuer, any officer, director, or any person occupying a similar status of the issuer, any person performing similar functions for the issuer, or any person holding a direct or indirect ownership interest in the issuer or in any way a beneficial interest in such sale of securities of the issuer, has not been:

(i) Found by a final order of any state or federal administrative agency or a court of competent jurisdiction to have violated any provision of the Securities Act of Nebraska or a similar act of any other state or of the United States;

(ii) Convicted of any felony or misdemeanor in connection with the offer, purchase, or sale of any security or any felony involving fraud or deceit, including, but not limited to, forgery, embezzlement, obtaining money under false pretenses, larceny, or conspiracy to defraud;

(iii) Found by any state or federal administrative agency or court of competent jurisdiction to have engaged in fraud or deceit, including, but not limited to, making an untrue statement of a material fact or omitting to state a material fact; or

(iv) Temporarily or preliminarily restrained or enjoined by a court of competent jurisdiction from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of any false filing with any state or with the Securities and Exchange Commission;

(d)(i) At least fifteen business days prior to the offer or sale, the issuer files a notice with the director, which notice shall include:

(A) The name, address, telephone number, and email address of the issuer;

(B) The name and address of each person holding direct or indirect ownership or beneficial interest in the issuer;

(C) The amount of the offering; and

(D) The type of security being offered, the manner in which purchasers will be solicited, and a statement made upon oath or affirmation that the conditions of this exemption have been or will be met.

(ii) Failure to give such notice may be cured by an order issued by the director in his or her discretion;

(e) Prior to payment of consideration for the securities, the offeree receives a written disclosure statement containing (i) a description of the proposed use of the proceeds of the offering; (ii) the name of each partner or limited liability company member of the issuer, officer, director, or person occupying a similar status of the issuer or performing similar functions for the issuer; and (iii) the financial condition of the issuer;

(f) The purchaser signs a subscription agreement in which the purchaser acknowledges that he or she:

(i) Has received the written disclosure statement;

(ii) Understands the investment involves a high level of risk; and

(iii) Has the financial resources to withstand the total loss of the money invested; and

(g) The issuer, within thirty days after the completion of the offering, files with the Department of Banking and Finance a statement indicating the number of investors, the total dollar amount raised, and the use of the offering proceeds.

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 business days of the receipt of a written request the matter will be set down for hearing. If no hearing is requested within fifteen business days of the issuance of the order and none is ordered by the director, the order shall automatically become a final order and shall 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, shall enter his or her written findings of fact and conclusions of law and may affirm, modify, or vacate the order. 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 act, the burden of proving an exemption from a definition shall be upon the person claiming it.

Source: Laws 1965, c. 549, § 11, p. 1787; Laws 1973, LB 167, § 6; Laws 1977, LB 263, § 5; Laws 1978, LB 760, § 2; Laws 1980, LB 496, § 1; Laws 1986, LB 909, § 11; Laws 1987, LB 93, § 1; Laws 1989, LB 60, § 3; Laws 1990, LB 956, § 10; Laws 1991, LB 305, § 5; Laws 1992, LB 758, § 2; Laws 1993, LB 216, § 7; Laws 1994, LB 1241, § 1; Laws 1995, LB 96, § 1; Laws 1996, LB 1053, § 9; Laws 1997, LB 335, § 7; Laws 2000, LB 932, § 20; Laws 2001, LB 52, § 44; Laws 2002, LB 957, § 9; Laws 2006, LB 876, § 20; Laws 2010, LB814, § 1; Laws 2011, LB76, § 3; Laws 2013, LB205, § 2; Laws 2013, LB214, § 6.

8-1114 Unlawful representation concerning merits of registration or exemption.

Neither the fact that an application for registration or notice filing under section 8-1103, a notice filing under section 8-1108.02, or a registration

statement under section 8-1106 or 8-1107 has been filed, nor the fact that a person or security is effectively registered, shall constitute a finding by the director that any document filed under the Securities Act of Nebraska is true, complete, and not misleading. Neither any such fact nor the fact that an exemption or exception is available for a security or a transaction shall mean that the director has passed in any way upon the merits or qualifications of, or recommended or given approval to, any person, security, or transaction. It shall be unlawful to make, or cause to be made, to any prospective purchaser, customer, or client any representation inconsistent with this section.

Source: Laws 1965, c. 549, § 14, p. 1790; Laws 1997, LB 335, § 8; Laws 2013, LB214, § 7.

8-1118 Violations; damages; statute of limitations.

(1) Any person who offers or sells a security in violation of section 8-1104 or offers or sells a security by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made in the light of the circumstances under which they are made not misleading, the buyer not knowing of the untruth or omission, and who does not sustain the burden of proof that he or she did not know and in the exercise of reasonable care could not have known of the untruth or omission, shall be liable to the person buying the security from him or her, who may sue either at law or in equity to recover the consideration paid for the security, together with interest at six percent per annum from the date of payment, costs, and reasonable attorney's fees, less the amount of any income received on the security, upon the tender of the security, or for damages if he or she no longer owns the security, except that in actions brought based on a transaction exempt from registration under subdivision (23) of section 8-1111, no person shall be liable for any statement of a material fact made or for an omission of a material fact required to be stated or necessary to make the statement made not misleading unless such statement or omission was made with the intent to defraud or mislead, with the burden of proof in such cases being on the claimant. Damages shall be the amount that would be recoverable upon a tender less (a) the value of the security when the buyer disposed of it and (b) interest at six percent per annum from the date of disposition.

(2) Any investment adviser who provides investment adviser services to another person which results in a willful violation of subsection (2), (3), or (4) of section 8-1102, subsection (2) of section 8-1103, or section 8-1114 or any investment adviser who employs any device, scheme, or artifice to defraud such person or engages in any act, practice, or course of business which operates or would operate as a fraud or deceit on such person shall be liable to such person. Such person may sue either at law or in equity to recover the consideration paid for the investment adviser services and any loss due to such investment adviser services, together with interest at six percent per annum from the date of payment of the consideration plus costs and reasonable attorney's fees, less the amount of any income received from such investment adviser services and any other economic benefit.

(3) Every person who directly or indirectly controls a person liable under subsections (1) and (2) of this section, including every partner, limited liability company member, officer, director, or person occupying a similar status or performing similar functions of a partner, limited liability company member,

officer, or director, or employee of such person who materially aids in the conduct giving rise to liability, and every broker-dealer, issuer-dealer, agent, investment adviser, or investment adviser representative who materially aids in such conduct shall be liable jointly and severally with and to the same extent as such person, unless able to sustain the burden of proof that he or she did not know, and in the exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist. There shall be contribution as in cases of contract among the several persons so liable.

(4) Any tender specified in this section may be made at any time before entry of judgment. Every cause of action under the Securities Act of Nebraska shall survive the death of any person who might have been a plaintiff or defendant. No person may sue under this section more than three years after the contract of sale or the rendering of investment advice. No person may sue under this section (a) if the buyer received a written offer, before suit and at a time when he or she owned the security, to refund the consideration paid together with interest at six percent per annum from the date of payment, less the amount of any income received on the security, and the buyer failed to accept the offer within thirty days of its receipt, or (b) if the buyer received such an offer before suit and at a time when he or she did not own the security, unless the buyer rejected the offer in writing within thirty days of its receipt.

(5) No person who has made or engaged in the performance of any contract in violation of any provision of the act or any rule or order under the act, or who has acquired any purported right under any such contract with knowledge of the facts by reason of which its making or performance was in violation, may base any suit on the contract. Any condition, stipulation, or provision binding any person acquiring any security or receiving any investment advice to waive compliance with any provision of the act or any rule or order under the act shall be void.

Source: Laws 1965, c. 549, § 18, p. 1793; Laws 1973, LB 167, § 8; Laws 1993, LB 216, § 9; Laws 1993, LB 121, § 99; Laws 1994, LB 884, § 14; Laws 2013, LB205, § 3.

8-1120 Administration of act; Director of Banking and Finance; powers and duties; use of information for personal benefit prohibited; Securities Act Cash Fund; created; use; investment; transfers; document filed, when.

(1) Except as otherwise provided in this section, the Securities Act of Nebraska shall be administered by the Director of Banking and Finance who may employ such assistants or counsel as may be reasonably necessary for the purpose thereof and who may designate one of such assistants as an assistant director. The director may delegate to such assistant director or counsel any powers, authority, and duties imposed upon or granted to the director under the act, such as may be lawfully delegated under the common law or the statutes of this state. The director may also employ special counsel with respect to any investigation conducted by him or her under the act or with respect to any litigation to which the director is a party under the act, except that security issued by and representing an interest in or a debt of, or guaranteed by, any insurance company shall be registered, pursuant to the provisions of sections 8-1104 to 8-1109, with the Director of Insurance who shall as to such registrations administer and enforce the act, and as pertains to the administration and

enforcement of such registration of such securities all references in the act to director shall mean the Director of Insurance.

(2)(a) It shall be unlawful for the director or any of his or her officers or employees to use for personal benefit any information which is filed with or obtained by the director and which is not made public. Neither the director nor any of his or her officers or employees shall disclose any confidential information except among themselves, when necessary or appropriate in a proceeding, examination, or investigation under the act, or as authorized in subdivision (2)(b) of this subsection. No provision of the act shall either create or derogate from any privilege which exists at common law or otherwise when documentary or other evidence is sought under a subpoena directed to the director or any of his or her officers or employees.

(b)(i) In administering the act, the director may also:

(A) Enter into agreements or relationships with other government officials, including, but not limited to, the securities administrator of a foreign state and the Securities and Exchange Commission, or self-regulatory organizations, to share resources, standardized or uniform methods or procedures, and documents, records, and information; or

(B) Accept and rely on examination or investigation reports made by other government officials, including, but not limited to, the securities administrator of a foreign state and the Securities and Exchange Commission, or self-regulatory organizations.

(ii) For purposes of this subdivision, foreign state means any state of the United States, other than the State of Nebraska, any territory of the United States, including Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Virgin Islands, and the District of Columbia.

(3) The director may from time to time make, amend, and rescind such rules and forms as are necessary to carry out the act. No rule or form may be made unless the director finds that the action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of the act.

In prescribing rules and forms the director may cooperate with the securities administrators of the other states and the Securities and Exchange Commission with a view to effectuating the policy of the Securities Act of Nebraska to achieve maximum uniformity in the form and content of registration statements, applications, and reports wherever practicable. All rules and forms of the director shall be published and made available to any person upon request.

(4) No provision of the act imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, form, or order of the director, notwithstanding that the rule or form may later be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

(5) Every hearing in an administrative proceeding shall be public unless the director in his or her discretion grants a request joined in by all the respondents that the hearing be conducted privately.

(6) The Securities Act Cash Fund is created. All filing fees, registration fees, and all other fees and all money collected by or paid to the director under any of the provisions of the act shall be remitted to the State Treasurer for credit to the fund, except that registration fees collected by or paid to the Director of

Insurance pursuant to the provisions of the act shall be credited to the Department of Insurance Cash Fund. The Securities Act Cash Fund shall be used for the purpose of administering and enforcing the provisions of the act, except that transfers may be made to the General Fund at the direction of the Legislature. Any money in the Securities Act 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.

(7)(a) The State Treasurer, at the direction of the budget administrator of the budget division of the Department of Administrative Services, shall transfer one million two hundred fifty thousand dollars from the Securities Act Cash Fund to the Affordable Housing Trust Fund on or before September 1, 2013, and the State Treasurer, at the direction of the budget administrator of the budget division of the Department of Administrative Services, shall transfer one million two hundred fifty thousand dollars from the Securities Act Cash Fund to the Affordable Housing Trust Fund on or before September 1, 2014.

(b) The State Treasurer, at the direction of the budget administrator of the budget division of the Department of Administrative Services, shall transfer two hundred fifty thousand dollars from the Securities Act Cash Fund to the Homeless Shelter Assistance Trust Fund on or before September 1, 2013, and the State Treasurer, at the direction of the budget administrator of the budget division of the Department of Administrative Services, shall transfer two hundred fifty thousand dollars from the Securities Act Cash Fund to the Homeless Shelter Assistance Trust Fund on or before September 1, 2014.

(c) The State Treasurer, at the direction of the budget administrator of the budget division of the Department of Administrative Services, shall transfer five hundred thousand dollars from the Securities Act Cash Fund to the Legal Aid and Services Fund on or before September 1, 2013, and the State Treasurer, at the direction of the budget administrator of the budget division of the Department of Administrative Services, shall transfer five hundred thousand dollars from the Securities Act Cash Fund to the Legal Aid and Services Fund on or before September 1, 2014.

(8) A document is filed when it is received by the director. The director shall keep a register of all applications for registration and registration statements which are or have ever been effective under the Securities Act of Nebraska and all denial, suspension, or revocation orders which have ever been entered under the act. The register shall be open for public inspection. The information contained in or filed with any registration statement, application, or report may be made available to the public under such conditions as the director may prescribe.

(9) Upon request and at such reasonable charges as he or she shall prescribe, the director shall furnish to any person photostatic or other copies, certified under his or her seal of office if requested, of any entry in the register or any document which is a matter of public record. In any proceeding or prosecution under the act, any copy so certified shall be prima facie evidence of the contents of the entry or document certified.

(10) The director in his or her discretion may honor requests from interested persons for interpretative opinions.

Source: Laws 1965, c. 549, § 20, p. 1795; Laws 1969, c. 584, § 33, p. 2361; Laws 1973, LB 167, § 9; Laws 1983, LB 469, § 1; Laws

1995, LB 7, § 27; Laws 1997, LB 864, § 1; Laws 2000, LB 932, § 21; Laws 2003, LB 217, § 24; Laws 2013, LB199, § 17; Laws 2013, LB214, § 8.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

ARTICLE 14

DISCLOSURE OF CONFIDENTIAL INFORMATION

Section

- 8-1401. Disclosure of confidential records or information; court order; not applicable, when; immunity.
- 8-1402. Provide records or information; costs.
- 8-1403. Terms, defined.
- 8-1404. Death of decedent; information regarding financial or property interests; furnished; to whom; affidavit; contents; immunity from liability; applicability of section.

8-1401 Disclosure of confidential records or information; court order; not applicable, when; immunity.

(1) No person organized under the Credit Union Act, the Nebraska Banking Act, the Nebraska Industrial Development Corporation Act, the Nebraska Model Business Corporation Act, the Nebraska Nonprofit Corporation Act, the Nebraska Professional Corporation Act, the Nebraska Trust Company Act, or Chapter 8, article 3, or otherwise authorized to conduct business in Nebraska or organized under the laws of the United States, shall be required to disclose any records or information, financial or otherwise, that it deems confidential concerning its affairs or the affairs of any person with which it is doing business to any person, party, agency, or organization, unless:

(a) The disclosure relates to a lawyers trust account and is required to be made to the Counsel for Discipline of the Nebraska Supreme Court pursuant to a rule adopted by the Nebraska Supreme Court;

(b) The disclosure is governed by rules for discovery promulgated pursuant to section 25-1273.01;

(c) The disclosure is made pursuant to section 8-1404;

(d) The request for disclosure is made by a law enforcement agency regarding a crime, a fraud, or any other unlawful activity in which the person to whom the request for disclosure is made is or may be a victim of such crime, fraud, or unlawful activity;

(e) The request for disclosure is made by a governmental agency which is a duly constituted supervisory regulatory agency of the person to whom the request for disclosure is made and the disclosure relates to examinations, audits, investigations, or inquiries of such persons;

(f) The request for disclosure is made pursuant to subpoena issued under the laws of this state by a governmental agency exercising investigatory or adjudicative functions with respect to a matter within the agency's jurisdiction;

(g) The production of records is pursuant to a written demand of the Tax Commissioner under section 77-375;

(h) There is first presented to such person a subpoena, summons, or warrant issued by a court of competent jurisdiction;

(i) A statute by its terms or rules and regulations adopted and promulgated thereunder requires the disclosure, other than by subpoena, summons, warrant, or court order;

(j) There is presented to such person an order of a court of competent jurisdiction setting forth the exact nature and limits of such required disclosure and a showing that all persons to be affected by such order have had reasonable notice and an opportunity to be heard upon the merits of such order;

(k) The request for disclosure relates to information or records regarding the balance due, monthly payments due, payoff amounts, payment history, interest rates, due dates, or similar information for indebtedness owed by a deceased person when the request is made by a person having an ownership interest in real estate or personal property which secures such indebtedness owed to the person to whom the request for disclosure is made; or

(l) There is first presented to such person the written permission of the person about whom records or information is being sought authorizing the release of the requested records or information.

(2) Any person who makes a disclosure of records or information as required by this section shall not be held civilly or criminally liable for such disclosure in the absence of malice, bad faith, intent to deceive, or gross negligence.

Source: Laws 1977, LB 384, § 1; Laws 1979, LB 216, § 1; Laws 1986, LB 529, § 1; Laws 1995, LB 109, § 193; Laws 1996, LB 681, § 178; Laws 1996, LB 948, § 121; Laws 1998, LB 1104, § 1; Laws 2002, LB 857, § 2; Laws 2002, LB 957, § 12; Laws 2003, LB 131, § 10; Laws 2003, LB 156, § 1; Laws 2012, LB811, § 1; Laws 2014, LB749, § 233; Laws 2014, LB788, § 3.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB749, section 233, with LB788, section 3, to reflect all amendments.

Note: Changes made by LB788 became effective July 18, 2014. Changes made by LB749 became operative January 1, 2016.

Cross References

Credit Union Act, see section 21-1701.

Nebraska Banking Act, see section 8-101.01.

Nebraska Industrial Development Corporation Act, see section 21-2318.

Nebraska Model Business Corporation Act, see section 21-201.

Nebraska Nonprofit Corporation Act, see section 21-1901.

Nebraska Professional Corporation Act, see section 21-2201.

Nebraska Trust Company Act, see section 8-201.01.

8-1402 Provide records or information; costs.

(1) Any person, party, agency, or organization requesting disclosure of records or information pursuant to section 8-1401 shall pay the costs of providing such records or information, unless:

(a) The request for disclosure is made pursuant to subdivision (1)(a) of section 8-1401 and a Nebraska Supreme Court rule provides for the method of payment;

(b) The request is made pursuant to subdivision (1)(b) of section 8-1401 and the rules for discovery provide for the method of payment;

(c) The request for disclosure is made pursuant to subdivision (1)(d) or (1)(e) of section 8-1401;

(d) Otherwise ordered by a court of competent jurisdiction; or

(e) The person making the disclosure waives any or all of the costs.

(2) The requesting person, party, agency, or organization shall pay five dollars per hour per person for the time actually spent on the service or, if such person can show that its actual expense in providing the records or information was greater than five dollars per hour per person, it shall be paid the actual cost of providing the records or information.

(3) No person authorized to receive payment pursuant to subsection (1) of this section has an obligation to provide any records or information pursuant to section 8-1401 until assurances are received that the costs due under this section will be paid, except for requests made pursuant to subdivisions (1)(d), (1)(e), (1)(f), and (1)(g) of section 8-1401.

Source: Laws 1979, LB 216, § 2; Laws 1995, LB 384, § 11; Laws 1998, LB 1104, § 2; Laws 2002, LB 957, § 13; Laws 2003, LB 156, § 2; Laws 2014, LB788, § 4.
Effective date July 18, 2014.

8-1403 Terms, defined.

For purposes of sections 8-1401, 8-1402, and 8-1404:

(1) Governmental agency means any agency, department, or commission of this state or any authorized officer, employee, or agent of such agency, department, or commission;

(2) Law enforcement agency means an agency or department of this state or of any political subdivision of this state that obtains, serves, and enforces arrest warrants or that conducts or engages in prosecutions for violations of the law; and

(3) Person means any individual, corporation, partnership, limited liability company, association, joint stock association, trust, unincorporated organization, and any other legal entity.

Source: Laws 2003, LB 156, § 3; Laws 2014, LB788, § 6.
Effective date July 18, 2014.

8-1404 Death of decedent; information regarding financial or property interests; furnished; to whom; affidavit; contents; immunity from liability; applicability of section.

(1) This section does not apply to:

(a) Real property owned by a decedent; or

(b) The contents of a safe deposit box rented by a decedent from a state-chartered or federally chartered bank, savings bank, building and loan association, savings and loan association, or credit union.

(2) After the death of a decedent, a person (a) indebted to the decedent or (b) having possession of (i) personal property, (ii) an instrument evidencing a debt, (iii) an obligation, (iv) a chose in action, (v) a life insurance policy, (vi) a bank account, (vii) a certificate of deposit, or (viii) intangible property, including annuities, fixed income investments, mutual funds, cash, money market accounts, or stocks, belonging to the decedent, shall furnish the value of the indebtedness or property on the date of death and the names of the known or designated beneficiaries of property described in this subsection to a person who is (A) an heir at law of the decedent, (B) a devisee of the decedent or a

person nominated as a personal representative in a will of the decedent, or (C) an agent or attorney authorized in writing by any such person described in subdivision (A) or (B) of this subdivision, with a copy of such authorization attached to the affidavit, and who also presents an affidavit containing the information required by subsection (3) of this section.

(3) An affidavit presented under subsection (2) of this section shall state:

(a) The name, address, social security number if available, and date of death of the decedent;

(b) The name and address of the affiant and that the affiant is (i) an heir at law of the decedent, (ii) a devisee of the decedent or a person nominated as a personal representative in a will of the decedent, or (iii) an agent or attorney authorized in writing by any such person described in subdivision (i) or (ii) of this subdivision;

(c) That the disclosure of the value on the date of death is necessary to determine whether the decedent's estate can be administered under the summary procedures set forth in section 30-24,125, to assist in the determination of the inheritance tax in an estate that is not subject to probate, or to assist a conservator or guardian in the preparation of a final accounting subsequent to the death of the decedent;

(d) That the affiant is answerable and accountable for the information received to the decedent's personal representative, if any, or to any other person having a superior right to the property or indebtedness;

(e) That the affiant swears or affirms that all statements in the affidavit are true and material and further acknowledges that any false statement may subject the person to penalties relating to perjury under section 28-915; and

(f) That no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction.

(4) A person presented with an affidavit under subsection (2) of this section shall provide the requested information within five business days after being presented with the affidavit.

(5) A person who acts in good faith reliance on an affidavit presented under subsection (2) of this section is immune from liability for the disclosure of the requested information.

Source: Laws 2014, LB788, § 5.
Effective date July 18, 2014.

ARTICLE 21

INTERSTATE BRANCHING AND MERGER ACT

Section

8-2104. Out-of-state bank; powers; interstate merger transaction; notice; powers and duties.

8-2104 Out-of-state bank; powers; interstate merger transaction; notice; powers and duties.

(1) An out-of-state bank may establish and maintain a branch or acquire a branch in this state upon compliance with any applicable requirements of the Nebraska Model Business Corporation Act for registration or qualification to do business in this state.

(2) An out-of-state bank may engage in an interstate merger transaction in this state in which it is the resulting bank and establish one or more branches in this state. The out-of-state bank shall notify the department of the proposed interstate merger transaction involving a Nebraska state chartered bank within fifteen days after the date it files an application for an interstate merger transaction with its primary regulator.

(3) An out-of-state bank may conduct only those activities at its branch or branches in this state that are permissible under the laws of Nebraska or of the United States, except that an out-of-state bank with trust powers may exercise all trust powers in this state as a Nebraska bank with trust powers subject to the requirements of section 8-209.

(4) All branches of an out-of-state bank shall comply with all applicable Nebraska laws and regulations in the conduct of their business in this state to the maximum extent authorized by federal law.

Source: Laws 1997, LB 351, § 4; Laws 2002, LB 1089, § 11; Laws 2012, LB963, § 17; Laws 2014, LB749, § 234.
Operative date January 1, 2016.

Cross References

Nebraska Model Business Corporation Act, see section 21-201.

ARTICLE 23

INTERSTATE TRUST COMPANY OFFICE ACT

Section

8-2306. Out-of-state trust company; instate branch trust offices; requirements; procedure.

8-2311. Out-of-state trust company without instate branch trust office; representative trust offices; requirements; procedure.

8-2306 Out-of-state trust company; instate branch trust offices; requirements; procedure.

(1) An out-of-state trust company, in order to establish and maintain branch trust offices in Nebraska pursuant to section 8-2305, shall file written notice of the proposed transaction with the director on a form prescribed by the director on or after the date on which the out-of-state trust company applies to its home state regulator for approval to establish and maintain the branch trust office in this state. The notice shall include a copy of the application made to its home state regulator, a copy of a resolution of its board of directors authorizing the branch trust office, and the filing fee prescribed by section 8-602.

(2) An out-of-state trust company shall provide with the notice satisfactory evidence to the director of compliance with (a) any applicable requirements of the Nebraska Model Business Corporation Act and (b) the applicable requirements of its home state regulator for establishing and maintaining a branch trust office.

(3) An out-of-state trust company shall provide with the notice an affidavit from its president stating that for as long as it maintains a branch trust office in this state the trust company will comply with Nebraska law.

(4) An out-of-state trust company shall obtain a fidelity bond in accordance with section 8-205.01. Submission of a rider to an existing bond indicating that the required coverage is outstanding and evidencing the beneficiaries described

in section 8-205.01 shall satisfy the requirements of this subsection. The bond or a substitute bond shall remain in effect during all periods in which the trust company conducts business in Nebraska.

Source: Laws 1998, LB 1321, § 59; Laws 2014, LB749, § 235.
Operative date January 1, 2016.

Cross References

Nebraska Model Business Corporation Act, see section 21-201.

8-2311 Out-of-state trust company without instate branch trust office; representative trust offices; requirements; procedure.

(1) An out-of-state trust company, in order to establish and maintain representative trust offices in Nebraska pursuant to section 8-2310, shall file written notice of the proposed transaction with the director on a form prescribed by the director. The notice shall include, in addition to the information and fee prescribed in subsection (1) of section 8-2309:

(a) Satisfactory evidence that the out-of-state trust company is a trust company;

(b) Satisfactory evidence of compliance with any applicable requirements of the Nebraska Model Business Corporation Act;

(c) An affidavit from its president stating that for as long as it maintains a representative trust office in this state the trust company will comply with Nebraska law; and

(d) Submission of a fidelity bond in accordance with section 8-205.01. Submission of a rider to an existing bond indicating that the required coverage is outstanding and evidencing the beneficiaries described in section 8-205.01 shall satisfy the requirements of this subdivision. The bond or a substitute bond shall remain in effect during all periods in which the trust company conducts business in Nebraska.

(2) The director shall act within ninety days after receipt of notice under subsection (1) of this section. The director may extend the ninety-day period if he or she determines that the notice raises issues that require additional information or additional time for analysis. If the ninety-day period is extended, the out-of-state trust company may establish representative trust offices only on prior written approval of the director.

(3) The director may deny approval of the proposed representative trust office if he or she finds that the trust company lacks sufficient financial resources to establish the representative trust office without adversely affecting its safety or soundness, that the trust company does not have adequate fidelity bond coverage, or that the proposed representative trust office would not be in the public interest.

(4) If the director does not extend the ninety-day period pursuant to subsection (2) of this section and does not act within ninety days, the out-of-state trust company may, upon compliance with sections 8-209 and 8-210, establish representative trust offices on the ninety-first day following the director's receipt of notice.

Source: Laws 1998, LB 1321, § 64; Laws 2014, LB749, § 236.
Operative date January 1, 2016.

Cross References

Nebraska Model Business Corporation Act, see section 21-201.

ARTICLE 27

NEBRASKA MONEY TRANSMITTERS ACT

Section

- 8-2701. Act, how cited.
- 8-2702. Definitions, where found.
- 8-2703. Applicant, defined.
- 8-2704. Authorized delegate, defined.
- 8-2705. Breach of security of the system, defined.
- 8-2706. Control, defined.
- 8-2707. Controlling person, defined.
- 8-2708. Department, defined.
- 8-2709. Director, defined.
- 8-2710. Electronic instrument, defined.
- 8-2711. Executive officer, defined.
- 8-2712. Key shareholder, defined.
- 8-2713. Licensee, defined.
- 8-2714. Material litigation, defined.
- 8-2715. Monetary value, defined.
- 8-2716. Money transmission, defined.
- 8-2717. Nationwide Mortgage Licensing System and Registry, defined.
- 8-2718. Outstanding payment instrument, defined.
- 8-2719. Payment instrument, defined.
- 8-2720. Permissible investments, defined.
- 8-2721. Person, defined.
- 8-2722. Remit, defined.
- 8-2723. Stored value, defined.
- 8-2724. Licensure requirement; applicability.
- 8-2725. License required; license not transferable or assignable.
- 8-2726. License; applicant; qualifications; requirements.
- 8-2727. License applicant; surety bond; alternate security; duration.
- 8-2728. Licensee; investments required; waiver.
- 8-2729. License application; form; contents.
- 8-2730. Licensee; license and registration through Nationwide Mortgage Licensing System and Registry; department; powers; director; reports; duties; department; duties.
- 8-2731. Supervisory information sharing; information and material; how treated; applicability; director; powers.
- 8-2732. Application fee; processing fee.
- 8-2733. Application; director; duties; powers; onsite investigation; costs; denial of application; reasons; hearing.
- 8-2734. License; renewal application; licensing fee; processing fee; report; contents.
- 8-2735. Licensee; notice to director; when; report; contents.
- 8-2736. Acquisition of control of licensee; notice to director; director; duties; powers; disapproval; grounds; notice; hearing.
- 8-2737. Onsite examination of licensee; notice; examination fee; costs; director; powers.
- 8-2738. Licensee; books, accounts, and records.
- 8-2739. Licensee; authorized delegate; contract; contents.
- 8-2740. Authorized delegate; duties.
- 8-2741. License; suspension or revocation; grounds; director; powers and duties; hearing; surrender; cancellation; expiration.
- 8-2742. Authorized delegate; suspension or revocation of designation; grounds; director; powers and duties; hearing; final order; application to modify or rescind.
- 8-2743. Cease and desist order; notice; hearing; vacation or modification of order; when; judicial review; enforcement.

Section

- 8-2744. Violations; orders authorized.
8-2745. Violations; penalties.
8-2746. Rules and regulations.
8-2747. Fees, charges, costs, and fines; disposition.
8-2748. License under Nebraska Sale of Checks and Funds Transmission Act; how treated.

8-2701 Act, how cited.

Sections 8-2701 to 8-2748 shall be known and may be cited as the Nebraska Money Transmitters Act.

Source: Laws 2013, LB616, § 1.

8-2702 Definitions, where found.

For purposes of the Nebraska Money Transmitters Act, the definitions found in sections 8-2703 to 8-2723 shall be used.

Source: Laws 2013, LB616, § 2.

8-2703 Applicant, defined.

Applicant means a person filing an application for a license under the Nebraska Money Transmitters Act.

Source: Laws 2013, LB616, § 3.

8-2704 Authorized delegate, defined.

Authorized delegate means an entity designated by the licensee or an exempt entity under the Nebraska Money Transmitters Act to engage in the business of money transmission on behalf of the licensee or exempt entity.

Source: Laws 2013, LB616, § 4.

8-2705 Breach of security of the system, defined.

Breach of security of the system means unauthorized acquisition of data that compromises the security, confidentiality, or integrity of the information maintained by the Nationwide Mortgage Licensing System and Registry, its affiliates, or its subsidiaries.

Source: Laws 2013, LB616, § 5.

8-2706 Control, defined.

Control means the power, directly or indirectly, to direct the management or policies of a licensee, whether through ownership of securities, by contract, or otherwise. Any person who (1) has the power to elect a majority of executive officers, managers, directors, trustees, or other persons exercising managerial authority of a licensee or any person in control of a licensee, (2) directly or indirectly has the right to vote ten percent or more of a class of stock or directly or indirectly has the power to sell or direct the sale of ten percent or more of a class of stock, (3) in the case of a limited liability company, is a managing member, or (4) in the case of a partnership, has the right to receive, upon dissolution, or has contributed, ten percent or more of the capital, is presumed to control that licensee.

Source: Laws 2013, LB616, § 6.

8-2707 Controlling person, defined.

Controlling person means any person in control of a licensee.

Source: Laws 2013, LB616, § 7.

8-2708 Department, defined.

Department means the Department of Banking and Finance.

Source: Laws 2013, LB616, § 8.

8-2709 Director, defined.

Director means the Director of Banking and Finance.

Source: Laws 2013, LB616, § 9.

8-2710 Electronic instrument, defined.

Electronic instrument means a card or other tangible object for the transmission or payment of money that contains a microprocessor chip, magnetic strip, or other means for the storage of information, that is prefunded, and the value of which is decremented upon each use. Electronic instrument does not include a card or other tangible object that is redeemable by the issuer or its affiliates in goods or services of the issuer or its affiliates.

Source: Laws 2013, LB616, § 10.

8-2711 Executive officer, defined.

Executive officer means the president, chairperson of the executive committee, senior officer responsible for business decisions, chief financial officer, and any other person who performs similar functions for a licensee.

Source: Laws 2013, LB616, § 11.

8-2712 Key shareholder, defined.

Key shareholder means any person or group of persons acting in concert owning ten percent or more of any voting class of an applicant's stock.

Source: Laws 2013, LB616, § 12.

8-2713 Licensee, defined.

Licensee means a person licensed pursuant to the Nebraska Money Transmitters Act.

Source: Laws 2013, LB616, § 13.

8-2714 Material litigation, defined.

Material litigation means any litigation that, according to generally accepted accounting principles, is deemed significant to an applicant's or licensee's financial health and would be required to be referenced in an applicant's or licensee's annual audited financial statements, report to shareholders, or similar documents.

Source: Laws 2013, LB616, § 14.

8-2715 Monetary value, defined.

Monetary value means a medium of exchange, whether or not redeemable in money.

Source: Laws 2013, LB616, § 15.

8-2716 Money transmission, defined.

Money transmission means the business of the sale or issuance of payment instruments or stored value or of receiving money or monetary value for transmission to a location within or outside the United States by any and all means, including wire, facsimile, or electronic transfer. Notwithstanding any other provision of law, money transmission also includes bill payment services not limited to the right to receive payment of any claim for another but does not include bill payment services in which an agent of a payee receives money or monetary value on behalf of such payee.

Source: Laws 2013, LB616, § 16.

8-2717 Nationwide Mortgage Licensing System and Registry, defined.

Nationwide Mortgage Licensing System and Registry means a licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of mortgage loan originators, mortgage bankers, installment loan companies, and other state-regulated financial services entities and industries.

Source: Laws 2013, LB616, § 17.

8-2718 Outstanding payment instrument, defined.

Outstanding payment instrument means any payment instrument issued by a licensee which has been sold in the United States directly by the licensee or any payment instrument issued by a licensee which has been sold by an authorized delegate of the licensee in the United States, which has been reported to the licensee as having been sold, and which has not yet been paid by or for the licensee.

Source: Laws 2013, LB616, § 18.

8-2719 Payment instrument, defined.

Payment instrument means any electronic or written check, draft, money order, travelers check, or other electronic or written instrument or order for the transmission or payment of money, sold or issued to one or more persons, whether or not such instrument is negotiable. Payment instrument does not include any credit card, any voucher, any letter of credit, or any instrument that is redeemable by the issuer or its affiliates in goods or services of the issuer or its affiliates.

Source: Laws 2013, LB616, § 19.

8-2720 Permissible investments, defined.

Permissible investments means:

(1) Cash;

(2) Certificates of deposit or other debt obligations of a financial institution, either domestic or foreign;

(3) Bills of exchange or time drafts drawn on and accepted by a commercial bank, otherwise known as bankers' acceptances, which are eligible for purchase by member banks of the federal reserve system;

(4) Any investment bearing a rating of one of the three highest grades as defined by a nationally recognized organization that rates such securities;

(5) Investment securities that are obligations of the United States or its agencies or instrumentalities, obligations that are guaranteed fully as to principal and interest by the United States, or any obligations of any state or political subdivision thereof;

(6) Shares in a money market mutual fund, interest-bearing bills or notes or bonds, debentures or stock traded on any national securities exchange or on a national over-the-counter market, or mutual funds primarily composed of such securities or a fund composed of one of more permissible investments as set forth in this section;

(7) Any demand borrowing agreement or agreements made to a corporation or a subsidiary of a corporation whose capital stock is listed on a national exchange;

(8) Receivables that are due to a licensee from its authorized delegates pursuant to a contract described in section 8-2739 which are not past due or doubtful of collection; or

(9) Any other investment or similar security approved by the director.

Source: Laws 2013, LB616, § 20.

8-2721 Person, defined.

Person means any individual, partnership, limited liability company, association, joint-stock association, trust, or corporation. Person does not include the United States or the State of Nebraska.

Source: Laws 2013, LB616, § 21.

8-2722 Remit, defined.

Remit, except as used in section 8-2747, means either to make direct payment of the funds to a licensee or its representatives authorized to receive those funds or to deposit the funds in a bank, credit union, or savings and loan association or other similar financial institution in an account specified by a licensee.

Source: Laws 2013, LB616, § 22.

8-2723 Stored value, defined.

Stored value means monetary value that is evidenced by an electronic record. Stored value does not include any item that is redeemable by the issuer or its affiliates in goods or services of the issuer or its affiliates.

Source: Laws 2013, LB616, § 23.

8-2724 Licensure requirement; applicability.

(1) The requirement for a license under the Nebraska Money Transmitters Act does not apply to:

(a) The United States or any department, agency, or instrumentality thereof;

(b) Any post office of the United States Postal Service;

(c) A state or any political subdivision thereof;

(d)(i) Banks, credit unions, building and loan associations, savings and loan associations, savings banks, or mutual banks organized under the laws of any state or the United States;

(ii) Subsidiaries of the institutions listed in subdivision (d)(i) of this subsection;

(iii) Bank holding companies which have a banking subsidiary located in Nebraska and whose debt securities have an investment grade rating by a national rating agency; or

(iv) Authorized delegates of the institutions and entities listed in subdivision (d)(i), (ii), or (iii) of this subsection, except that authorized delegates that are not banks, credit unions, building and loan associations, savings and loan associations, savings banks, mutual banks, subsidiaries of any of the foregoing, or bank holding companies shall comply with all requirements imposed upon authorized delegates under the act;

(e) The provision of electronic transfer of government benefits for any federal, state, or county governmental agency, as defined in Consumer Financial Protection Bureau Regulation E, 12 C.F.R. part 1005, as such regulation existed on January 1, 2013, by a contractor for and on behalf of the United States or any department, agency, or instrumentality thereof or any state or any political subdivision thereof; or

(f) An operator of a payment system only to the extent that the payment system provides processing, clearing, or settlement services between or among persons who are all exempt under this section in connection with wire transfers, credit card transactions, debit card transactions, automated clearinghouse transfers, or similar fund transfers.

(2) An authorized delegate of a licensee or of an exempt entity, acting within the scope of its authority conferred by a written contract as described in section 8-2739, is not required to obtain a license under the Nebraska Money Transmitters Act, except that such an authorized delegate shall comply with the other provisions of the act which apply to money transmission transactions.

Source: Laws 2013, LB616, § 24.

8-2725 License required; license not transferable or assignable.

(1) Except as otherwise provided in section 8-2724, a person shall not engage in money transmission without a license issued pursuant to the Nebraska Money Transmitters Act.

(2) A person is engaged in money transmission if the person provides money transmission services to any resident of this state even if the person providing money transmission services has no physical presence in this state.

(3) If a licensee has a physical presence in this state, the licensee may conduct its business at one or more locations, directly or indirectly owned, or through one or more authorized delegates, or both, pursuant to the single license granted to the licensee.

(4) A license issued pursuant to the act is not transferable or assignable.

Source: Laws 2013, LB616, § 25.

8-2726 License; applicant; qualifications; requirements.

To qualify for a license under the Nebraska Money Transmitters Act, an applicant, at the time of filing for a license, and a licensee at all times after a license is issued, shall satisfy the following requirements:

(1) Each applicant or licensee must have a net worth of not less than fifty thousand dollars, calculated in accordance with generally accepted accounting principles;

(2) The financial condition and responsibility, financial and business experience, and character and general fitness of the applicant or licensee must reasonably warrant the belief that the applicant's or licensee's business will be conducted honestly, fairly, and in a manner commanding the confidence and trust of the community. In determining whether this requirement is met and for purposes of investigating compliance with the act, the director may review and consider the relevant business records and capital adequacy of the applicant or licensee;

(3) Each corporate applicant or licensee must be in good standing in the state of its incorporation; and

(4) Each applicant or licensee must be registered or qualified to do business in the state.

Source: Laws 2013, LB616, § 26.

8-2727 License applicant; surety bond; alternate security; duration.

(1)(a) Each applicant shall submit, with the application, a surety bond issued by a bonding company or insurance company authorized to do business in this state and acceptable to the director in the principal sum of one hundred thousand dollars and in an additional principal sum of five thousand dollars for each location, in excess of one, at which the applicant proposes to sell and issue payment instruments or engage in money transmission in this state, up to a maximum of two hundred fifty thousand dollars. The director may increase the amount of the bond to a maximum of two hundred fifty thousand dollars for good cause. The bond shall be in a form satisfactory to the director and shall run to the state for the benefit of any claimants against the licensee to secure the faithful performance of the obligations of the licensee with respect to the receipt, handling, transmission, and payment of money in connection with money transmission. In the case of a bond, the aggregate liability of the surety shall not exceed the principal sum of the bond. Any claimant against the licensee may bring suit directly on the bond or the director may bring suit on behalf of any claimant, either in one action or in successive actions.

(b) The director may at any time require the filing of a new or supplemental bond in the form as provided in subdivision (a) of this subsection if he or she determines that the bond filed under this section is exhausted or is inadequate for any reason, including, but not limited to, the financial condition of a licensee or an applicant for a license or violations of the Nebraska Money Transmitters Act, any rule, regulation, or order thereunder, or any state or federal law applicable to a licensee or an applicant for a license. The new or supplemental bond shall not exceed five hundred thousand dollars.

(2) In lieu of the corporate surety bond or bonds required by subsection (1) of this section or of any portion of the principal thereof as required by such subsection, the applicant or licensee may deposit, with the director or with such banks or trust companies located in this state or with any federal reserve

bank as the applicant or licensee may designate and the director may approve, interest-bearing stocks and bonds, notes, debentures or other obligations of the United States or any agency or instrumentality thereof, or guaranteed by the United States, or of this state, or of a city, county, village, school district, or instrumentality of this state, or guaranteed by this state, to an aggregate amount, based upon principal amount or market value, whichever is lower, of not less than the amount of the required corporate surety bond or portion thereof. The securities shall be deposited and held to secure the same obligations as would the surety bond. The licensee shall have the right, with the approval of the director, to substitute other securities for those deposited and shall be required to do so on written order of the director made for good cause shown. The licensee shall pay the fees prescribed in section 8-602 for pledging and substitution of securities. So long as the licensee so depositing shall continue solvent and is not in violation of the Nebraska Money Transmitters Act, such licensee shall be permitted to receive the interest or dividends on such deposit. The safekeeping of such securities and all other expenses incidental to the pledging of such securities shall be paid by the licensee. All such securities shall be subject to sale and transfer and to the disposal of the proceeds by the director only on the order of a court of competent jurisdiction.

(3) The surety bond shall remain in effect until cancellation, which may occur only after thirty days' written notice to the director. Cancellation shall not affect any liability incurred or accrued during the period the surety bond was in effect.

(4) The surety bond shall remain in place for at least five years after the licensee ceases money transmission in this state, except that the director may permit the surety bond to be reduced or eliminated before that time to the extent that the amount of the licensee's payment instruments outstanding in this state are reduced. The director may also permit a licensee to substitute a letter of credit or such other form of security acceptable to the director for the surety bond in place at the time the licensee ceases money transmission in the state.

Source: Laws 2013, LB616, § 27.

8-2728 Licensee; investments required; waiver.

(1) Each licensee shall at all times possess permissible investments having an aggregate market value, calculated in accordance with generally accepted accounting principles, of not less than the aggregate face amount of all outstanding payment instruments and stored value issued or sold by the licensee in the United States. This requirement may be waived by the director if the dollar volume of a licensee's outstanding payment instruments and stored value does not exceed the bond or other security posted by the licensee pursuant to section 8-2727.

(2) Permissible investments, even if commingled with other assets of the licensee, are deemed by operation of law to be held in trust for the benefit of the purchasers and holders of the licensee's outstanding payment instruments in the event of the bankruptcy of the licensee.

Source: Laws 2013, LB616, § 28.

8-2729 License application; form; contents.

Each application for a license under the Nebraska Money Transmitters Act shall be made in writing and in a form prescribed by the director. Each application shall state or contain:

(1) For all applicants:

(a) The exact name of the applicant, the applicant's principal address, any fictitious or trade name used by the applicant in the conduct of its business, and the location of the applicant's business records;

(b) The history of the applicant's criminal convictions and material litigation for the five-year period before the date of the application;

(c) A description of the activities conducted by the applicant and a history of operations;

(d) A description of the business activities in which the applicant seeks to be engaged in this state;

(e) A list identifying the applicant's proposed authorized delegates in this state, if any, at the time of the filing of the application;

(f) A sample authorized delegate contract, if applicable;

(g) A sample form of payment instrument, if applicable;

(h) The locations at which the applicant and its authorized delegates, if any, propose to conduct money transmission in this state; and

(i) The name and address of the clearing bank or banks on which the applicant's payment instruments will be drawn or through which the payment instruments will be payable;

(2) If the applicant is a corporation, the applicant shall also provide:

(a) The date of the applicant's incorporation and state of incorporation;

(b) A certificate of good standing from the state in which the applicant was incorporated;

(c) A certificate of authority from the Secretary of State to conduct business in this state;

(d) A description of the corporate structure of the applicant, including the identity of any parent or subsidiary of the applicant, and a disclosure of whether any parent or subsidiary is publicly traded on any stock exchange;

(e) The name, business and residence addresses, and employment history for the five-year period immediately before the date of the application of the applicant's executive officers and the officers or managers who will be in charge of the applicant's activities to be licensed under the act;

(f) The name, business and residence addresses, and employment history for the five-year period immediately before the date of the application of any key shareholder of the applicant;

(g) The history of criminal convictions and material litigation for the five-year period immediately before the date of the application of every executive officer or key shareholder of the applicant;

(h) A copy of the applicant's most recent audited financial statement including balance sheet, statement of income or loss, statement of changes in shareholder equity, and statement of changes in financial position and, if available, the applicant's audited financial statements for the immediately preceding two-year period. However, if the applicant is a wholly owned subsidiary of another corporation, the applicant may submit either the parent

corporation's consolidated audited financial statements for the current year and for the immediately preceding two-year period or the parent corporation's Form 10-K reports filed with the United States Securities and Exchange Commission for the prior three years in lieu of the applicant's financial statements. If the applicant is a wholly owned subsidiary of a corporation having its principal place of business outside the United States, similar documentation filed with the parent corporation's non-United States regulator may be submitted to satisfy this subdivision; and

(i) Copies of all filings, if any, made by the applicant with the United States Securities and Exchange Commission or with a similar regulator in a country other than the United States, within the year preceding the date of filing of the application; and

(3) If the applicant is not a corporation, the applicant shall also provide:

(a) The name, business and residence addresses, personal financial statement, and employment history, for the five-year period immediately before the date of the application, of each principal of the applicant and the name, business and residence addresses, and employment history for the five-year period immediately before the date of the application of any other person or persons who will be in charge of the applicant's money transmission activities;

(b) A copy of the applicant's registration or qualification to do business in this state;

(c) The history of criminal convictions and material litigation for the five-year period immediately before the date of the application for each individual having any ownership interest in the applicant and each individual who exercises supervisory responsibility with respect to the applicant's activities; and

(d) Copies of the applicant's audited financial statements including balance sheet, statement of income or loss, and statement of changes in financial position for the current year and, if available, for the immediately preceding two-year period.

Source: Laws 2013, LB616, § 29.

8-2730 Licensee; license and registration through Nationwide Mortgage Licensing System and Registry; department; powers; director; reports; duties; department; duties.

(1) Effective July 1, 2014, the department shall require licensees under the Nebraska Money Transmitters Act to be licensed and registered through the Nationwide Mortgage Licensing System and Registry. In order to carry out this requirement, the department is authorized to participate in the Nationwide Mortgage Licensing System and Registry. For this purpose, the department may establish, by adopting and promulgating rules and regulations or by order, requirements as necessary. The requirements may include, but are not limited to:

(a) Background checks of applicants and licensees, including, but not limited to:

(i) Checks of an applicant's or a licensee's criminal history through fingerprint or other data bases, except that the department shall not require the submission of fingerprints by (A) an executive officer or director of an applicant or licensee which is either a publicly traded company or a wholly owned subsidiary of a publicly traded company or (B) an applicant or licensee who has

previously submitted the fingerprints of an executive officer or director directly to the Nationwide Mortgage Licensing System and Registry and the Federal Bureau of Investigation will accept such fingerprints for a criminal background check;

(ii) Checks of civil or administrative records;

(iii) Checks of an applicant's or a licensee's credit history; or

(iv) Any other information as deemed necessary by the Nationwide Mortgage Licensing System and Registry;

(b) The payment of fees to apply for or renew a license through the Nationwide Mortgage Licensing System and Registry;

(c) The setting or resetting, as necessary, of renewal processing or reporting dates;

(d) Information and reports pertaining to authorized delegates; and

(e) Amending or surrendering a license or any other such activities as the director deems necessary for participation in the Nationwide Mortgage Licensing System and Registry.

(2) In order to fulfill the purposes of the act, the department is authorized to establish relationships or contracts with the Nationwide Mortgage Licensing System and Registry or other entities designated by the Nationwide Mortgage Licensing System and Registry to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to the act. The department may allow such system to collect licensing fees on behalf of the department and allow such system to collect a processing fee for the services of the system directly from each licensee or applicant for a license.

(3) The director is required to regularly report enforcement actions and other relevant information to the Nationwide Mortgage Licensing System and Registry subject to the provisions contained in section 8-2731.

(4) The director shall establish a process whereby applicants and licensees may challenge information entered into the Nationwide Mortgage Licensing System and Registry by the director.

(5) The department shall ensure that the Nationwide Mortgage Licensing System and Registry adopts a privacy, data security, and breach of security of the system notification policy. The director shall make available upon written request a copy of the contract between the department and the Nationwide Mortgage Licensing System and Registry pertaining to the breach of security of the system provisions.

(6) The department shall upon written request provide the most recently available audited financial report of the Nationwide Mortgage Licensing System and Registry.

Source: Laws 2013, LB616, § 30.

8-2731 Supervisory information sharing; information and material; how treated; applicability; director; powers.

(1) In order to promote more effective regulation and reduce the regulatory burden through supervisory information sharing:

(a) Except as otherwise provided in this section, the requirements under any federal or state law regarding the privacy or confidentiality of any information or material provided to the Nationwide Mortgage Licensing System and Regis-

try, and any privilege arising under federal or state law, including the rules of any federal or state court, with respect to such information or material, shall continue to apply to such information or material after the information or material has been disclosed to the Nationwide Mortgage Licensing System and Registry. Such information and material may be shared with all federal and state regulatory officials with money transmitter industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal or state law;

(b) Information or material that is subject to privilege or confidentiality under subdivision (a) of this subsection shall not be subject to:

(i) Disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of the federal government or the respective state; or

(ii) Subpoena or discovery or admission into evidence in any private civil action or administrative process unless, with respect to any privilege held by the Nationwide Mortgage Licensing System and Registry with respect to such information or material, the person to whom such information or material pertains waives, in whole or in part, in the discretion of such person, that privilege;

(c) Any state statute relating to the disclosure of confidential supervisory information or any information or material described in subdivision (a) of this subsection that is inconsistent with such subdivision shall be superseded by the requirements of this section; and

(d) This section shall not apply with respect to the information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, applicants and licensees that is included in the Nationwide Mortgage Licensing System and Registry for access by the public.

(2) For these purposes, the director is authorized to enter into agreements or sharing arrangements with other governmental agencies, the Conference of State Bank Supervisors, the American Association of Residential Mortgage Regulators, the Money Transmitter Regulators Association, or other associations representing governmental agencies as established by adopting and promulgating rules and regulations or an order of the director.

Source: Laws 2013, LB616, § 31.

8-2732 Application fee; processing fee.

Each applicant shall submit, with the application, an application fee of one thousand dollars, and any processing fee allowed under subsection (2) of section 8-2730 which shall not be subject to refund but which, if the license is granted, shall constitute the license fee for the first license year or part thereof.

Source: Laws 2013, LB616, § 32.

8-2733 Application; director; duties; powers; onsite investigation; costs; denial of application; reasons; hearing.

(1) Upon the filing of a complete application under the Nebraska Money Transmitters Act, the director shall investigate the financial condition and responsibility, financial and business experience, character, and general fitness of the applicant. The director may conduct an onsite investigation of the applicant, the reasonable cost of which shall be borne by the applicant. If the

director finds that the applicant's business will be conducted honestly, fairly, and in a manner commanding the confidence and trust of the community and that the applicant has fulfilled the requirements imposed by the act and has paid the required application or license fee, the director shall issue a license to the applicant authorizing the applicant to engage in money transmission in this state. If these requirements have not been met, the director shall deny the application in writing, setting forth the reasons for the denial.

(2) The director shall approve or deny every application for an original license within one hundred twenty days after the date a complete application is submitted, which period may be extended by the written consent of the applicant. The director shall notify the applicant of the date when the application is deemed complete.

(3) Any applicant aggrieved by a denial issued by the director under the act may, at any time within fifteen business days after the date of the denial, request a hearing before the director. The hearing shall be held in accordance with the Administrative Procedure Act and rules and regulations of the department.

Source: Laws 2013, LB616, § 33.

Cross References

Administrative Procedure Act, see section 84-920.

8-2734 License; renewal application; licensing fee; processing fee; report; contents.

(1)(a) All initial licenses shall remain in full force and effect until the next succeeding July 1. Beginning July 1, 2014, initial licenses shall remain in full force and effect until the next succeeding December 31. Thereafter, each licensee shall, annually on or before December 31 of each year, file a license renewal application and pay to the director a license fee of two hundred fifty dollars and any processing fee allowed under subsection (2) of section 8-2730, both of which shall not be subject to refund.

(b) Licenses which expire on July 1, 2014, may be renewed until December 31, 2014, upon submission of a license renewal application and compliance with subsection (2) of this section. For such renewals, the department shall prorate the license fee provided in subdivision (1)(a) of this section using a factor of six-twelfths.

(2) The renewal application and license fee shall be accompanied by a report, in a form prescribed by the director, which shall include:

(a) A copy of the licensee's most recent audited consolidated annual financial statement including balance sheet, statement of income or loss, statement of changes in shareholders' equity, and statement of changes in financial position, or, if a licensee is a wholly owned subsidiary of another corporation, the consolidated audited annual financial statement of the parent corporation may be filed in lieu of the licensee's audited annual financial statement;

(b) The number of payment instruments sold by the licensee in the state, the dollar amount of those instruments, and the dollar amount of payment instruments currently outstanding, for the most recent quarter for which data is available before the date of the filing of the renewal application, but in no event more than one hundred twenty days before the renewal date;

(c) Any material changes to any of the information submitted by the licensee on its original application which have not previously been reported to the director on any other report required to be filed under the Nebraska Money Transmitters Act;

(d) A list of the licensee's permissible investments; and

(e) A list of the locations, if any, within this state at which money transmission is being conducted by either the licensee or its authorized delegates.

Source: Laws 2013, LB616, § 34.

8-2735 Licensee; notice to director; when; report; contents.

(1) A licensee shall file notice with the director within thirty calendar days after any material change in information provided in a licensee's application as prescribed by the director.

(2) A licensee shall file a report with the director within five business days after the licensee has reason to know of the occurrence of any of the following events:

(a) The filing of a petition by or against the licensee under any bankruptcy law of the United States for liquidation or reorganization;

(b) The filing of a petition by or against the licensee for receivership, the commencement of any other judicial or administrative proceeding for its dissolution or reorganization, or the making of a general assignment for the benefit of its creditors;

(c) The filing of an action to revoke or suspend the licensee's license in a state or country in which the licensee engages in business or is licensed;

(d) The cancellation or other impairment of the licensee's bond or other security;

(e) A charge or conviction of the licensee or of an executive officer, manager, or director of, or controlling person of, the licensee, for a felony; or

(f) A charge or conviction of an authorized delegate for a felony.

Source: Laws 2013, LB616, § 35.

8-2736 Acquisition of control of licensee; notice to director; director; duties; powers; disapproval; grounds; notice; hearing.

(1) No person acting personally or as an authorized delegate shall acquire control of any licensee under the Nebraska Money Transmitters Act without first giving thirty days' notice to the director on forms prescribed by the director of such proposed acquisition.

(2) The director, upon receipt of such notice, shall act upon the proposed acquisition within thirty days, and unless he or she disapproves the proposed acquisition within that period of time, the acquisition shall become effective on the thirty-first day after receipt without the director's approval, except that the director may extend the thirty-day period an additional thirty days if, in his or her judgment, any material information submitted is substantially inaccurate or the acquiring person has not furnished all the information required by the director.

(3) An acquisition may be made prior to the expiration of the disapproval period if the director issues written notice of his or her intent not to disapprove the action.

(4)(a) The director may disapprove any proposed acquisition if:

(i) The financial condition of any acquiring person is such as might jeopardize the financial stability of the acquired licensee;

(ii) The business experience, character, and general fitness of any acquiring person or of any of the proposed management personnel of the acquiring person indicate that the acquired licensee would not be operated honestly, carefully, or efficiently; or

(iii) Any acquiring person neglects, fails, or refuses to furnish all information required by the director.

(b) The director may require that any acquiring person comply with the application requirements of section 8-2729.

(c) The director shall notify the acquiring person in writing of disapproval of the acquisition. The notice shall provide a statement of the basis for the disapproval.

(d) Within fifteen business days after receipt of written notice of disapproval, the acquiring person may request a hearing on the proposed acquisition. The hearing shall be in accordance with the Administrative Procedure Act and rules and regulations of the department. Following such hearing, the director shall, by order, approve or disapprove the proposed acquisition on the basis of the record made at the hearing.

Source: Laws 2013, LB616, § 36.

Cross References

Administrative Procedure Act, see section 84-920.

8-2737 Onsite examination of licensee; notice; examination fee; costs; director; powers.

(1) The director may conduct an annual onsite examination of a licensee upon reasonable written notice to the licensee. The director may examine a licensee without prior notice if the director has a reasonable basis to believe that the licensee is in noncompliance with the Nebraska Money Transmitters Act. If the director concludes that an onsite examination of a licensee is necessary, the licensee shall pay an examination fee and the director shall charge for the actual cost of the examination at an hourly rate set by the director which is sufficient to cover all reasonable expenses associated with the examination. The onsite examination may be conducted in conjunction with examinations to be performed by representatives of agencies of another state or states. The director, in lieu of an onsite examination, may accept the examination report of an agency of another state or a report prepared by an independent accounting firm. Reports so accepted are considered for all purposes as an official report of the director. The licensee shall be responsible for the reasonable expenses incurred by the department, the agencies of another state, or an independent licensed or certified public accountant in making the examination or report.

(2) The director may request financial data from a licensee in addition to that required under section 8-2734 or conduct an onsite examination of any authorized delegate or location of a licensee within this state without prior notice to the authorized delegate or licensee only if the director has a reasonable basis to believe that the licensee or authorized delegate is in noncompliance with the Nebraska Money Transmitters Act. When the director examines an authorized

delegate's operations, the authorized delegate shall pay all reasonably incurred costs of such examination. When the director examines a licensee's location, the licensee shall pay all reasonably incurred costs of such examination.

Source: Laws 2013, LB616, § 37.

8-2738 Licensee; books, accounts, and records.

(1) Each licensee shall make, keep, and preserve the following books, accounts, and other records for a period of three years which shall be open to inspection by the director:

- (a) A record of each payment instrument and stored value sold;
- (b) A general ledger containing all assets, liability, capital, income, and expense accounts, which general ledger shall be posted at least monthly;
- (c) Settlement sheets received from authorized delegates;
- (d) Bank statements and bank reconciliation records;
- (e) Records of outstanding payment instruments and stored value;
- (f) Records of each payment instrument and stored value paid;
- (g) A list of the names and addresses of all of the licensee's authorized delegates; and
- (h) Any other records the director reasonably requires by rule or regulation or order.

(2) Maintenance of such documents as are required by this section in a photographic, electronic, or other similar form constitutes compliance with this section.

(3) Records may be maintained at a location other than within this state so long as the records are made accessible to the director on seven business days' written notice.

Source: Laws 2013, LB616, § 38.

8-2739 Licensee; authorized delegate; contract; contents.

A licensee desiring to conduct money transmission through an authorized delegate shall authorize each authorized delegate to operate pursuant to an express written contract which, for contracts entered into on or after January 1, 2014, shall provide the following:

- (1) That the licensee appoints the person as its authorized delegate with authority to engage in the sale and issue of payment instruments or engage in the business of money transmission on behalf of the licensee;
- (2) That neither a licensee nor an authorized delegate may authorize subdelegates without the written consent of the director; and
- (3) That the licensee is subject to supervision and regulation by the director.

Source: Laws 2013, LB616, § 39.

8-2740 Authorized delegate; duties.

(1) An authorized delegate shall not make any fraudulent or false statement or misrepresentation to a licensee or to the director.

(2) An authorized delegate shall conduct all money transmission strictly in accordance with the licensee's written procedures provided to the authorized delegate.

(3) An authorized delegate shall remit all money owing to the licensee in accordance with the terms of the contract between the licensee and the authorized delegate.

(4) An authorized delegate is deemed to consent to the director's inspection with or without prior notice to the licensee or authorized delegate.

(5) An authorized delegate is under a duty to act only as authorized under the contract with the licensee and the Nebraska Money Transmitters Act. An authorized delegate who exceeds its authority is subject to cancellation of its contract and further disciplinary action by the director.

(6) All funds, less fees, received by an authorized delegate of a licensee from the sale or delivery of a payment instrument issued by a licensee or received by an authorized delegate for transmission shall, from the time such funds are received by such authorized delegate until such time when the funds or an equivalent amount are remitted by the authorized delegate to the licensee, constitute trust funds owned by and belonging to the licensee. If an authorized delegate commingles any such funds with any other funds or property owned or controlled by the authorized delegate, all commingled proceeds and other property is impressed with a trust in favor of the licensee in an amount equal to the amount of the proceeds due the licensee.

Source: Laws 2013, LB616, § 40.

8-2741 License; suspension or revocation; grounds; director; powers and duties; hearing; surrender; cancellation; expiration.

(1) The director may, following a hearing in accordance with the Administrative Procedure Act, suspend or revoke any license issued pursuant to the Nebraska Money Transmitters Act if he or she finds:

(a) Any fact or condition exists that, if it had existed at the time when the licensee applied for its original or renewal license, would have been grounds for denying such application;

(b) The licensee's net worth has become inadequate and the licensee, after ten days' written notice from the director, failed to take such steps as the director deems necessary to remedy such deficiency;

(c) The licensee knowingly violated any material provision of the act or any rule or order validly adopted and promulgated under the act;

(d) The licensee conducted money transmission in an unsafe or unsound manner;

(e) The licensee is insolvent;

(f) The licensee has suspended payment of its obligations, made an assignment for the benefit of its creditors, or admitted in writing its inability to pay its debts as they became due;

(g) The licensee filed for liquidation or reorganization under any bankruptcy law;

(h) The licensee refused to permit the director to make any examination authorized by the act; or

(i) The licensee willfully failed to make any report required by the act.

(2) In determining whether a licensee is engaging in an unsafe or unsound practice, the director may consider the size and condition of the licensee's money transmission, the magnitude of the loss, if any, the gravity of the violation of the act, and the previous conduct of the licensee.

(3) A licensee may voluntarily surrender a license by delivering to the director written notice of the surrender, but a surrender shall not affect civil or criminal liability for acts committed before the surrender or liability for any fines which may be levied against the licensee or any of its officers, directors, key shareholders, partners, or members for acts committed before the surrender.

(4)(a) If a licensee fails to renew its license as required by section 8-2734 and does not voluntarily surrender the license pursuant to this section, the department may issue a notice of expiration of the license to the licensee in lieu of revocation proceedings.

(b) If a licensee fails to maintain a surety bond as required by section 8-2727, the department may issue a notice of cancellation of the license in lieu of revocation proceedings.

(5) Revocation, suspension, surrender, cancellation, or expiration of a license shall not impair or affect the obligation of a preexisting lawful contract between the licensee and any person.

(6) Revocation, suspension, cancellation, or expiration of a license shall not affect civil or criminal liability for acts committed before the revocation, suspension, cancellation, or expiration or liability for any fines which may be levied against the licensee or any of its officers, directors, key shareholders, partners, or members for acts committed before the revocation, suspension, cancellation, or expiration.

Source: Laws 2013, LB616, § 41.

Cross References

Administrative Procedure Act, see section 84-920.

8-2742 Authorized delegate; suspension or revocation of designation; grounds; director; powers and duties; hearing; final order; application to modify or rescind.

(1) The director may, following a hearing in accordance with the Administrative Procedure Act, issue an order suspending or revoking the designation of an authorized delegate if the director finds that:

(a) The authorized delegate violated the Nebraska Money Transmitters Act or a rule or regulation adopted and promulgated or an order issued under the act;

(b) The authorized delegate did not cooperate with an examination or investigation by the director;

(c) The authorized delegate engaged in fraud, intentional misrepresentation, or gross negligence;

(d) The authorized delegate is convicted of a violation of a state or federal anti-money laundering statute;

(e) The competence, experience, character, or general fitness of the authorized delegate or a controlling person of the authorized delegate indicates that it is not in the public interest to permit the authorized delegate to engage in money transmission services; or

(f) The authorized delegate is engaged in an unsafe or unsound practice.

(2) In determining whether an authorized delegate is engaging in an unsafe or unsound practice, the director may consider the size and condition of the authorized delegate's money transmission, the magnitude of the loss, if any, the gravity of the violation of the act, and the previous conduct of the authorized delegate.

(3) Any authorized delegate to whom a final order is issued under this section may apply to the director to modify or rescind the order. The director shall not grant the application unless the director finds that (a) it is in the public interest to do so and (b) it is reasonable to believe that the person will comply with the act and any rule, regulation, or order issued under the act if and when that person is permitted to resume being an authorized delegate of a licensee.

Source: Laws 2013, LB616, § 42.

Cross References

Administrative Procedure Act, see section 84-920.

8-2743 Cease and desist order; notice; hearing; vacation or modification of order; when; judicial review; enforcement.

(1) The department may order any person to cease and desist whenever the department determines that the person has violated the Nebraska Money Transmitters Act. Upon entry of a cease and desist order, the director shall promptly notify the affected person that such order has been entered, of the reasons for such order, and that upon receipt, within fifteen business days after the date of the order, of a written request from the affected person, a hearing will be scheduled within thirty business days after the date of receipt of the written request, unless the parties consent to a later date or the hearing officer sets a later date for good cause. The hearing shall be held in accordance with the Administrative Procedure Act and rules and regulations of the department. If a hearing is not requested and none is ordered by the director, the order shall remain in effect until it is modified or vacated.

(2) The director may issue an order against a licensee to cease and desist from engaging in money transmission through an authorized delegate that is the subject of a separate order pursuant to section 8-2742.

(3) The director may vacate or modify a cease and desist order if he or she finds that the conditions which caused its entry have changed or that it is otherwise in the public interest to do so.

(4) A person aggrieved by a cease and desist order of the department may obtain judicial review of the order. The review shall be in the manner prescribed in the Administrative Procedure Act. The director may obtain an order from the district court of Lancaster County for enforcement of the cease and desist order.

Source: Laws 2013, LB616, § 43.

Cross References

Administrative Procedure Act, see section 84-920.

8-2744 Violations; orders authorized.

If the director finds, after notice and hearing in accordance with the Administrative Procedure Act, that any person has violated the Nebraska Money

Transmitters Act or any rule, regulation, or order of the director thereunder, the director may order such person to pay (1) an administrative fine of not more than five thousand dollars for each separate violation and (2) the costs of investigation.

Source: Laws 2013, LB616, § 44.

Cross References

Administrative Procedure Act, see section 84-920.

8-2745 Violations; penalties.

(1) Except as provided in subsections (2) and (3) of this section, any person violating the Nebraska Money Transmitters Act or any rule, regulation, or order of the director made pursuant to the act or who engages in any act, practice, or transaction declared by the Nebraska Money Transmitters Act to be unlawful is guilty of a Class III misdemeanor.

(2) A person who intentionally makes a false statement, misrepresentation, or false certification in a record filed or required to be maintained under the act or who intentionally makes a false entry or omits a material entry in such a record is guilty of a Class I misdemeanor.

(3) An individual who knowingly engages in money transmission for which a license is required under the act without being licensed under the act is guilty of a Class I misdemeanor.

Source: Laws 2013, LB616, § 45.

8-2746 Rules and regulations.

The director may adopt and promulgate rules and regulations and issue orders, rulings, findings, and demands as may be necessary to carry out the purposes of the Nebraska Money Transmitters Act.

Source: Laws 2013, LB616, § 46.

8-2747 Fees, charges, costs, and fines; disposition.

(1) The department shall remit all fees, charges, and costs collected by the department pursuant to the Nebraska Money Transmitters Act to the State Treasurer for credit to the Financial Institution Assessment Cash Fund.

(2) The department shall remit fines collected under the act to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 2013, LB616, § 47.

8-2748 License under Nebraska Sale of Checks and Funds Transmission Act; how treated.

A license issued under the Nebraska Sale of Checks and Funds Transmission Act as it existed immediately before January 1, 2014, remains in force as a license under the Nebraska Money Transmitters Act until the license's expiration date. Thereafter, the licensee shall be treated as if the licensee had applied for and had received a license under the Nebraska Money Transmitters Act and shall be required to comply with the renewal requirements set forth in the Nebraska Money Transmitters Act.

Source: Laws 2013, LB616, § 48.

ARTICLE 28

REAL ESTATE FINANCING ENFORCEMENT AND SERVICING

Section

8-2801. Real estate loan agreement, mortgage, deed of trust, security instrument; enforcement and servicing; local ordinance or resolution; limitation.

8-2801 Real estate loan agreement, mortgage, deed of trust, security instrument; enforcement and servicing; local ordinance or resolution; limitation.

(1) The enforcement and servicing of any real estate loan agreement or any mortgage, deed of trust, or other security instrument by which the loan is secured shall be pursuant only to state and federal law. No local ordinance or resolution may add to, change, interfere with any rights or obligations of, impose upon, or require payment of fees or taxes of any kind by, a lender, mortgagee, beneficiary, or trustee in a trust deed or servicer relating to, or delay or affect the enforcement and servicing of, any real estate loan agreement or any mortgage, deed of trust, or other security instrument by which the loan is secured.

(2) Subsection (1) of this section shall not apply to any ordinance or resolution adopted pursuant to the Community Development Law.

Source: Laws 2014, LB788, § 1.

Effective date July 18, 2014.

Cross References

Community Development Law, see section 18-2101.

CHAPTER 9

BINGO AND OTHER GAMBLING

Article.

1. General Provisions. 9-1,101.
6. County and City Lotteries. 9-601 to 9-631.02.
8. State Lottery. 9-812 to 9-836.01.
10. Nebraska Commission on Problem Gambling. 9-1001 to 9-1007.

ARTICLE 1

GENERAL PROVISIONS

Section

- 9-1,101. Department of Revenue; Charitable Gaming Division; created; duties; Charitable Gaming Operations Fund; created; use; investment; investigators; powers; fees authorized; administration of Nebraska Commission on Problem Gambling.

9-1,101 Department of Revenue; Charitable Gaming Division; created; duties; Charitable Gaming Operations Fund; created; use; investment; investigators; powers; fees authorized; administration of Nebraska Commission on Problem Gambling.

(1) The Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, and section 9-701 shall be administered and enforced by the Charitable Gaming Division of the Department of Revenue, which division is hereby created. The Department of Revenue shall make annual reports to the Governor, Legislature, Auditor of Public Accounts, and Attorney General on all tax revenue received, expenses incurred, and other activities relating to the administration and enforcement of such acts. The report submitted to the Legislature shall be submitted electronically.

(2) The Charitable Gaming Operations Fund is hereby 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.

(3)(a) Forty percent of the taxes collected pursuant to sections 9-239, 9-344, 9-429, and 9-648 shall be available to the Charitable Gaming Division for administering and enforcing the acts listed in subsection (1) of this section and providing administrative support for the Nebraska Commission on Problem Gambling. The remaining sixty percent shall be transferred to the General Fund. Any portion of the forty percent not used by the division in the administration and enforcement of such acts and section shall be distributed as provided in this subsection.

(b) On or before November 1 each year, the State Treasurer shall transfer fifty thousand dollars from the Charitable Gaming Operations Fund to the Compulsive Gamblers Assistance Fund, except that no transfer shall occur if the Charitable Gaming Operations Fund contains less than fifty thousand dollars.

(c) Any money remaining in the Charitable Gaming Operations Fund after the transfer pursuant to subdivision (b) of this subsection not used by the Charitable Gaming Division in its administration and enforcement duties pursuant to this section may be transferred to the General Fund at the direction of the Legislature.

(4) The Tax Commissioner shall employ investigators who shall be vested with the authority and power of a law enforcement officer to carry out the laws of this state administered by the Tax Commissioner or the Department of Revenue and to enforce sections 28-1101 to 28-1117 relating to possession of a gambling device. For purposes of enforcing sections 28-1101 to 28-1117, the authority of the investigators shall be limited to investigating possession of a gambling device, notifying local law enforcement authorities, and reporting suspected violations to the county attorney for prosecution.

(5) The Charitable Gaming Division may charge a fee for publications and listings it produces. The fee shall not exceed the cost of publication and distribution of such items. The division may also charge a fee for making a copy of any record in its possession equal to the actual cost per page. The division shall remit the fees to the State Treasurer for credit to the Charitable Gaming Operations Fund.

(6) For administrative purposes only, the Nebraska Commission on Problem Gambling shall be located within the Charitable Gaming Division. The division shall provide office space, furniture, equipment, and stationery and other necessary supplies for the commission. Commission staff shall be appointed, supervised, and terminated by the director of the Gamblers Assistance Program pursuant to section 9-1004.

Source: Laws 1986, LB 1027, § 185; Laws 1988, LB 1232, § 1; Laws 1989, LB 767, § 1; Laws 1990, LB 1055, § 3; Laws 1991, LB 427, § 1; Laws 1993, LB 397, § 1; Laws 1994, LB 694, § 1; Laws 1994, LB 1066, § 8; Laws 2000, LB 659, § 1; Laws 2001, LB 541, § 2; Laws 2002, LB 1310, § 2; Laws 2007, LB638, § 1; Laws 2010, LB879, § 1; Laws 2012, LB782, § 11; Laws 2013, LB6, § 8.

Cross References

Nebraska Bingo Act, see section 9-201.

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska County and City Lottery Act, see section 9-601.

Nebraska Lottery and Raffle Act, see section 9-401.

Nebraska Pickle Card Lottery Act, see section 9-301.

Nebraska Small Lottery and Raffle Act, see section 9-501.

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

State Athletic Commissioner, office and duties, see section 81-8,128.

ARTICLE 6 COUNTY AND CITY LOTTERIES

Section

- 9-601. Act, how cited.
- 9-603. Definitions, where found.
- 9-606.03. Keno writer, defined.
- 9-614. Lottery operator, defined.
- 9-615.01. Lottery worker, defined.
- 9-631.02. Keno writer; exemption from licensure.

9-601 Act, how cited.

Sections 9-601 to 9-653 shall be known and may be cited as the Nebraska County and City Lottery Act.

Source: Laws 1986, LB 1027, § 172; Laws 1989, LB 767, § 47; Laws 1991, LB 427, § 54; Laws 1991, LB 795, § 4; Laws 1993, LB 563, § 2; Laws 2002, LB 545, § 44; Laws 2011, LB490, § 1; Laws 2014, LB259, § 1.
Effective date July 18, 2014.

9-603 Definitions, where found.

For purposes of the Nebraska County and City Lottery Act, the definitions found in sections 9-603.02 to 9-618 shall be used.

Source: Laws 1986, LB 1027, § 174; Laws 1989, LB 767, § 48; Laws 2002, LB 545, § 45; Laws 2003, LB 3, § 4; Laws 2011, LB490, § 2; Laws 2014, LB259, § 2.
Effective date July 18, 2014.

9-606.03 Keno writer, defined.

(1) Keno writer means a person whose primary responsibilities include accepting inside tickets or other requests for wagers and payments of wagers from players, issuing outside tickets, voiding tickets, and redeeming winning tickets.

(2) Keno writer does not include a keno manager, a lottery operator, or any other person who is directly in charge of the manual selection of numbers.

Source: Laws 2014, LB259, § 3.
Effective date July 18, 2014.

9-614 Lottery operator, defined.

Lottery operator shall mean any individual, sole proprietorship, partnership, limited liability company, or corporation which operates a lottery on behalf of a county, city, or village.

A lottery operator shall be a resident of Nebraska or, if a partnership, limited liability company, or corporation, shall be organized under the laws of this state as a partnership, formed under the Nebraska Uniform Limited Liability Company Act, or incorporated under the Nebraska Model Business Corporation Act.

Source: Laws 1989, LB 767, § 55; Laws 1990, LB 1055, § 6; Laws 1993, LB 121, § 114; Laws 1995, LB 109, § 194; Laws 2010, LB888, § 98; Laws 2013, LB283, § 1; Laws 2014, LB749, § 237.
Operative date January 1, 2016.

Cross References

Nebraska Model Business Corporation Act, see section 21-201.

Nebraska Uniform Limited Liability Company Act, see section 21-101.

9-615.01 Lottery worker, defined.

Lottery worker shall mean any person, other than a keno writer, who performs work directly related to the conduct of a lottery, including, but not

limited to, winning number selection, winning number verification, record keeping, shift checkout and review of keno writer banks, and security.

Source: Laws 2002, LB 545, § 49; Laws 2014, LB259, § 4.
Effective date July 18, 2014.

9-631.02 Keno writer; exemption from licensure.

A person who is a keno writer and has no direct responsibility for the selection of numbers shall not be considered a lottery worker and shall not be required to be licensed for purposes of the Nebraska County and City Lottery Act.

Source: Laws 2014, LB259, § 5.
Effective date July 18, 2014.

**ARTICLE 8
STATE LOTTERY**

Section

- 9-812. State Lottery Operation Trust Fund; State Lottery Operation Cash Fund; State Lottery Prize Trust Fund; created; transfers; Education Innovation Fund; created; use; investment; Nebraska Education Improvement Fund; created; investment; unclaimed prize money; use.
- 9-831. Advertising on problem gambling prevention, education, and awareness messages; requirements.
- 9-836.01. Division; sale of tangible personal property; distribution of profits.

9-812 State Lottery Operation Trust Fund; State Lottery Operation Cash Fund; State Lottery Prize Trust Fund; created; transfers; Education Innovation Fund; created; use; investment; Nebraska Education Improvement Fund; created; investment; unclaimed prize money; use.

(1) All money received from the operation of lottery games conducted pursuant to the State Lottery Act in Nebraska shall be credited to the State Lottery Operation Trust Fund, which fund is hereby created. All payments of the costs of establishing and maintaining the lottery games shall be made from the State Lottery Operation Cash Fund. In accordance with legislative appropriations, money for payments for expenses of the division shall be transferred from the State Lottery Operation Trust Fund to the State Lottery Operation Cash Fund, which fund is hereby created. All money necessary for the payment of lottery prizes shall be transferred from the State Lottery Operation Trust Fund to the State Lottery Prize Trust Fund, which fund is hereby created. The amount used for the payment of lottery prizes shall not be less than forty percent of the dollar amount of the lottery tickets which have been sold.

(2) A portion of the dollar amount of the lottery tickets which have been sold on an annualized basis shall be transferred from the State Lottery Operation Trust Fund to the Education Innovation Fund, the Nebraska Opportunity Grant Fund, the Nebraska Education Improvement Fund, the Nebraska Environmental Trust Fund, the Nebraska State Fair Board, and the Compulsive Gamblers Assistance Fund as provided in subsection (3) of this section. The dollar amount transferred pursuant to this subsection shall equal the greater of (a) the dollar amount transferred to the funds in fiscal year 2002-03 or (b) any amount which constitutes at least twenty-two percent and no more than twenty-five percent of the dollar amount of the lottery tickets which have been sold on an annualized basis. To the extent that funds are available, the Tax Commissioner and director

may authorize a transfer exceeding twenty-five percent of the dollar amount of the lottery tickets sold on an annualized basis.

(3) Of the money available to be transferred to the Education Innovation Fund, the Nebraska Opportunity Grant Fund, the Nebraska Education Improvement Fund, the Nebraska Environmental Trust Fund, the Nebraska State Fair Board, and the Compulsive Gamblers Assistance Fund:

(a) The first five hundred thousand dollars shall be transferred to the Compulsive Gamblers Assistance Fund to be used as provided in section 9-1006;

(b) Beginning July 1, 2016, forty-four and one-half percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the Nebraska Education Improvement Fund;

(c) Through June 30, 2016, nineteen and three-fourths percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the Education Innovation Fund;

(d) Through June 30, 2016, twenty-four and three-fourths percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the Nebraska Opportunity Grant Fund;

(e) Forty-four and one-half percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the Nebraska Environmental Trust Fund to be used as provided in the Nebraska Environmental Trust Act;

(f) Ten percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the Nebraska State Fair Board if the most populous city within the county in which the fair is located provides matching funds equivalent to ten percent of the funds available for transfer. Such matching funds may be obtained from the city and any other private or public entity, except that no portion of such matching funds shall be provided by the state. If the Nebraska State Fair ceases operations, ten percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the General Fund; and

(g) One percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the Compulsive Gamblers Assistance Fund to be used as provided in section 9-1006.

(4)(a) The Education Innovation Fund is created. At least seventy-five percent of the lottery proceeds allocated to the Education Innovation Fund shall be available for disbursement.

(b) For fiscal year 2013-14, the Education Innovation Fund shall be allocated as follows: (i) The first one million dollars shall be transferred to the Excellence in Teaching Cash Fund to fund the Excellence in Teaching Act; (ii) the next allocation shall be distributed to local systems as grants for approved accelerated or differentiated curriculum programs for students identified as learners with high ability pursuant to section 79-1108.02 in an aggregated amount up to

the amount distributed in the prior fiscal year for such purposes increased by the basic allowable growth rate pursuant to section 79-1025; (iii) up to the next one hundred sixty thousand dollars shall be used by the State Department of Education to implement section 79-759; (iv) the next one million seven hundred fifty thousand dollars shall be allocated to early childhood education grants awarded by the department pursuant to section 79-1103; (v) the next one million dollars shall be transferred to the Early Childhood Education Endowment Cash Fund for use pursuant to section 79-1104.02; (vi) the next two hundred thousand dollars shall be used to provide grants to establish bridge programs pursuant to sections 79-1189 to 79-1195; (vii) the next ten thousand dollars shall be used to fund the Interstate Compact on Educational Opportunity for Military Children; (viii) the next eighty-five thousand five hundred fifty dollars shall be allocated to the State Department of Education for distribution pursuant to section 79-2306; and (ix) the amount remaining shall be allocated, after administrative expenses, for distance education equipment and incentives pursuant to sections 79-1336 and 79-1337. No funds received as allocations from the Education Innovation Fund pursuant to this subdivision may be obligated for payment to be made after June 30, 2016.

(c) For fiscal year 2014-15, the Education Innovation Fund shall be allocated, after administrative expenses, as follows: (i) The first one million two hundred thousand dollars shall be transferred to the Excellence in Teaching Cash Fund to fund the Excellence in Teaching Act; (ii) the next allocation shall be distributed to local systems as grants for approved accelerated or differentiated curriculum programs for students identified as learners with high ability pursuant to section 79-1108.02 in an aggregated amount up to the amount distributed in the prior fiscal year for such purposes increased by the basic allowable growth rate pursuant to section 79-1025; (iii) the next one million eight hundred fifty thousand dollars shall be allocated to early childhood education grants awarded by the State Department of Education pursuant to section 79-1103; (iv) the next one million dollars shall be transferred to the Early Childhood Education Endowment Cash Fund for use pursuant to section 79-1104.02; (v) the next two hundred thousand dollars shall be used to provide grants to establish bridge programs pursuant to sections 79-1189 to 79-1195; (vi) the next ten thousand dollars shall be used to fund the Interstate Compact on Educational Opportunity for Military Children; (vii) the next two million dollars shall be allocated for distance education equipment and incentives pursuant to sections 79-1336 and 79-1337; (viii) the next one million dollars shall be transferred to the School District Reorganization Fund; (ix) up to the next one hundred forty-five thousand dollars shall be used by the State Department of Education to implement section 79-759; and (x) the next three hundred thirty-five thousand dollars shall be allocated to local systems as grants awarded by the State Department of Education to assist schools in evaluating and improving career education programs to align such programs with the state's economic and workforce needs. Except for funds transferred to the School District Reorganization Fund, the Early Childhood Education Endowment Cash Fund, or the department for early childhood education grants pursuant to section 79-1103, no funds received as allocations from the Education Innovation Fund pursuant to this subdivision may be obligated for payment to be made after June 30, 2016, and such funds received as transfers or allocations from the Education Innovation Fund that have not been used for their designat-

ed purpose as of such date shall be transferred to the Nebraska Education Improvement Fund on or before August 1, 2016.

(d) For fiscal year 2015-16, the Education Innovation Fund shall be allocated, after administrative expenses, as follows: (i) The first one million two hundred thousand dollars shall be transferred to the Excellence in Teaching Cash Fund to fund the Excellence in Teaching Act; (ii) the next allocation shall be distributed to local systems as grants for approved accelerated or differentiated curriculum programs for students identified as learners with high ability pursuant to section 79-1108.02 in an aggregated amount up to the amount distributed in the prior fiscal year for such purposes increased by the basic allowable growth rate pursuant to section 79-1025; (iii) the next one million nine hundred fifty thousand dollars shall be allocated to early childhood education grants awarded by the State Department of Education pursuant to section 79-1103; (iv) the next one million dollars shall be transferred to the Early Childhood Education Endowment Cash Fund for use pursuant to section 79-1104.02; (v) the next ten thousand dollars shall be used to fund the Interstate Compact on Educational Opportunity for Military Children; (vi) the next two million five hundred thousand dollars shall be allocated for distance education equipment and incentives pursuant to sections 79-1336 and 79-1337; (vii) the next one million dollars shall be transferred to the School District Reorganization Fund; (viii) up to the next one hundred forty-five thousand dollars shall be used by the State Department of Education to implement section 79-759; and (ix) of the amount remaining, (A) three million dollars shall be retained in the Education Innovation Fund to transfer to the Nebraska Education Improvement Fund on June 30, 2016, and (B) the remaining amount shall be allocated to local systems as grants awarded by the State Department of Education to assist schools in evaluating and improving career education programs to align such programs with the state's economic and workforce needs. Except for funds transferred to the School District Reorganization Fund, the Early Childhood Education Endowment Cash Fund, or the department for early childhood education grants pursuant to section 79-1103, no funds received as allocations from the Education Innovation Fund pursuant to this subdivision may be obligated for payment to be made after June 30, 2016, and such funds received as transfers or allocations from the Education Innovation Fund that have not been used for their designated purpose as of such date shall be transferred to the Nebraska Education Improvement Fund on or before August 1, 2016.

(e) The Education Innovation Fund terminates on June 30, 2016. Any money in the fund on such date shall be transferred to the Nebraska Education Improvement Fund on such date.

(5) The Nebraska Education Improvement Fund is created. The fund shall consist of money transferred pursuant to subsections (3) and (4) of this section, money transferred pursuant to section 85-1920, and any other funds appropriated 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.

(6) Any money in the State Lottery Operation Trust Fund, the State Lottery Operation Cash Fund, the State Lottery Prize Trust Fund, or the Education Innovation 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.

(7) Unclaimed prize money on a winning lottery ticket shall be retained for a period of time prescribed by rules and regulations. If no claim is made within such period, the prize money shall be used at the discretion of the Tax Commissioner for any of the purposes prescribed in this section.

Source: Laws 1991, LB 849, § 12; Laws 1992, LB 1257, § 57; Laws 1993, LB 138, § 28; Laws 1993, LB 563, § 24; Laws 1994, LB 647, § 5; Laws 1994, LB 694, § 119; Laws 1994, LB 1066, § 11; Laws 1995, LB 275, § 1; Laws 1995, LB 860, § 1; Laws 1996, LB 900, § 1015; Laws 1996, LB 1069, § 1; Laws 1997, LB 118, § 1; Laws 1997, LB 347, § 1; Laws 1997, LB 710, § 1; Laws 1997, LB 865, § 1; Laws 1998, LB 924, § 16; Laws 1998, LB 1228, § 7; Laws 1998, LB 1229, § 1; Laws 1999, LB 386, § 1; Laws 2000, LB 659, § 2; Laws 2000, LB 1243, § 1; Laws 2001, LB 797, § 1; Laws 2001, LB 833, § 1; Laws 2001, Spec. Sess., LB 3, § 1; Laws 2002, LB 1105, § 418; Laws 2002, LB 1310, § 3; Laws 2002, Second Spec. Sess., LB 1, § 1; Laws 2003, LB 367, § 1; Laws 2003, LB 574, § 21; Laws 2004, LB 1083, § 83; Laws 2004, LB 1091, § 1; Laws 2006, LB 1208, § 1; Laws 2007, LB638, § 16; Laws 2009, LB286, § 4; Laws 2009, LB545, § 1; Laws 2009, LB547, § 1; Laws 2009, First Spec. Sess., LB2, § 1; Laws 2010, LB956, § 1; Laws 2011, LB333, § 1; Laws 2011, LB575, § 7; Laws 2011, LB637, § 22; Laws 2012, LB1079, § 9; Laws 2013, LB6, § 9; Laws 2013, LB366, § 8; Laws 2013, LB495, § 1; Laws 2013, LB497, § 1; Laws 2014, LB967, § 2.

Effective date April 3, 2014.

Cross References

Center for Student Leadership and Extended Learning Act, see section 79-772.

Excellence in Teaching Act, see section 79-8,132.

Interstate Compact on Educational Opportunity for Military Children, see section 79-2201.

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska Environmental Trust Act, see section 81-15,167.

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

9-831 Advertising on problem gambling prevention, education, and awareness messages; requirements.

The division shall spend not less than five percent of the advertising budget for the state lottery on problem gambling prevention, education, and awareness messages. The division shall coordinate messages developed under this section with the prevention, education, and awareness messages in use by or developed in conjunction with the Gamblers Assistance Program established pursuant to section 9-1005. For purposes of this section, the advertising budget for the state lottery includes amounts budgeted and spent for advertising, promotions, incentives, public relations, marketing, or contracts for the purchase or lease of goods or services that include advertising, promotions, incentives, public relations, or marketing, but does not include in-kind contributions by media outlets.

Source: Laws 2006, LB 1039, § 2; Laws 2013, LB6, § 10.

9-836.01 Division; sale of tangible personal property; distribution of profits.

The division may endorse and sell for profit tangible personal property related to the lottery. Any money received as profit by the division pursuant to this section shall be remitted to the State Treasurer for credit to the State Lottery Operation Trust Fund to be distributed to the Education Innovation

Fund, the Nebraska Opportunity Grant Fund, the Nebraska Education Improvement Fund, the Nebraska Environmental Trust Fund, and the Compulsive Gamblers Assistance Fund pursuant to the requirements of section 9-812.

Source: Laws 1994, LB 694, § 118; Laws 1998, LB 924, § 17; Laws 2003, LB 574, § 22; Laws 2010, LB956, § 2; Laws 2013, LB497, § 2.

ARTICLE 10

NEBRASKA COMMISSION ON PROBLEM GAMBLING

Section

- 9-1001. Funding for assistance to problem gamblers; legislative findings and intent.
9-1002. Terms, defined.
9-1003. Nebraska Commission on Problem Gambling; created; members; terms; vacancies; meetings.
9-1004. Commission; officers; expenses; duties; director; duties; rules and regulations; report.
9-1005. Gamblers Assistance Program; created; duties.
9-1006. Compulsive Gamblers Assistance Fund; created; use; investment.
9-1007. Division of Behavioral Health of Department of Health and Human Services or department; restriction on expenditures; contracts; how treated; Compulsive Gamblers Assistance Fund; use.

9-1001 Funding for assistance to problem gamblers; legislative findings and intent.

The Legislature finds that the main sources of funding for assistance to problem gamblers 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. It is the intent of the Legislature that such funding be used primarily for counseling and treatment services for problem gamblers and their families who are residents of Nebraska.

Source: Laws 2013, LB6, § 1.

9-1002 Terms, defined.

For purposes of sections 9-1001 to 9-1007:

- (1) Commission means the Nebraska Commission on Problem Gambling;
- (2) Division means the Charitable Gaming Division of the Department of Revenue;
- (3) Problem gambling means maladaptive gambling behavior that disrupts personal, family, or vocational pursuits; and
- (4) Program means the Gamblers Assistance Program.

Source: Laws 2013, LB6, § 2.

9-1003 Nebraska Commission on Problem Gambling; created; members; terms; vacancies; meetings.

(1) The Nebraska Commission on Problem Gambling is created. For administrative purposes only, the commission shall be within the division. The commission shall have nine members appointed by the Governor as provided in this section, subject to confirmation by a majority of the members of the Legislature. The members of the commission shall have no pecuniary interest, either directly or indirectly, in a contract with the program providing services to

problem gamblers and shall not be employed by the commission or the Department of Revenue.

(2) By July 1, 2013, the Governor shall appoint members of the commission as follows:

- (a) One member with medical care or mental health expertise;
- (b) One member with expertise in banking and finance;
- (c) One member with legal expertise;
- (d) One member with expertise in the field of education;
- (e) Two members who are consumers of problem gambling services;
- (f) One member with data analysis expertise; and

(g) Two members who are residents of the state and are representative of the public at large.

(3) The terms of the members shall be for three years, except that the Governor shall designate three of the initial appointees to serve initial terms beginning on July 1, 2013, and ending on March 1, 2014, three of the initial appointees to serve initial terms beginning on July 1, 2013, and ending on March 1, 2015, and three of the initial appointees to serve initial terms beginning on July 1, 2013, and ending on March 1, 2016. The Governor shall appoint members to fill vacancies in the same manner as the original appointments, and such appointees shall serve for the remainder of the unexpired term.

(4) Beginning July 1, 2013, the commission shall adopt bylaws governing its operation and the commission shall meet at least four times each calendar year and may meet more often on the call of the chairperson. Each member shall attend at least two meetings each calendar year and shall be subject to removal for failure to attend at least two meetings unless excused by a majority of the members of the commission. Meetings of the commission are subject to the Open Meetings Act.

Source: Laws 2013, LB6, § 3.

Cross References

Open Meetings Act, see section 84-1407.

9-1004 Commission; officers; expenses; duties; director; duties; rules and regulations; report.

(1) The commission shall appoint one of its members as chairperson and such other officers as it deems appropriate. Members shall be reimbursed for their actual and necessary expenses in carrying out their duties as members of the commission as provided in sections 81-1174 to 81-1177.

(2) The commission shall develop guidelines and standards for the operation of the program and shall direct the distribution and disbursement of money in the Compulsive Gamblers Assistance Fund.

(3) The commission shall appoint a director of the program, provide for office space and equipment, and support and facilitate the work of the program. The director may hire, terminate, and supervise commission and program staff, shall be responsible for the duties of the office and the administration of the program, and shall electronically provide an annual report to the General Affairs Committee of the Legislature which includes issues and policy concerns that relate to problem gambling in Nebraska. All documents, files, equipment,

effects, and records belonging to the State Committee on Problem Gambling on June 30, 2013, shall become the property of the commission on July 1, 2013.

(4) The commission shall (a) provide for a process for the evaluation and approval of provider applications and contracts for treatment and other services funded from the Compulsive Gamblers Assistance Fund and (b) develop standards and guidelines for training and certification of problem gambling counselors.

(5) The commission shall provide for (a) the review and use of evaluation data, (b) the use and expenditure of funds for education regarding problem gambling and prevention of problem gambling, and (c) the creation and implementation of outreach and educational programs regarding problem gambling for Nebraska residents.

(6) The commission may adopt and promulgate rules and regulations and engage in other activities it finds necessary to carry out its duties under sections 9-1001 to 9-1007.

(7) The commission shall submit a report within sixty days after the end of each fiscal year to the Governor and the Clerk of the Legislature that provides details of the administration of the program and distribution of funds from the Compulsive Gamblers Assistance Fund. The report submitted to the Legislature shall be submitted electronically.

Source: Laws 2013, LB6, § 4.

9-1005 Gamblers Assistance Program; created; duties.

The Gamblers Assistance Program is created. The program shall:

(1) Contract with providers of problem gambling treatment services to Nebraska consumers;

(2) Promote public awareness of the existence of problem gambling and the availability of treatment services;

(3) Evaluate the existence and scope of problem gambling in Nebraska and its consequences through means and methods determined by the commission; and

(4) Perform such other duties and provide such other services as the commission determines.

Source: Laws 2013, LB6, § 5.

9-1006 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 or commission 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 commission shall administer the fund for the operation of the Gamblers Assistance Program. The Director of Administrative Services shall draw warrants upon the Compulsive Gamblers Assistance Fund upon the presentation of proper vouchers by the commission. 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 edu-

cation, assistance, and counseling to individuals and families experiencing difficulty as a result of problem gambling, to promote the awareness of problem gamblers assistance programs, and to pay the costs and expenses of the Gamblers Assistance Program, including travel. 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; Laws 2009, LB189, § 2; R.S.1943, (2009), § 71-817; Laws 2013, LB6, § 6.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

9-1007 Division of Behavioral Health of Department of Health and Human Services or department; restriction on expenditures; contracts; how treated; Compulsive Gamblers Assistance Fund; use.

(1) Except as otherwise provided in subsection (2) of this section, no person acting on behalf of the Division of Behavioral Health of the Department of Health and Human Services or the department shall make expenditures not required by contract obligations entered into before July 1, 2013, until the Gamblers Assistance Program created in section 9-1005 commences its duties.

(2) Any contract between the State of Nebraska and a provider of problem gambling services in existence on July 1, 2013, shall remain in full force and effect and is binding and effective upon the parties to the contract until the contract is terminated according to its terms or renegotiated by the commission.

(3) The Compulsive Gamblers Assistance Fund shall not be subject to any nonstatutory expenditure limitation from any source and shall be available for expenditure as provided in sections 9-1001 to 9-1006.

Source: Laws 2013, LB6, § 7.

CHAPTER 10

BONDS

Article.

7. School District Bonds. 10-703.01.

ARTICLE 7

SCHOOL DISTRICT BONDS

Section

10-703.01. Issuance; election; notice; counting of ballots; canvass of vote.

10-703.01 Issuance; election; notice; counting of ballots; canvass of vote.

In all special elections called for voting on the question of issuing bonds of the school district, the county clerk or election commissioner or, if the school district lies in more than one county, the county clerk or election commissioner in the county having the greatest number of electors entitled to vote on the question shall designate the polling places and appoint the election officials, who need not be the regular election officials, and otherwise conduct the election as provided under the Election Act except as otherwise specifically provided in this section. Any special election held under this section shall be subject to section 32-405. The school district shall designate the form of ballot and reimburse the county clerk or election official for the expenses of conducting the election as provided in sections 32-1201 to 32-1208. The school district officers shall give notice of the election at least twenty days prior to the election and cause the sample ballot to be published in a newspaper of general circulation in the school district one time not more than ten days nor less than three days prior to the election, and no notice of the election shall be required to be given by the county clerk or election commissioner. The notice of election shall state where ballots for early voting may be obtained.

The ballots shall be counted by the county clerk or election commissioner conducting the election and two disinterested persons appointed by him or her. When the polls are closed, the receiving board shall deliver the ballots to the county clerk or election commissioner conducting the election who, with the two disinterested persons appointed by him or her, shall proceed to count the ballots.

Ballots for early voting shall be furnished to the county clerk or election commissioner and ready for distribution by the county clerk or election commissioner conducting the election not less than fifteen days prior to the election.

When a school district lies in more than one county, the county clerk or election commissioner in any other county containing part of such school district shall, upon request, certify its registration books for those precincts in which the school district is located to the county clerk or election commissioner conducting the election and shall immediately forward all requests for ballots for early voting to the county clerk or election commissioner charged with the issuing of such ballots. Not less than five days prior to the election, the school

district officers shall certify to the county clerk or election commissioner conducting the election a list of all registered voters of the school district in any other county or counties qualified to vote on the bond issue.

All ballots cast at the election shall be counted by the same board. When all the ballots have been counted, the returns of such election shall be turned over to the school board or board of education of the district in which the election was held for the purpose of making a canvass thereof.

The two disinterested persons appointed on the counting board shall receive wages at no less than the minimum rate set in section 48-1203 for each hour of service rendered.

Source: Laws 1957, c. 352, § 1, p. 1198; Laws 1959, c. 26, § 1, p. 175; Laws 1972, LB 661, § 2; Laws 1973, LB 550, § 2; Laws 1979, LB 421, § 1; Laws 1984, LB 920, § 29; Laws 1992, LB 424, § 1; Laws 1994, LB 76, § 466; Laws 1997, LB 764, § 2; Laws 2002, LB 935, § 1; Laws 2003, LB 521, § 1; Laws 2005, LB 98, § 1; Laws 2014, LB946, § 1.

Operative date January 1, 2015.

Cross References

Election Act, see section 32-101.

CHAPTER 11

BONDS AND OATHS, OFFICIAL

Article.

1. Official Bonds and Oaths. 11-105, 11-115.

ARTICLE 1

OFFICIAL BONDS AND OATHS

Section

11-105. Bonds and oaths; filing; time.

11-115. Bonds; failure to furnish; show cause order; effect.

11-105 Bonds and oaths; filing; time.

(1) Official bonds, with the oath endorsed thereon, shall be filed in the proper office within the following time:

(a) Of all officers elected at any general election, following receipt of their election certificate and not later than ten days before the first Thursday after the first Tuesday in January next succeeding the election;

(b) Of all appointed officers, within thirty days after their appointment; and

(c) Of officers elected at any special election and city and village officers, within thirty days after the canvass of the votes of the election at which they were chosen.

(2) The filing of the bond with the oath endorsed thereon does not authorize a person to take any official action prior to the beginning of his or her term of office pursuant to Article XVII, section 5, of the Constitution of Nebraska.

(3) In counties which provide a bond for county officers pursuant to subdivision (22) of section 11-119, such county officers are not required to comply with the timing requirements of subsection (1) of this section with regard to their official bond but shall file their oaths of office in the proper offices prior to the beginning of their terms of office.

Source: Laws 1881, c. 13, § 5, p. 95; R.S.1913, § 5711; C.S.1922, § 5041; C.S.1929, § 12-105; R.S.1943, § 11-105; Laws 1976, LB 534, § 1; Laws 2013, LB311, § 1.

11-115 Bonds; failure to furnish; show cause order; effect.

If any person elected or appointed to any office neglects to have his or her official bond executed and approved as provided by law and filed for record within the time limited by sections 11-101 to 11-122, the officer with whom the bond is required to be filed shall immediately issue an order to such person to show cause why he or she has failed to properly file such bond and why his or her office should not be declared vacant. If such person properly files the official bond within ten days of the issuance of the show cause order for appointed officials or before the date for taking office for elected officials, such filing shall be deemed to be in compliance with sections 11-101 to 11-122. If such person does not file the bond within ten days of the issuance of such order

for appointed officials or before the date for taking office for elected officials and sufficient cause is not shown within that time, his or her office shall thereupon ipso facto become vacant, and such vacancy shall thereupon immediately be filled by election or appointment as the law may direct in other cases of vacancy in the same office. This section does not apply to county officers covered pursuant to subdivision (22) of section 11-119.

Source: Laws 1881, c. 13, § 15, p. 97; R.S.1913, § 5721; C.S.1922, § 5051; C.S.1929, § 12-115; R.S.1943, § 11-115; Laws 1976, LB 534, § 2; Laws 2013, LB311, § 2.

CHAPTER 12

CEMETERIES

Article.

1. Wyuka Cemetery. 12-101
5. Cemetery Associations. 12-501 to 12-532.
8. Maintenance and Improvement of Cemeteries. 12-808, 12-812.
11. Burial Pre-Need Sales. 12-1109.
12. Unmarked Human Burial Sites. 12-1208.

ARTICLE 1

WYUKA CEMETERY

Section

- 12-101. Wyuka Cemetery; declared a public charitable corporation; powers; trustees; appointment; terms; vacancies; reports; retirement plan reports; duties.

12-101 Wyuka Cemetery; declared a public charitable corporation; powers; trustees; appointment; terms; vacancies; reports; retirement plan reports; duties.

(1) The cemetery in Lincoln, Nebraska, known as Wyuka Cemetery, is hereby declared to be a public charitable corporation. The general control and management of the affairs of such cemetery shall be vested in a board of three trustees until July 1, 2009, and thereafter shall be vested in a board of five trustees. The trustees shall serve without compensation and shall be a body corporate to be known as Wyuka Cemetery, with power to sue and be sued, to contract and to be contracted with, and to acquire, hold, and convey both real and personal property for all purposes consistent with the provisions of sections 12-101 to 12-105, and shall have the power of eminent domain to be exercised in the manner provided in section 12-201.

(2) The trustees of Wyuka Cemetery shall have the power, by resolution duly adopted by a majority vote, to authorize one of their number to sign a petition for paving, repaving, curbing, recurbing, grading, changing grading, guttering, resurfacing, relaying existing pavement, or otherwise improving any street, streets, alley, alleys, or public ways or grounds abutting cemetery property. When such improvements have been ordered, the trustees shall pay, from funds of the cemetery, such special taxes or assessments as may be properly determined.

(3) The trustees of Wyuka Cemetery shall be appointed by the Governor of the State of Nebraska at the expiration of each trustee's term of office. The two trustees appointed for their initial terms of office beginning July 1, 2009, shall be appointed by the Governor to serve a five-year term and a six-year term, respectively. Thereafter, each of the five trustees shall be appointed by the Governor for a term of six years. In the event of a vacancy occurring among the members of the board, the vacancy shall be filled by appointment by the Governor, and such appointment shall continue for the unexpired term.

(4) The board of trustees of Wyuka Cemetery shall file with the Auditor of Public Accounts, on or before the second Tuesday in June of each year, an

itemized report of all the receipts and expenditures in connection with its management and control of the cemetery.

(5) The trustees of Wyuka Cemetery shall have the power to provide, in their discretion, retirement benefits for present and future employees of the cemetery, and to establish, participate in, and administer plans for the benefit of its employees or its employees and their dependents, which may provide disability, hospitalization, medical, surgical, accident, sickness and life insurance coverage, or any one or more coverages, and which shall be purchased from a corporation or corporations authorized and licensed by the Department of Insurance.

(6)(a) Beginning December 31, 1998, and each December 31 thereafter, the trustees shall file with the Public Employees Retirement Board an annual report on each retirement plan established pursuant to this section and section 401(a) of the Internal Revenue Code and shall submit copies of such report to the Auditor of Public Accounts. The Auditor of Public Accounts may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. The annual report shall be in a form prescribed by the Public Employees Retirement Board and shall contain the following information for each such retirement plan:

- (i) The number of persons participating in the retirement plan;
- (ii) The contribution rates of participants in the plan;
- (iii) Plan assets and liabilities;
- (iv) The names and positions of persons administering the plan;
- (v) The names and positions of persons investing plan assets;
- (vi) The form and nature of investments;
- (vii) For each defined contribution plan, a full description of investment policies and options available to plan participants; and
- (viii) For each defined benefit plan, the levels of benefits of participants in the plan, the number of members who are eligible for a benefit, and the total present value of such members' benefits, as well as the funding sources which will pay for such benefits.

If a plan contains no current active participants, the trustees may file in place of such report a statement with the Public Employees Retirement Board indicating the number of retirees still drawing benefits, and the sources and amount of funding for such benefits.

(b) If such retirement plan is a defined benefit plan which was open to new members on January 1, 2004, in addition to the reports required by section 13-2402, the trustees shall cause to be prepared an annual report and shall file the same with the Public Employees Retirement Board and the Nebraska Retirement Systems Committee of the Legislature and submit to the Auditor of Public Accounts a copy of such report. The Auditor of Public Accounts may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. If the trustees do not submit a copy of the report to the Auditor of Public Accounts within six months after the end of the plan year, the Auditor of Public Accounts may audit, or cause to be audited, Wyuka Cemetery. All costs of the audit shall be paid by Wyuka Cemetery. The report shall consist of a full actuarial analysis of each such retirement plan established pursuant to this section. The analysis shall be prepared by an independent private organization or public entity employing actuaries who are members in good standing of

the American Academy of Actuaries, and which organization or entity has demonstrated expertise to perform this type of analysis and is unrelated to any organization offering investment advice or which provides investment management services to the retirement plan. The report to the Nebraska Retirement Systems Committee shall be submitted electronically.

Source: Laws 1927, c. 197, § 1, p. 560; C.S.1929, § 13-101; R.S.1943, § 12-101; Laws 1953, c. 15, § 1, p. 81; Laws 1959, c. 28, § 1, p. 179; Laws 1967, c. 38, § 1, p. 167; Laws 1998, LB 1191, § 3; Laws 1999, LB 795, § 2; Laws 2009, LB498, § 1; Laws 2011, LB252, § 1; Laws 2011, LB474, § 2; Laws 2014, LB759, § 3. Effective date July 18, 2014.

ARTICLE 5

CEMETERY ASSOCIATIONS

Section

- 12-501. Formation; trustees; election; notice; clerk; right to establish cemetery limited.
- 12-502. Formation; record of proceedings; certification; effect; certified transcript as evidence; duty of county clerk; fees.
- 12-512.01. Perpetual care trust fund; trustees; duties.
- 12-512.02. Perpetual care trust fund; proceeds; investment.
- 12-512.04. Perpetual care trust fund; audit; exception; filing; expense.
- 12-512.05. Perpetual care and maintenance guarantee fund; establish; amount required.
- 12-516. Trustees; bond; terms; approval; filing; fee; cost paid by association.
- 12-518. Lots; plat; care, improvement, adornment; annual exhibit; powers and duties of association.
- 12-531. Abandoned or neglected pioneer cemetery; management and operation; cemetery association; duties; map; perpetual care trust fund; duties.
- 12-532. Mowing.

12-501 Formation; trustees; election; notice; clerk; right to establish cemetery limited.

(1) For purposes of sections 12-501 to 12-532, cemetery association means an association formed under such sections.

(2) Every cemetery, other than those owned, operated, and maintained by the state, by towns, villages, and cities, by churches, by public charitable corporations, by cemetery districts, and by fraternal and benevolent societies, shall be owned, conducted, and managed by cemetery associations organized and incorporated as provided in sections 12-501 to 12-532 except as specifically provided in sections 12-530 and 12-812.

(3) The establishment of a cemetery by any agency other than those enumerated in this section shall constitute a nuisance, and its operation may be enjoined at the suit of any taxpayer in the state.

(4) It shall be lawful for any number of persons, not less than five, who are residents of the county in which they desire to form themselves into an association, to form themselves into a cemetery association and to elect any number of their members, not less than three, to serve as trustees, and one member as clerk, who shall continue in office during the pleasure of the association. All such elections shall take place at a meeting of four or more members of such association by a majority vote of those present. A notice for such meeting shall be published in a local newspaper, or posted in three places

within the precinct or township in which the cemetery is or will be located, at least fifteen days prior to the meeting.

Source: R.S.1866, c. 25, § 45, p. 205; Laws 1905, c. 38, § 1, p. 274; R.S.1913, § 679; C.S.1922, § 588; C.S.1929, § 13-501; Laws 1935, c. 27, § 1, p. 121; C.S.Supp.,1941, § 13-501; R.S.1943, § 12-501; Laws 2014, LB863, § 3.
Effective date April 10, 2014.

12-502 Formation; record of proceedings; certification; effect; certified transcript as evidence; duty of county clerk; fees.

The clerk of the cemetery association shall make out a true record of the proceedings of the meeting provided for by section 12-501 and certify and deliver the same to the clerk of the county in which such meeting is held, together with the name by which such association shall be known. The county clerk, immediately upon the receipt of such certified statement, shall record the same in a book provided by the county clerk for that purpose at the expense of the county and shall be entitled to the same fees for the services as the county clerk is entitled to demand for other similar services. After the making of such record by the county clerk, the trustees and the associated members and successors shall be invested with the powers, privileges, and immunities incident to aggregate corporations. A certified transcript of the record made by the county clerk shall be deemed and taken in all courts and places whatsoever within this state as prima facie evidence of the existence of such cemetery association.

Source: R.S.1866, c. 25, § 46, p. 205; R.S.1913, § 680; C.S.1922, § 589; C.S.1929, § 13-502; R.S.1943, § 12-502; Laws 2014, LB863, § 4.
Effective date April 10, 2014.

12-512.01 Perpetual care trust fund; trustees; duties.

Every cemetery association shall provide for and select trustees, other than officers or members of the association, who shall be selected, as provided for in section 12-512.03, to invest, safeguard, and look after certain funds of the association, including the sums provided for by section 12-512.02 and any other money acquired for the purposes of such fund, in a perpetual care trust fund, the income therefrom to be used for the perpetual care of the cemetery by the association.

Source: Laws 1953, c. 20, § 1, p. 89; Laws 2014, LB863, § 5.
Effective date April 10, 2014.

12-512.02 Perpetual care trust fund; proceeds; investment.

The cemetery association shall place at least one hundred dollars for each cemetery lot sold into the perpetual care trust fund. Such funds shall be paid by the cemetery association to the trustees of the perpetual care trust fund, who shall invest the funds under the same conditions and restrictions as trust funds are invested under section 30-3201. If any lots are sold on contract, thirty percent of all payments received on the contract shall be paid to the trustee or trustees of the perpetual care trust fund until the entire payments required by this section are made.

Source: Laws 1953, c. 20, § 2, p. 89; Laws 1955, c. 18, § 1, p. 91; Laws 2014, LB863, § 6.
Effective date April 10, 2014.

12-512.04 Perpetual care trust fund; audit; exception; filing; expense.

On June 30 of each year, the individual trustees or corporate trustee, as the case may be, of a perpetual care trust fund shall have an audit of the perpetual care trust fund made by a certified public accountant except as otherwise provided in section 12-531. The report of such audit by the auditor shall be filed within thirty days after June 30 of such year with the county clerk of the county in which the cemetery is located. The expense of the audit and the filing fee of the report shall be paid by the cemetery association.

Source: Laws 1953, c. 20, § 4, p. 90; Laws 2014, LB863, § 7.
Effective date April 10, 2014.

12-512.05 Perpetual care and maintenance guarantee fund; establish; amount required.

Every cemetery association shall, before selling or disposing of any interment space or lots, establish a minimum perpetual care and maintenance guarantee fund of not less than two thousand five hundred dollars in cash to be administered by the trustee or trustees of the perpetual care trust fund selected as provided in section 12-512.03.

Source: Laws 1955, c. 18, § 3, p. 92; Laws 1967, c. 39, § 1, p. 169; Laws 2014, LB863, § 8.
Effective date April 10, 2014.

12-516 Trustees; bond; terms; approval; filing; fee; cost paid by association.

If the trustees of any cemetery association receive the gift of any property, real or personal, in their own name, in trust, for the perpetual care of the cemetery, or anything connected therewith, the trustees shall, upon the enactment of bylaws to that effect by the association, give a bond to the association of at least one thousand dollars, conditioned for the faithful administration of the trust and care of the funds and property. The bond shall be filed with and approved by the county clerk of the county in which the association is located, and the clerk shall be paid the same fee for approving and filing the bond as fixed by law for approving and filing official bonds. The cost of the bond shall be paid by the cemetery association.

Source: Laws 1925, c. 138, § 1, p. 367; C.S.1929, § 13-505; Laws 1941, c. 18, § 1, p. 106; C.S.Supp.,1941, § 13-505; R.S.1943, § 12-516; Laws 1980, LB 909, § 3; Laws 2014, LB863, § 9.
Effective date April 10, 2014.

12-518 Lots; plat; care, improvement, adornment; annual exhibit; powers and duties of association.

A cemetery association shall cause a plat of the cemetery grounds, and of the lots laid out in the cemetery, to be made and recorded, such lots to be numbered by regular consecutive numbers. It shall have power to enclose, improve, and adorn the grounds and avenues and erect buildings for the use of the association, to prescribe rules for the enclosing and adorning of lots and for erecting monuments in the cemetery, and to prohibit any use, division, im-

provement, or adornment of a lot which it may deem improper. An annual exhibit shall be made of the affairs of the association.

Source: R.S.1866, c. 25, § 51, p. 207; R.S.1913, § 685; C.S.1922, § 594; C.S.1929, § 13-507; R.S.1943, § 12-518; Laws 2014, LB863, § 10.

Effective date April 10, 2014.

12-531 Abandoned or neglected pioneer cemetery; management and operation; cemetery association; duties; map; perpetual care trust fund; duties.

(1) A cemetery association which takes over the management and operation of a cemetery pursuant to section 12-812 shall, within one year after taking over, prepare a map of the cemetery and make a good faith effort to identify the remains buried in the cemetery according to the headstones and the owner of all lots. The cemetery association shall file the map and identifying information and a record of all business conducted by the cemetery association in the prior calendar year with the county clerk at the time it files the audit, compilation, or statement of accounts under subsection (2) of this section.

(2)(a) On June 30 of each year, the individual trustees or corporate trustee, as the case may be, of a perpetual care trust fund for a cemetery association described in subsection (1) of this section which has a balance of one hundred thousand dollars or more on such date shall have an audit of the perpetual care trust fund made by a certified public accountant. The report of such audit by the auditor shall be filed within thirty days after June 30 of such year with the county clerk of the county in which the cemetery is located. The expense of the audit and the filing fee of the report shall be paid by the cemetery association.

(b) On June 30 of each year, the individual trustees or corporate trustee, as the case may be, of a perpetual care trust fund for a cemetery association described in subsection (1) of this section which has a balance of more than ten thousand dollars and less than one hundred thousand dollars on such date shall have a compilation of the perpetual care trust fund made by a certified public accountant. The report of such compilation by the certified public accountant shall be filed within thirty days after June 30 of such year with the county clerk of the county in which the cemetery is located. The expense of the compilation and the filing fee of the report shall be paid by the cemetery association.

(c) On June 30 of each year, the individual trustees or corporate trustee, as the case may be, of a perpetual care trust fund for a cemetery association described in subsection (1) of this section which has a balance of ten thousand dollars or less on such date shall file a statement of accounts of the perpetual care trust fund within thirty days after June 30 of such year with the county clerk of the county in which the cemetery is located. There shall be no filing fee for filing the statement of accounts.

Source: Laws 2014, LB863, § 1.

Effective date April 10, 2014.

12-532 Mowing.

Any cemetery association shall provide for at least one mowing annually of the cemetery it manages, and one of such mowings shall occur within two

weeks prior to Memorial Day. Additional mowings shall be at the discretion of the cemetery association.

Source: Laws 2014, LB863, § 2.
Effective date April 10, 2014.

ARTICLE 8

MAINTENANCE AND IMPROVEMENT OF CEMETERIES

Section

- 12-808. Abandoned or neglected pioneer cemetery, defined.
12-812. Abandoned or neglected pioneer cemetery; county transfer management; conditions.

12-808 Abandoned or neglected pioneer cemetery, defined.

For purposes of sections 12-807 to 12-810 and 12-812, an abandoned or neglected pioneer cemetery shall be defined according to the following criteria:

- (1) Such cemetery was founded or the land upon which such cemetery is situated was given, granted, donated, sold, or deeded to the founders of the cemetery prior to January 1, 1900;
- (2) Such cemetery contains the grave or graves of a person or persons who were homesteaders, immigrants from a foreign nation, prairie farmers, pioneers, sodbusters, first generation Nebraskans, or Civil War veterans; and
- (3) Such cemetery has been generally abandoned or neglected for a period of at least five consecutive years.

Source: Laws 1975, LB 129, § 2; Laws 1996, LB 932, § 1; Laws 2008, LB995, § 6; Laws 2014, LB863, § 11.
Effective date April 10, 2014.

12-812 Abandoned or neglected pioneer cemetery; county transfer management; conditions.

A county which is maintaining an abandoned or neglected pioneer cemetery may transfer the management of the cemetery to a cemetery association formed under sections 12-501 to 12-532 or to a cemetery district organized under sections 12-909 to 12-923 if:

- (1) The county has been maintaining the cemetery pursuant to sections 12-807 to 12-810 for at least five years;
- (2) The planning commission appointed pursuant to section 23-114.01, if any, reviews the proposed transfer; and
- (3) The county board approves the transfer of the cemetery by resolution after a public hearing for which notice is provided to the public.

Source: Laws 2014, LB863, § 12.
Effective date April 10, 2014.

ARTICLE 11

BURIAL PRE-NEED SALES

Section

- 12-1109. Rules and regulations.

12-1109 Rules and regulations.

The director may adopt and promulgate rules and regulations necessary to carry out and enforce the Burial Pre-Need Sale Act.

Source: Laws 1986, LB 643, § 9; Laws 2014, LB700, § 13.
Operative date July 18, 2014.

ARTICLE 12

UNMARKED HUMAN BURIAL SITES

Section

12-1208. Discovery of remains or goods; society; duties.

12-1208 Discovery of remains or goods; society; duties.

(1) Upon notification pursuant to section 12-1206, the society shall promptly assist in examining the discovered material to attempt to determine its origin and identity.

(2) If the society finds that the discovered human skeletal remains or burial goods are of non-American-Indian origin with a known or unknown identity, it shall notify the county attorney of the finding. Upon receipt of the finding, the county attorney shall cause the remains and associated burial goods to be interred in consultation with the county coroner. Reburial shall be in accordance with the wishes and at the expense of any known persons in the order listed by section 30-2223 or, if no relatives are known, in an appropriate cemetery at the expense of the county in which the remains were discovered after a one-year scientific study period if such study period is considered necessary or desirable by the society. In no case shall any human skeletal remains that are reasonably identifiable as to familial or tribal origin be displayed by any entity which receives funding or official recognition from the state or any of its political subdivisions. In situations in which human skeletal remains or burial goods that are unidentifiable as to familial or tribal origin are clearly found to be of extremely important, irreplaceable, and intrinsic scientific value, the remains or goods may be curated by the society until the remains or goods may be reinterred as provided in this subsection without impairing their scientific value.

(3) If the society finds that the discovered human skeletal remains or burial goods are of American Indian origin, it shall promptly notify in writing the Commission on Indian Affairs and any known persons in the order listed in section 30-2223 or, if no relatives are known, any Indian tribes reasonably identified as tribally linked to such remains or goods in order to ascertain and follow the wishes of the relative or Indian tribe, if any, as to reburial or other disposition. Reburial by any such relative or Indian tribe shall be by and at the expense of such relative or Indian tribe. In cases in which reasonably identifiable American Indian human skeletal remains or burial goods are unclaimed by the appropriate relative or Indian tribe, the society shall notify all other Indian tribes which can reasonably be determined to have lived in Nebraska in order to ascertain and follow the wishes of the tribe as to reburial or other disposition. Reburial by any such tribe shall be by and at the expense of the tribe. If such remains or goods are unclaimed by the appropriate tribe, the remains or goods shall be reburied, as determined by the commission, by one of the four federally recognized Indian tribes in Nebraska.

Source: Laws 1989, LB 340, § 8; Laws 2001, LB 97, § 1; Laws 2007, LB463, § 1113; Laws 2014, LB998, § 1.
Effective date April 10, 2014.

CHAPTER 13

CITIES, COUNTIES, AND OTHER POLITICAL SUBDIVISIONS

Article.

2. Community Development. 13-208.
5. Budgets.
 - (a) Nebraska Budget Act. 13-503 to 13-513.
12. Nebraska Public Transportation Act. 13-1205.
21. Enterprise Zones. 13-2101.01 to 13-2114.
24. Retirement Benefits and Plans. 13-2402.
25. Joint Public Agency Act. 13-2525.
27. Civic and Community Center Financing Act. 13-2701 to 13-2709.
31. Sports Arena Facility Financing Assistance Act. 13-3107, 13-3108.

ARTICLE 2

COMMUNITY DEVELOPMENT

Section

13-208. Tax credits; limit.

13-208 Tax credits; limit.

The total amount of tax credit granted for programs approved and certified under the Community Development Assistance Act by the department for any fiscal year shall not exceed three hundred fifty thousand dollars, except that for fiscal year 2014-15, the total amount of tax credit granted under this section shall be reduced by fifty thousand dollars.

Source: Laws 1984, LB 372, § 8; Laws 2005, LB 334, § 5; Laws 2011, LB345, § 9; Laws 2014, LB1114, § 1.
Effective date July 18, 2014.

ARTICLE 5

BUDGETS

(a) NEBRASKA BUDGET ACT

Section

- 13-503. Terms, defined.
- 13-504. Proposed budget statement; contents; corrections; cash reserve; limitation.
- 13-505. Proposed budget statement; estimated expenditures; unencumbered balances; estimated income.
- 13-506. Proposed budget statement; notice; hearing; adoption; certify to board; exceptions; file with auditor.
- 13-508. Adopted budget statement; certified taxable valuation; levy.
- 13-509.01. Cash balance; expenditure authorized; limitation.
- 13-513. Auditor; request information.

(a) NEBRASKA BUDGET ACT

13-503 Terms, defined.

For purposes of the Nebraska Budget Act, unless the context otherwise requires:

(1) Governing body means the governing body of any county agricultural society, elected county fair board, joint airport authority formed under the Joint Airport Authorities Act, city or county airport authority, bridge commission created pursuant to section 39-868, cemetery district, city, village, municipal county, community college, community redevelopment authority, county, drainage or levee district, educational service unit, rural or suburban fire protection district, historical society, hospital district, irrigation district, learning community, natural resources district, nonprofit county historical association or society for which a tax is levied under subsection (1) of section 23-355.01, public building commission, railroad transportation safety district, reclamation district, road improvement district, rural water district, school district, sanitary and improvement district, township, offstreet parking district, transit authority, metropolitan utilities district, Educational Service Unit Coordinating Council, and political subdivision with the authority to have a property tax request, with the authority to levy a toll, or that receives state aid;

(2) Levying board means any governing body which has the power or duty to levy a tax;

(3) Fiscal year means the twelve-month period used by each governing body in determining and carrying on its financial and taxing affairs;

(4) Tax means any general or special tax levied against persons, property, or business for public purposes as provided by law but shall not include any special assessment;

(5) Auditor means the Auditor of Public Accounts;

(6) Cash reserve means funds required for the period before revenue would become available for expenditure but shall not include funds held in any special reserve fund;

(7) Public funds means all money, including nontax money, used in the operation and functions of governing bodies. For purposes of a county, city, or village which has a lottery established under the Nebraska County and City Lottery Act, only those net proceeds which are actually received by the county, city, or village from a licensed lottery operator shall be considered public funds, and public funds shall not include amounts awarded as prizes;

(8) Adopted budget statement means a proposed budget statement which has been adopted or amended and adopted as provided in section 13-506. Such term shall include additions, if any, to an adopted budget statement made by a revised budget which has been adopted as provided in section 13-511;

(9) Special reserve fund means any special fund set aside by the governing body for a particular purpose and not available for expenditure for any other purpose. Funds created for (a) the retirement of bonded indebtedness, (b) the funding of employee pension plans, (c) the purposes of the Political Subdivisions Self-Funding Benefits Act, (d) the purposes of the Local Option Municipal Economic Development Act, (e) voter-approved sinking funds, or (f) statutorily authorized sinking funds shall be considered special reserve funds;

(10) Biennial period means the two fiscal years comprising a biennium commencing in odd-numbered or even-numbered years used by a city or village in determining and carrying on its financial and taxing affairs; and

(11) Biennial budget means a budget by a city of the primary or metropolitan class that adopts a charter provision providing for a biennial period to determine and carry on the city's financial and taxing affairs or a budget by a city of

the first or second class or village that provides for a biennial period to determine and carry on the city's or village's financial and taxing affairs.

Source: Laws 1969, c. 145, § 2, p. 669; Laws 1972, LB 537, § 1; Laws 1977, LB 510, § 6; R.S.1943, (1987), § 23-922; Laws 1988, LB 802, § 2; Laws 1992, LB 1063, § 3; Laws 1992, Second Spec. Sess., LB 1, § 3; Laws 1993, LB 734, § 17; Laws 1994, LB 1257, § 3; Laws 1996, LB 299, § 10; Laws 1997, LB 250, § 2; Laws 1999, LB 437, § 25; Laws 2000, LB 968, § 4; Laws 2000, LB 1116, § 6; Laws 2001, LB 142, § 25; Laws 2003, LB 607, § 1; Laws 2006, LB 1024, § 1; Laws 2007, LB603, § 1; Laws 2009, LB392, § 2; Laws 2010, LB779, § 1; Laws 2013, LB111, § 1.

Cross References

Joint Airport Authorities Act, see section 3-716.

Local Option Municipal Economic Development Act, see section 18-2701.

Nebraska County and City Lottery Act, see section 9-601.

Political Subdivisions Self-Funding Benefits Act, see section 13-1601.

13-504 Proposed budget statement; contents; corrections; cash reserve; limitation.

(1) Each governing body shall annually or biennially prepare a proposed budget statement on forms prescribed and furnished by the auditor. The proposed budget statement shall be made available to the public by the political subdivision prior to publication of the notice of the hearing on the proposed budget statement pursuant to section 13-506. A proposed budget statement shall contain the following information, except as provided by state law:

(a) For the immediately preceding fiscal year or biennial period, the revenue from all sources, including motor vehicle taxes, other than revenue received from personal and real property taxation, allocated to the funds and separately stated as to each such source: The unencumbered cash balance at the beginning and end of the year or biennial period; the amount received by taxation of personal and real property; and the amount of actual expenditures;

(b) For the current fiscal year or biennial period, actual and estimated revenue from all sources, including motor vehicle taxes, allocated to the funds and separately stated as to each such source: The actual unencumbered cash balance available at the beginning of the year or biennial period; the amount received from personal and real property taxation; and the amount of actual and estimated expenditures, whichever is applicable. Such statement shall contain the cash reserve for each fiscal year or biennial period and shall note whether or not such reserve is encumbered. Such cash reserve projections shall be based upon the actual experience of prior years or biennial periods. The cash reserve shall not exceed fifty percent of the total budget adopted exclusive of capital outlay items;

(c) For the immediately ensuing fiscal year or biennial period, an estimate of revenue from all sources, including motor vehicle taxes, other than revenue to be received from taxation of personal and real property, separately stated as to each such source: The actual or estimated unencumbered cash balances, whichever is applicable, to be available at the beginning of the year or biennial period; the amounts proposed to be expended during the year or biennial period; and the amount of cash reserve, based on actual experience of prior years or biennial periods, which cash reserve shall not exceed fifty percent of the total budget adopted exclusive of capital outlay items;

(d) A statement setting out separately the amount sought to be raised from the levy of a tax on the taxable value of real property (i) for the purpose of paying the principal or interest on bonds issued by the governing body and (ii) for all other purposes;

(e) A uniform summary of the proposed budget statement, including each proprietary function fund included in a separate proprietary budget statement prepared pursuant to the Municipal Proprietary Function Act, and a grand total of all funds maintained by the governing body;

(f) For municipalities, a list of the proprietary functions which are not included in the budget statement. Such proprietary functions shall have a separate budget statement which is approved by the city council or village board as provided in the Municipal Proprietary Function Act; and

(g) For school districts and educational service units, a separate identification and description of all current and future costs to the school district or educational service unit which are reasonably anticipated as a result of any contract, and any adopted amendments thereto, for superintendent services to be rendered to such school district or administrator services to be rendered to such educational service unit.

(2) The actual or estimated unencumbered cash balance required to be included in the budget statement by this section shall include deposits and investments of the political subdivision as well as any funds held by the county treasurer for the political subdivision and shall be accurately stated on the proposed budget statement.

(3) The political subdivision shall correct any material errors in the budget statement detected by the auditor or by other sources.

Source: Laws 1969, c. 145, § 3, p. 670; Laws 1971, LB 129, § 1; Laws 1984, LB 932, § 3; Laws 1986, LB 889, § 2; Laws 1987, LB 183, § 3; R.S.Supp., 1987, § 23-923; Laws 1989, LB 33, § 6; Laws 1993, LB 310, § 3; Laws 1993, LB 734, § 18; Laws 1994, LB 1310, § 1; Laws 1995, LB 490, § 22; Laws 1996, LB 1362, § 1; Laws 1997, LB 271, § 9; Laws 1999, LB 86, § 3; Laws 2000, LB 968, § 5; Laws 2002, LB 568, § 1; Laws 2013, LB111, § 2; Laws 2014, LB470, § 1.

Operative date July 1, 2014.

Cross References

Municipal Proprietary Function Act, see section 18-2801.

13-505 Proposed budget statement; estimated expenditures; unencumbered balances; estimated income.

The estimated expenditures plus the required cash reserve for the ensuing fiscal year or biennial period less all estimated and actual unencumbered balances at the beginning of the year or biennial period and less the estimated income from all sources, including motor vehicle taxes, other than taxation of personal and real property shall equal the amount to be received from taxes, and such amount shall be shown on the proposed budget statement pursuant to section 13-504. The amount to be raised from taxation of personal and real property, as determined above, plus the estimated revenue from other sources, including motor vehicle taxes, and the unencumbered balances shall equal the

estimated expenditures, plus the necessary required cash reserve, for the ensuing year or biennial period.

Source: Laws 1969, c. 145, § 4, p. 671; R.S.1943, (1983), § 23-924; Laws 1993, LB 310, § 4; Laws 1997, LB 271, § 10; Laws 2002, LB 568, § 2; Laws 2013, LB111, § 3.

13-506 Proposed budget statement; notice; hearing; adoption; certify to board; exceptions; file with auditor.

(1) Each governing body shall each year or biennial period conduct a public hearing on its proposed budget statement. Notice of place and time of such hearing, together with a summary of the proposed budget statement, shall be published at least five days prior to the date set for hearing in a newspaper of general circulation within the governing body's jurisdiction. When the total operating budget, not including reserves, does not exceed ten thousand dollars per year or twenty thousand dollars per biennial period, the proposed budget summary may be posted at the governing body's principal headquarters. After such hearing, the proposed budget statement shall be adopted, or amended and adopted as amended, and a written record shall be kept of such hearing. The amount to be received from personal and real property taxation shall be certified to the levying board after the proposed budget statement is adopted or is amended and adopted as amended. If the levying board represents more than one county, a member or a representative of the governing board shall, upon the written request of any represented county, appear and present its budget at the hearing of the requesting county. The certification of the amount to be received from personal and real property taxation shall specify separately (a) the amount to be applied to the payment of principal or interest on bonds issued by the governing body and (b) the amount to be received for all other purposes. If the adopted budget statement reflects a change from that shown in the published proposed budget statement, a summary of such changes shall be published within twenty days after its adoption in the manner provided in this section, but without provision for hearing, setting forth the items changed and the reasons for such changes.

(2) Upon approval by the governing body, the budget shall be filed with the auditor. The auditor may review the budget for errors in mathematics, improper accounting, and noncompliance with the Nebraska Budget Act or sections 13-518 to 13-522. If the auditor detects such errors, he or she shall immediately notify the governing body of such errors. The governing body shall correct any such error as provided in section 13-511. Warrants for the payment of expenditures provided in the budget adopted under this section shall be valid notwithstanding any errors or noncompliance for which the auditor has notified the governing body.

Source: Laws 1969, c. 145, § 5, p. 672; Laws 1971, LB 129, § 2; Laws 1973, LB 95, § 1; R.S.1943, (1983), § 23-925; Laws 1993, LB 310, § 5; Laws 1996, LB 1362, § 2; Laws 1997, LB 271, § 11; Laws 1999, LB 86, § 4; Laws 2002, LB 568, § 3; Laws 2013, LB111, § 4.

13-508 Adopted budget statement; certified taxable valuation; levy.

(1) After publication and hearing thereon and within the time prescribed by law, each governing body, except as provided in subsection (3) of this section,

shall file with and certify to the levying board or boards on or before September 20 of each year or September 20 of the final year of a biennial period and file with the auditor a copy of the adopted budget statement which complies with sections 13-518 to 13-522 or 79-1023 to 79-1030, together with the amount of the tax required to fund the adopted budget, setting out separately (a) the amount to be levied for the payment of principal or interest on bonds issued by the governing body and (b) the amount to be levied for all other purposes. Proof of publication shall be attached to the statements. Learning communities shall also file a copy of such adopted budget statement with member school districts on or before September 1 of each year. The governing body, in certifying the amount required, may make allowance for delinquent taxes not exceeding five percent of the amount required plus the actual percentage of delinquent taxes for the preceding tax year or biennial period and for the amount of estimated tax loss from any pending or anticipated litigation which involves taxation and in which tax collections have been or can be withheld or escrowed by court order. For purposes of this section, anticipated litigation shall be limited to the anticipation of an action being filed by a taxpayer who or which filed a similar action for the preceding year or biennial period which is still pending. Except for such allowances, a governing body shall not certify an amount of tax more than one percent greater or lesser than the amount determined under section 13-505.

(2) Each governing body shall use the certified taxable values as provided by the county assessor pursuant to section 13-509 for the current year in setting or certifying the levy. Each governing body may designate one of its members to perform any duty or responsibility required of such body by this section.

(3)(a) A Class I school district shall do the filing and certification required by subsection (1) of this section on or before August 1 of each year.

(b) A learning community shall do such filing and certification on or before September 1 of each year.

Source: Laws 1969, c. 145, § 7, p. 672; Laws 1971, LB 129, § 3; Laws 1977, LB 391, § 1; Laws 1979, LB 178, § 1; R.S.1943, (1983), § 23-927; Laws 1989, LB 643, § 1; Laws 1992, LB 1063, § 4; Laws 1992, Second Spec. Sess., LB 1, § 4; Laws 1993, LB 310, § 6; Laws 1993, LB 734, § 19; Laws 1995, LB 452, § 2; Laws 1996, LB 299, § 11; Laws 1996, LB 900, § 1018; Laws 1996, LB 1362, § 3; Laws 1997, LB 269, § 10; Laws 1998, LB 306, § 2; Laws 1998, Spec. Sess., LB 1, § 1; Laws 1999, LB 86, § 5; Laws 2002, LB 568, § 4; Laws 2006, LB 1024, § 2; Laws 2008, LB1154, § 1; Laws 2009, LB166, § 1; Laws 2013, LB111, § 5.

13-509.01 Cash balance; expenditure authorized; limitation.

On and after the first day of its fiscal year in 1993 and of each succeeding year or on or after the first day of its biennial period and until the adoption of the budget by a governing body in September, the governing body may expend any balance of cash on hand for the current expenses of the political subdivision governed by the governing body. Except as provided in section 13-509.02, such expenditures shall not exceed an amount equivalent to the total amount expended under the last budget in the equivalent period of the prior budget year or biennial period. Such expenditures shall be charged against the appro-

priations for each individual fund or purpose as provided in the budget when adopted.

Source: Laws 1993, LB 734, § 21; Laws 1994, LB 1257, § 4; Laws 2013, LB111, § 6.

13-513 Auditor; request information.

The auditor shall, on or before December 1 each year, request information from each governing body in a form prescribed by the auditor regarding (1) trade names, corporate names, or other business names under which the governing body operates and (2) agreements to which the governing body is a party under the Interlocal Cooperation Act and the Joint Public Agency Act. Each governing body shall provide such information to the auditor on or before December 31.

Source: Laws 2004, LB 939, § 2; Laws 2013, LB192, § 1.

Cross References

Interlocal Cooperation Act, see section 13-801.

Joint Public Agency Act, see section 13-2501.

ARTICLE 12

NEBRASKA PUBLIC TRANSPORTATION ACT

Section

13-1205. Department of Roads; powers, duties, and responsibilities; enumerated.

13-1205 Department of Roads; powers, duties, and responsibilities; enumerated.

The department shall have the following powers, duties, and responsibilities:

(1) To collect and maintain data on the level of public transportation services and needs in the state and identify areas not being adequately served by existing public or private transportation services;

(2) To assess the regional and statewide effect of changes, improvement, and route abandonments in the state's public transportation system;

(3) To develop a six-year statewide transit plan and programs for public transportation in coordination with local plans and programs developed by municipalities, counties, and transit authorities;

(4) To provide planning and technical assistance to agencies of the state, political subdivisions, or groups seeking to improve public transportation;

(5) To advise, consult, and cooperate with agencies of the state, the federal government, and other states, interstate agencies, political subdivisions, and groups concerned with public transportation;

(6) To cooperate with the Public Service Commission by providing periodic assessments to the commission when determining the effect of proposed regulatory decisions on public transportation;

(7) To administer federal and state programs providing financial assistance to public transportation, except those federal and state programs in which a municipality, county, transit authority, or other state agency is designated as the administrator; and

(8) To exercise all other powers necessary and proper for the discharge of its duties, including the adoption and promulgation of reasonable rules and regulations to carry out the act.

Source: Laws 1975, LB 443, § 9; Laws 1979, LB 322, § 4; Laws 1981, LB 545, § 4; Laws 1981, LB 144, § 4; R.S.1943, (1983), § 19-3905; Laws 1993, LB 158, § 4; Laws 2012, LB782, § 16; Laws 2013, LB222, § 3.

ARTICLE 21 ENTERPRISE ZONES

Section

- 13-2101.01. Act, how cited.
- 13-2103. Designation; application; requirements; limitation; term.
- 13-2105. State government interagency response team.
- 13-2109. Enterprise zone association; board; membership; vacancies; powers and duties; dissolution.
- 13-2112. Rules and regulations.
- 13-2114. Repealed. Laws 2013, LB 222, § 48.

13-2101.01 Act, how cited.

Sections 13-2101 to 13-2112 shall be known and may be cited as the Enterprise Zone Act.

Source: Laws 1993, LB 725, § 1; Laws 2013, LB222, § 4.

13-2103 Designation; application; requirements; limitation; term.

(1)(a) Beginning on the date the rules and regulations updated in accordance with section 13-2112 become effective as provided in section 84-908, the department shall, for a period of one hundred eighty days, accept formal applications for the designation of enterprise zones. Within sixty days after the end of such application period, the department may designate not more than five areas as enterprise zones based on eligible applications it has received. Each area designated as an enterprise zone shall meet all eligibility criteria. Of the enterprise zones authorized, no more than one shall be located inside the boundaries of a city of the metropolitan class and no more than one inside a city of the primary class.

(b) In the application period, the department may reject from consideration any application which does not fully and completely comport with the provisions of section 13-2104 at the end of the designated application period. In choosing among eligible applications for enterprise zone designation, the department shall consider the levels of distress existing within the applicant areas and the contents of the applicant's formal enterprise zone application.

(2) Any city, village, tribal government area, or county may apply for designation of an area within such city, village, tribal government area, or county as an enterprise zone, except that if a county seeks to have an area within an incorporated city or village or a tribal government area designated as an enterprise zone, the consent of the governing body of such city, village, or tribal government area shall first be required.

(3) If an incorporated city or village or a tribal government area consents, a county may apply on behalf of the city, village, or tribal government area for certification of an area within such city, village, or tribal government area as an

enterprise zone. Both a county and a city, village, or tribal government area shall not apply for certification of the same area.

(4) Two or more counties or tribal government areas may jointly apply for designation of an area as an enterprise zone which is located on both sides of their common boundaries.

(5) Political subdivisions wishing to file an application for designation of an enterprise zone shall first follow the procedures set out in sections 13-2106 to 13-2108. An application for designation as an enterprise zone shall be in a form and contain information prescribed by the department pursuant to section 13-2104.

(6) An area designated as an enterprise zone shall retain such designation for a period of ten years from the date of such designation.

(7) All enterprise zones designated as such within a single county shall not exceed a total of sixteen square miles in area.

Source: Laws 1992, LB 1240, § 3; Laws 1993, LB 725, § 4; Laws 2014, LB800, § 1.

Effective date July 18, 2014.

13-2105 State government interagency response team.

The Governor shall provide a state government interagency response team to work with local governments and enterprise zone associations on effective ways to use new and existing resources from all levels of government to improve development capacity in enterprise zones and accomplish the purposes of the Enterprise Zone Act.

Source: Laws 1992, LB 1240, § 5; Laws 1993, LB 725, § 6; Laws 2014, LB800, § 2.

Effective date July 18, 2014.

13-2109 Enterprise zone association; board; membership; vacancies; powers and duties; dissolution.

(1) There shall be created an enterprise zone association within each proposed enterprise zone upon the decision by the political subdivision to submit an enterprise zone application. Such enterprise zone association shall be governed by an enterprise zone association board which shall consist of seven members. The initial members of the board shall be appointed by the mayor of the city or village with the approval of the city council or village board, by the county board, or by the tribal chairperson. The city council, village board, county board, or tribal government shall establish the length of the terms and shall establish staggered terms so that no more than four members of the enterprise zone association board shall be appointed in any one-year period.

(2) The city council, village board, county board, or tribal government shall, by majority vote, nominate candidates and appoint from the candidates qualified persons to fill each vacant, open, or opening seat on the enterprise zone association board. A member of the enterprise zone association board, not otherwise disqualified, whose term of office has ended shall continue to serve as a member of the board until his or her successor is properly qualified and appointed.

(3) Vacancies on the enterprise zone association board shall be filled in the same manner as provided for appointments other than initial appointments,

and such members shall serve for the balance of the unexpired terms. A board member may serve more than one term. Any board member appointed as a resident of the area constituting the enterprise zone shall cease to be a member of the enterprise zone association board at such time as he or she ceases to be a resident within the area constituting the zone, and at such time his or her seat shall be vacant.

(4) The enterprise zone association board shall select its own officers and may exercise such other additional powers and authority as may be granted it by the department or the city, village, county, or tribal government. The presence of at least four members of the enterprise zone association board shall be necessary to transact any business.

(5) Individuals chosen to serve as members of the enterprise zone association board shall include property owners, business operators, and users of space within the area of the enterprise zone as well as individuals representing groups or organizations with an interest in furthering the purposes and goals of the enterprise zone. Not less than two-thirds of the members of the enterprise zone association board shall be residents of the area constituting the enterprise zone. For purposes of this section, residents of the area constituting the enterprise zone shall be construed to include those persons residing within a county in which an enterprise zone is located when the enterprise zone is not located in a city of the primary or metropolitan class.

(6) The city, village, county, or tribal government establishing the enterprise zone association shall provide appropriate staff assistance and support to the association.

(7) If an applicant for designation as an enterprise zone does not receive such designation, the association of such applicant shall be dissolved.

Source: Laws 1992, LB 1240, § 9; Laws 1993, LB 725, § 10; Laws 1998, LB 1259, § 1; Laws 2014, LB800, § 3.
Effective date July 18, 2014.

13-2112 Rules and regulations.

The department shall adopt and promulgate rules and regulations to carry out the Enterprise Zone Act. The department shall update such rules and regulations within six months after July 18, 2014.

Source: Laws 1992, LB 1240, § 12; Laws 1993, LB 725, § 15; Laws 2014, LB800, § 4.
Effective date July 18, 2014.

13-2114 Repealed. Laws 2013, LB 222, § 48.

ARTICLE 24

RETIREMENT BENEFITS AND PLANS

Section

13-2402. Political subdivision with defined benefit plan; notification required; valuation report; filing; report required; when; contents; failure to file; audit; costs.

13-2402 Political subdivision with defined benefit plan; notification required; valuation report; filing; report required; when; contents; failure to file; audit; costs.

(1) On or before November 1, 2014, each political subdivision which offers a defined benefit plan pursuant to section 401(a) of the Internal Revenue Code which was open to new members on January 1, 2004, shall submit written notification to the Nebraska Retirement Systems Committee of the Legislature that it offers such a plan.

(2) Beginning November 15, 2014, and each November 15 thereafter, the governing entity of the retirement plan of each political subdivision that offers such a defined benefit retirement plan shall file with the committee a copy of the most recent annual actuarial valuation of the retirement plan. The valuation report shall be filed electronically.

(3)(a) Beginning November 15, 2014, and each November 15 thereafter, the governing entity of the retirement plan of each political subdivision that offers such a defined benefit retirement plan shall file a report with the committee if either of the following conditions exists as of the latest annual actuarial valuation of the retirement plan: (i) The contributions do not equal the actuarial requirement for funding; or (ii) the funded ratio is less than eighty percent.

(b) The report shall include, but not be limited to, an analysis of the conditions and a recommendation for the circumstances and timing of any future benefit changes, contribution changes, or other corrective action, or any combination of actions, to improve the conditions. The committee may require a governing entity to present its report to the committee at a public hearing. The report shall be submitted electronically.

(4) If a governing entity does not file the reports required by subsection (2) or (3) of this section with the committee by November 15, the Auditor of Public Accounts may audit, or cause to be audited, the political subdivision offering the retirement plan. All costs of the audit shall be paid by the political subdivision.

(5) For purposes of this section, political subdivision means any local governmental body formed and organized under state law and any joint entity or joint public agency created under state law to act on behalf of political subdivisions.

Source: Laws 2014, LB759, § 1.

Effective date July 18, 2014.

ARTICLE 25

JOINT PUBLIC AGENCY ACT

Section

13-2525. Biennial report; fee.

13-2525 Biennial report; fee.

(1) Commencing in 2001 and each odd-numbered year thereafter, each joint public agency shall deliver to the Secretary of State a biennial report on a form prescribed and furnished by the Secretary of State that sets forth:

(a) The name of the joint public agency;

(b) The street address of its principal office and the name of its manager or executive director, if any, at the office in this state;

(c) The names and business or residence addresses of its representatives and principal officers;

(d) A brief description of the nature of its activities; and

(e) The names of the participating public agencies.

(2) The information in the biennial report must be current on the date the biennial report is executed on behalf of the joint public agency.

(3) The first biennial report must be delivered to the Secretary of State between January 1 and April 1 of the odd-numbered year following the calendar year in which the joint public agency was authorized to transact business. Subsequent biennial reports must be delivered to the Secretary of State between January 1 and April 1 of the following odd-numbered years. The biennial report is due on April 1 of the odd-numbered year in which it must be delivered to the Secretary of State as required by this section.

(4) If a biennial report does not contain the information required by this section, the Secretary of State shall promptly notify the reporting joint public agency in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the Secretary of State within thirty days after the effective date of notice, it is deemed to be timely filed.

(5) Upon the delivery of the biennial report as provided in this section, the Secretary of State shall charge and collect a fee of twenty dollars. The fee is due on April 1 of the odd-numbered year in which the biennial report must be delivered to the Secretary of State as required by this section.

(6) A correction or an amendment to the biennial report may be delivered to the Secretary of State for filing at any time.

Source: Laws 1999, LB 87, § 25; Laws 2014, LB774, § 1.
Effective date July 18, 2014.

ARTICLE 27

CIVIC AND COMMUNITY CENTER FINANCING ACT

Section

13-2701.	Act, how cited.
13-2702.	Purpose of act.
13-2703.	Terms, defined.
13-2704.	Civic and Community Center Financing Fund; created; use; investment.
13-2704.01.	Grants of assistance; purposes; applications; evaluation.
13-2704.02.	Grants of assistance; engineering and technical studies.
13-2705.	Conditional grant approval; limits.
13-2707.	Department; evaluation criteria; match required; location.
13-2707.01.	Grant; engineering and technical studies; evaluation criteria.
13-2709.	Information on grants; department; duties.

13-2701 Act, how cited.

Sections 13-2701 to 13-2710 shall be known and may be cited as the Civic and Community Center Financing Act.

Source: Laws 1999, LB 382, § 13; Laws 2011, LB297, § 2; Laws 2013, LB153, § 1.

13-2702 Purpose of act.

The purpose of the Civic and Community Center Financing Act is to support the development of civic, community, and recreation centers throughout Nebraska. Furthermore, the act is intended to support projects that foster maintenance or growth of communities.

Source: Laws 1999, LB 382, § 14; Laws 2011, LB297, § 3; Laws 2013, LB153, § 2.

13-2703 Terms, defined.

For purposes of the Civic and Community Center Financing Act:

(1) Civic center means a facility that is primarily used to host conventions, meetings, and cultural events and a library;

(2) Community center means the traditional center of a community, typically comprised of a cohesive core of residential, civic, religious, and commercial buildings, arranged around a main street and intersecting streets;

(3) Department means the Department of Economic Development;

(4) Fund means the Civic and Community Center Financing Fund;

(5) Historic building means a building eligible for listing on or currently listed on the National Register of Historic Places; and

(6) Recreation center means a facility used for athletics, fitness, sport activities, or recreation that is owned by a municipality and is available for use by the general public with or without charge. Recreation center does not include any facility that requires a person to purchase a membership to utilize such facility.

Source: Laws 1999, LB 382, § 15; Laws 2011, LB297, § 4; Laws 2013, LB153, § 3.

13-2704 Civic and Community Center Financing Fund; created; use; investment.

(1) The Civic and Community Center Financing Fund is created. The fund 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. Transfers may be made from the fund to the General Fund, the Department of Revenue Enforcement Fund, and the State Colleges Sport Facilities Cash Fund at the direction of the Legislature.

(2)(a) The department shall use the Civic and Community Center Financing Fund for the following purposes:

(i) For grants of assistance as described in section 13-2704.01;

(ii) For grants of assistance as described in section 13-2704.02; and

(iii) For reasonable and necessary costs of the department directly related to the administration of the fund, not to exceed the amount needed to employ a one-half full-time equivalent employee.

(b) The fund may not be used for programming, marketing, advertising, or facility-staffing activities.

(3) The State Treasurer shall transfer two hundred fifty thousand dollars from the Civic and Community Center Financing Fund to the State Colleges Sport Facilities Cash Fund on October 1 of 2012, 2013, and 2014. Commencing October 1, 2015, and every year thereafter, the State Treasurer shall transfer four hundred thousand dollars from the Civic and Community Center Financing Fund to the State Colleges Sport Facilities Cash Fund.

Source: Laws 1999, LB 382, § 16; Laws 2009, First Spec. Sess., LB3, § 8; Laws 2010, LB779, § 5; Laws 2011, LB297, § 5; Laws 2012, LB969, § 4; Laws 2013, LB153, § 4.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

13-2704.01 Grants of assistance; purposes; applications; evaluation.

(1) The department shall use the fund to provide grants of assistance for the following purposes:

(a) To assist in the construction of new civic centers and recreation centers or the renovation or expansion of existing civic centers and recreation centers;

(b) To assist in the conversion, rehabilitation, or reuse of historic buildings; or

(c) To upgrade community centers, including the demolition of substandard and abandoned buildings.

(2) Applications for grants of assistance pursuant to this section shall be evaluated by the department pursuant to section 13-2707.

Source: Laws 2013, LB153, § 5.

13-2704.02 Grants of assistance; engineering and technical studies.

(1) The department shall use the fund to provide grants of assistance for engineering and technical studies directly related to projects described in section 13-2704.01.

(2) Applications for grants of assistance pursuant to this section shall be evaluated by the department pursuant to section 13-2707.01.

Source: Laws 2013, LB153, § 6.

13-2705 Conditional grant approval; limits.

The department may conditionally approve grants of assistance from the fund to eligible and competitive applicants within the following limits:

(1) Except as provided in subdivision (2) of this section, a grant request shall be in an amount meeting the following requirements:

(a) For a grant of assistance under section 13-2704.01, at least ten thousand dollars but no more than:

(i) For a city of the primary class, one million five hundred thousand dollars;

(ii) For a municipality with a population of forty thousand but less than one hundred thousand, seven hundred fifty thousand dollars;

(iii) For a municipality with a population of twenty thousand but less than forty thousand, five hundred thousand dollars;

(iv) For a municipality with a population of ten thousand but less than twenty thousand, four hundred thousand dollars; and

(v) For a municipality with a population of less than ten thousand, two hundred fifty thousand dollars; and

(b) For a grant of assistance under section 13-2704.02, at least two thousand dollars but no more than ten thousand dollars;

(2) Upon the balance of the fund reaching two million five hundred thousand dollars, and until the balance of the fund falls below one million dollars, a grant request shall be in an amount meeting the following requirements:

(a) For a grant of assistance under section 13-2704.01, at least ten thousand dollars but no more than:

(i) For a city of the primary class, two million two hundred fifty thousand dollars;

(ii) For a municipality with a population of forty thousand but less than one hundred thousand, one million one hundred twenty-five thousand dollars;

(iii) For a municipality with a population of twenty thousand but less than forty thousand, seven hundred fifty thousand dollars;

(iv) For a municipality with a population of ten thousand but less than twenty thousand, six hundred thousand dollars; and

(v) For a municipality with a population of less than ten thousand, three hundred seventy-five thousand dollars; and

(b) For a grant of assistance under section 13-2704.02, at least two thousand dollars but no more than ten thousand dollars;

(3) Assistance from the fund shall not amount to more than fifty percent of the cost of the project for which a grant is requested; and

(4) A municipality shall not be awarded more than one grant of assistance under section 13-2704.01 and one grant of assistance under section 13-2704.02 in any five-year period.

Source: Laws 1999, LB 382, § 17; Laws 2003, LB 385, § 1; Laws 2010, LB789, § 1; Laws 2011, LB297, § 6; Laws 2013, LB153, § 7.

13-2707 Department; evaluation criteria; match required; location.

(1) The department shall evaluate all applications for grants of assistance under section 13-2704.01 based on the following criteria, which are listed in no particular order of preference:

(a) Retention Impact. Funding decisions by the department shall be based on the likelihood of the project retaining existing residents in the community where the project is located, developing, sustaining, and fostering community connections, and enhancing the potential for economic growth in a manner that will sustain the quality of life and promote long-term economic development;

(b) New Resident Impact. Funding decisions by the department shall be based on the likelihood of the project attracting new residents to the community where the project is located;

(c) Visitor Impact. Funding decisions by the department shall be based on the likelihood of the project enhancing or creating an attraction that would increase the potential of visitors to the community where the project is located from inside and outside the state;

(d) Readiness. The applicant's fiscal and economic capacity to finance the local share and ability to proceed and implement its plan and operate the civic center, community center, or recreation center; and

(e) Project Planning. Projects with completed technical assistance and feasibility studies shall be preferred to those with no prior planning.

(2) Any grant of assistance under section 13-2704.01 shall be matched at least equally from local sources. At least fifty percent of the local match must be in cash.

(3) To receive a grant of assistance under section 13-2704.01, the project for which the grant is requested shall be located in the municipality that applies for the grant.

Source: Laws 1999, LB 382, § 19; Laws 2003, LB 385, § 3; Laws 2011, LB297, § 7; Laws 2013, LB153, § 8.

13-2707.01 Grant; engineering and technical studies; evaluation criteria.

The department shall evaluate all applications for grants of assistance under section 13-2704.02 based on the following criteria:

(1) Financial Support. Assistance from the fund shall be matched at least equally from local sources. At least fifty percent of the local match must be in cash. Projects with a higher level of local matching funds shall be preferred as compared to those with a lower level of matching funds; and

(2) Project Location. Assistance from the fund shall be for engineering and technical studies related to projects that will be located in the municipality that applies for the grant.

Source: Laws 2013, LB153, § 9.

13-2709 Information on grants; department; duties.

The department shall submit, as part of the department's annual status report under section 81-1201.11, the following information regarding the Civic and Community Center Financing Act:

(1) Information documenting the grants conditionally approved for funding by the Legislature in the following fiscal year;

(2) Reasons why a full application was not sent to any municipality seeking assistance under the act;

(3) The amount of sales tax revenue generated for the fund pursuant to subsection (4) of section 13-2610 and subsection (9) of section 13-3108, the total amount of grants applied for under the act, the year-end fund balance, and, if all available funds have not been committed to funding grants under the act, an explanation of the reasons why all such funds have not been so committed;

(4) The amount of appropriated funds actually expended by the department for the year;

(5) The department's current budget for administration of the act and the department's planned use and distribution of funds, including details on the amount of funds to be expended on grants and the amount of funds to be expended by the department for administrative purposes; and

(6) Grant summaries, including the applicant municipality, project description, grant amount requested, amount and type of matching funds, and reasons for approval or denial based on evaluation criteria from section 13-2707 or 13-2707.01 for every application seeking assistance under the act.

Source: Laws 1999, LB 382, § 21; Laws 2011, LB404, § 2; Laws 2013, LB153, § 10; Laws 2014, LB867, § 1.
Operative date April 3, 2014.

ARTICLE 31

SPORTS ARENA FACILITY FINANCING ASSISTANCE ACT

Section

13-3107. Tax Commissioner; duties; Department of Revenue; rules and regulations.

13-3108. Sports Arena Facility Support Fund; created; investment; State Treasurer; duties; state assistance; use.

13-3107 Tax Commissioner; duties; Department of Revenue; rules and regulations.

(1) If an application is approved, the Tax Commissioner shall:

(a) Audit or review audits of the approved eligible sports arena facility to determine the (i) state sales tax revenue collected by retailers doing business at such facility on sales at such facility, (ii) state sales tax revenue collected on primary and secondary box office sales of admissions to such facility, and (iii) new state sales tax revenue collected by nearby retailers;

(b) Certify annually the amount of state sales tax revenue and new state sales tax revenue determined under subdivision (a) of this subsection to the Legislature; and

(c) Determine if more than one facility is eligible for state assistance from state sales tax revenue collected by the same nearby retailers. If the Tax Commissioner has made such a determination, the facility that was first determined to be eligible for state assistance shall be the only facility eligible to receive such funds.

(2) State sales tax revenue collected by retailers that are doing business at an eligible sports arena facility and new state sales tax revenue collected by nearby retailers shall be reported on informational returns developed by the Department of Revenue and provided to any such retailers by the facility. The informational returns shall be submitted to the department by the retailer by the twentieth day of the month following the month the sales taxes are collected. The Tax Commissioner shall use the data from the informational returns and sales tax returns of both such categories of retailers and the sports arena facility for purposes of the Sports Arena Facility Financing Assistance Act.

(3) On or before April 1, 2014, the Tax Commissioner shall certify to the State Treasurer, for each eligible sports arena facility for which state assistance has been approved, the total amount of state sales tax revenue and new state sales tax revenue described in subdivisions (1)(a)(i) through (iii) of this section that was collected from July 1, 2013, through December 31, 2013. The certified amount shall be used for purposes of making the transfer required under subdivision (2)(a) of section 13-3108 and making the distribution of state assistance described in subsection (4) of section 13-3108.

(4) Beginning in 2014, the Tax Commissioner shall use data from the informational returns and sales tax returns described in subsection (2) of this section to certify quarterly, for each eligible sports arena facility for which state assistance has been approved, the total amount of state sales tax revenue and new state sales tax revenue described in subdivisions (1)(a)(i) through (iii) of this section that was collected in the preceding calendar quarter. The Tax Commissioner shall certify such amount to the State Treasurer within sixty days after the end of each calendar quarter, and such certification shall be used

for purposes of making the transfers required under subdivision (2)(b) of section 13-3108 and making the quarterly distributions of state assistance described in subsection (5) of section 13-3108.

(5) The Department of Revenue may adopt and promulgate rules and regulations to carry out the Sports Arena Facility Financing Assistance Act.

Source: Laws 2010, LB779, § 13; Laws 2011, LB210, § 2; Laws 2014, LB867, § 2.

Operative date April 3, 2014 .

13-3108 Sports Arena Facility Support Fund; created; investment; State Treasurer; duties; state assistance; use.

(1) The Sports Arena Facility Support 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)(a) Upon receiving the certification described in subsection (3) of section 13-3107, the State Treasurer shall transfer the amount certified to the fund.

(b) Upon receiving the quarterly certification described in subsection (4) of section 13-3107, the State Treasurer shall transfer the amount certified to the fund.

(3)(a) It is the intent of the Legislature to appropriate from the fund money to be distributed as provided in subsections (4) and (5) of this section to any political subdivision for which an application for state assistance under the Sports Arena Facility Financing Assistance Act has been approved an amount not to exceed seventy percent of the (i) state sales tax revenue collected by retailers doing business at eligible sports arena facilities on sales at such facilities, (ii) state sales tax revenue collected on primary and secondary box office sales of admissions to such facilities, and (iii) new state sales tax revenue collected by nearby retailers and sourced under sections 77-2703.01 to 77-2703.04 to a location within six hundred yards of the eligible facility.

(b) The amount to be appropriated for distribution as state assistance to a political subdivision under this subsection for any one year after the tenth year shall not exceed the highest such amount appropriated under subdivision (3)(a) of this section during any one year of the first ten years of such appropriation. If seventy percent of the state sales tax revenue as described in subdivision (3)(a) of this section exceeds the amount to be appropriated under this subdivision, such excess funds shall be transferred to the General Fund.

(4) The amount certified under subsection (3) of section 13-3107 shall be distributed as state assistance on or before April 15, 2014.

(5) Beginning in 2014, quarterly distributions of state assistance shall be made. Such quarterly distributions shall be based on the certifications provided under subsection (4) of section 13-3107 and shall occur within fifteen days after receipt of such certification.

(6) The total amount of state assistance approved for an eligible sports arena facility shall not (a) exceed fifty million dollars or (b) be paid out for more than twenty years after the issuance of the first bond for the sports arena facility.

(7) State assistance to the political subdivision shall no longer be available upon the retirement of the bonds issued to acquire, construct, improve, or equip the facility or any subsequent bonds that refunded the original issue or

when state assistance reaches the amount determined under subsection (6) of this section, whichever comes first.

(8) State assistance shall not be used for an operating subsidy or other ancillary facility.

(9) The thirty percent of state sales tax revenue remaining after the appropriation and transfer in subsection (3) of this section shall be appropriated by the Legislature to the Civic and Community Center Financing Fund.

(10) Except as provided in subsection (11) of this section for a city of the primary class, any municipality that has applied for and received a grant of assistance under the Civic and Community Center Financing Act shall not receive state assistance under the Sports Arena Facility Financing Assistance Act for the same project for which the grant was awarded under the Civic and Community Center Financing Act.

(11) A city of the primary class shall not be eligible to receive a grant of assistance from the Civic and Community Center Financing Act if the city has applied for and received a grant of assistance under the Sports Arena Facility Financing Assistance Act.

Source: Laws 2010, LB779, § 14; Laws 2011, LB297, § 9; Laws 2012, LB426, § 2; Laws 2014, LB867, § 3.
Operative date April 3, 2014 .

Cross References

Civic and Community Center Financing Act, see section 13-2701.

Nebraska Capital Expansion Act, see section 72-1269.

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



CHAPTER 14

CITIES OF THE METROPOLITAN CLASS

Article.

1. General Powers. 14-109.
4. City Planning, Zoning. 14-415, 14-420.
5. Fiscal Management, Revenue, and Finances.
 - (g) Pension Board. 14-567.
6. Police Department.
 - (a) General Provisions. 14-607.
18. Metropolitan Transit Authority. 14-1805.01.
21. Public Utilities. 14-2102 to 14-2139.

ARTICLE 1

GENERAL POWERS

Section

- 14-109. City council; powers; occupation and license taxes; motor vehicle fee; conditions; limitations.

14-109 City council; powers; occupation and license taxes; motor vehicle fee; conditions; limitations.

(1)(a) The city council shall have power to tax for revenue, license, and regulate any person within the limits of the city by ordinance except as otherwise provided in this section. Such tax may include both a tax for revenue and license. The city council may raise revenue by levying and collecting a tax on any occupation or business within the limits of the city. After March 27, 2014, any occupation tax imposed pursuant to this section shall make a reasonable classification of businesses, users of space, or kinds of transactions for purposes of imposing such tax, except that no occupation tax shall be imposed on any transaction which is subject to tax under section 53-160, 66-489, 66-489.02, 66-4,140, 66-4,145, 66-4,146, 77-2602, or 77-4008 or which is exempt from tax under section 77-2704.24. The occupation tax shall be imposed in the manner provided in section 18-1208, except that section 18-1208 does not apply to an occupation tax subject to section 86-704. All such taxes shall be uniform in respect to the class upon which they are imposed. All scientific and literary lectures and entertainments shall be exempt from taxation, as well as concerts and all other musical entertainments given exclusively by the citizens of the city. It shall be the duty of the city clerk to deliver to the city treasurer the certified copy of the ordinance levying such tax, and the city clerk shall append thereto a warrant requiring the city treasurer to collect such tax.

(b) For purposes of this subsection, limits of the city does not include the extraterritorial zoning jurisdiction of such city.

(2)(a) Except as otherwise provided in subdivision (c) of this subsection, the city council shall also have power to require any individual whose primary residence or person who owns a place of business which is within the limits of the city and that owns and operates a motor vehicle within such limits to annually register such motor vehicle in such manner as may be provided and to

require such person to pay an annual motor vehicle fee therefor and to require the payment of such fee upon the change of ownership of such vehicle. All such fees which may be provided for under this subsection shall be credited to a separate fund of the city, thereby created, to be used exclusively for constructing, repairing, maintaining, or improving streets, roads, alleys, public ways, or parts thereof or for the amortization of bonded indebtedness when created for such purposes.

(b) No motor vehicle fee shall be required under this subsection if (i) a vehicle is used or stored but temporarily in such city for a period of six months or less in a twelve-month period, (ii) an individual does not have a primary residence or a person does not own a place of business within the limits of the city and does not own and operate a motor vehicle within the limits of the city, or (iii) an individual is a full-time student attending a postsecondary institution within the limits of the city and the motor vehicle's situs under the Motor Vehicle Certificate of Title Act is different from the place at which he or she is attending such institution.

(c) After December 31, 2012, no motor vehicle fee shall be required of any individual whose primary residence is or person who owns a place of business within the extraterritorial zoning jurisdiction of such city.

(d) For purposes of this subsection, limits of the city includes the extraterritorial zoning jurisdiction of such city.

(3) For purposes of this section, person includes bodies corporate, societies, communities, the public generally, individuals, partnerships, limited liability companies, joint-stock companies, cooperatives, and associations. Person does not include any federal, state, or local government or any political subdivision thereof.

Source: Laws 1921, c. 116, art. I, § 9, p. 408; C.S.1922, § 3496; C.S.1929, § 14-109; R.S.1943, § 14-109; Laws 1997, LB 752, § 73; Laws 2011, LB81, § 1; Laws 2012, LB745, § 2; Laws 2014, LB474, § 1. Effective date March 27, 2014.

Cross References

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

ARTICLE 4 CITY PLANNING, ZONING

Section

14-415. Building ordinance or regulations; enforcement; inspection; violations; penalty.
14-420. Request for change in zoning; notice; requirements; failure to give; effect.

14-415 Building ordinance or regulations; enforcement; inspection; violations; penalty.

The city, in addition to other remedies, may institute any appropriate action or proceedings to prevent an unlawful erection, construction, reconstruction, alteration, conversion, maintenance, or use of any building or structure in violation of any ordinance or regulations enacted or issued pursuant to sections 14-401 to 14-418, to restrain, correct, or abate such violation, to prevent the occupancy of the building, structure, or land, or to prevent any illegal act, conduct, business, or use in or about such premises. The ordinance or regula-

tions shall be enforced by the city as it may provide. In addition to and not in restriction of any other powers, the city may cause any building, structure, place, or premises to be inspected and examined and to order in writing the remedying of any condition found to exist therein or thereat in violation of any provision of the ordinance or regulations made under authority of such sections. The owner, general agent, lessee, or tenant of a building or premises or of any part of such building or premises where a violation of any provision of the ordinance or regulations has been committed or shall exist or the general agent, architect, builder, contractor, or any other person who commits, takes part, or assists in any such violation or who maintains any building or premises in which any such violation shall exist shall be guilty of a Class IV misdemeanor for a first or second violation and a Class II misdemeanor for a third or subsequent violation, if the third or subsequent violation is committed within two years after the commission of the prior violation.

Source: Laws 1925, c. 45, § 9, p. 184; C.S.1929, § 14-412; R.S.1943, § 14-415; Laws 1959, c. 37, § 3, p. 212; Laws 2014, LB174, § 1. Effective date July 18, 2014.

14-420 Request for change in zoning; notice; requirements; failure to give; effect.

(1) A city of the metropolitan class shall provide written notice of any properly filed request for a change in the zoning classification of a subject property to the owners of adjacent property in the manner set out in this section.

(2) Initial notice of the proposed zoning change on the subject property shall be sent to the owners of adjacent property by regular United States mail, postage prepaid, to the owner's address as it appears in the records of the office of the register of deeds, postmarked at least ten working days prior to the planning board public hearing on the proposed change. The initial notice shall also be provided at least ten working days prior to the hearing to any registered neighborhood association when the subject property is located within the boundary of the area of concern of such association in the manner requested by the association. Each neighborhood association desiring to receive such notice shall register with the city the area of concern of such association and provide the name of and contact information for the individual who is to receive notice on behalf of such association and the requested manner of service, whether by email or regular, certified, or registered mail. The registration shall be in accordance with any rules adopted and promulgated by the city. Such notice shall describe the subject property or give its address, describe the nature of the zoning change requested, and contain the date, time, and location of the planning board hearing.

(3) A second notice of the proposed zoning change on the subject property shall be sent to the same owners of adjacent property who were provided with notice under subsection (2) of this section. Such notice shall be sent by regular United States mail, postage prepaid, to the owner's address as it appears in the records of the office of the register of deeds, postmarked at least ten working days prior to the city council public hearing on the proposed change. Such notice shall describe the subject property or give its address, describe the nature of the zoning change requested, and contain the date, time, and location of the city council public hearing.

(4) No additional or further notice beyond that required by subsections (2) and (3) of this section shall be necessary in the event that the scheduled planning board or city council public hearing on the proposed zoning change is adjourned, continued, or postponed until a later date.

(5) The requirements of this section shall not apply to proposed changes in the text of the zoning code itself or any proposed changes in the zoning code affecting whole classes or classifications of property throughout the jurisdiction of the city.

(6) Except for a willful or deliberate failure to cause notice to be given, no zoning decision made by a city of the metropolitan class either to accept or reject a proposed zoning change with regard to a subject property shall be void, invalidated, or affected in any way because of any irregularity, defect, error, or failure on the part of the city or its employees to cause notice to be given as required by this section if a reasonable attempt to comply with this section was made. No action to challenge the validity of the acceptance or rejection of a proposed zoning change on the basis of this section shall be filed more than one year following the date of the formal acceptance or rejection of the zoning change by the city council.

(7) Except for a willful or deliberate failure to cause notice to be given, the city and its employees shall not be liable for any damage to any person resulting from any failure to cause notice to be given as required by this section when a reasonable attempt was made to provide such notice. No action for damages resulting from the failure to cause notice to be provided as required by this section shall be filed more than one year following the date of the formal acceptance or rejection of the proposed zoning change by the city council.

(8) For purposes of this section:

(a) Adjacent property shall mean any piece of real property any portion of which is located within three hundred feet of the nearest boundary line of the subject property or within one thousand feet of the nearest boundary line of the subject property if the proposed zoning change involves a heavy industrial district classification;

(b) Owner shall mean the owner of a piece of adjacent property as indicated on the records of the office of the register of deeds as provided to or made available to the city no earlier than the last business day before the twenty-fifth day preceding the planning board public hearing on the zoning change proposed for the subject property; and

(c) Subject property shall mean any tract of real property located within the boundaries of a city of the metropolitan class or within the zoning jurisdiction of a city of the metropolitan class which is the subject of a properly filed request for a change of its zoning classification.

Source: Laws 1993, LB 367, § 1; Laws 2014, LB679, § 1.
Effective date July 18, 2014.

ARTICLE 5

FISCAL MANAGEMENT, REVENUE, AND FINANCES

(g) PENSION BOARD

Section

14-567. Pension board; duties; retirement plan reports.

(g) PENSION BOARD

14-567 Pension board; duties; retirement plan reports.

(1) Beginning December 31, 1998, and each December 31 thereafter, the pension board of a city of the metropolitan class shall file with the Public Employees Retirement Board an annual report on each retirement plan established by such city pursuant to section 401(a) of the Internal Revenue Code and shall submit copies of such report to the Auditor of Public Accounts. The Auditor of Public Accounts may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. The annual report shall be in a form prescribed by the Public Employees Retirement Board and shall contain the following information for each such retirement plan:

(a) The number of persons participating in the retirement plan;

(b) The contribution rates of participants in the plan;

(c) Plan assets and liabilities;

(d) The names and positions of persons administering the plan;

(e) The names and positions of persons investing plan assets;

(f) The form and nature of investments;

(g) For each defined contribution plan, a full description of investment policies and options available to plan participants; and

(h) For each defined benefit plan, the levels of benefits of participants in the plan, the number of members who are eligible for a benefit, and the total present value of such members' benefits, as well as the funding sources which will pay for such benefits.

If a plan contains no current active participants, the pension board may file in place of such report a statement with the Public Employees Retirement Board indicating the number of retirees still drawing benefits, and the sources and amount of funding for such benefits.

(2) If such retirement plan is a defined benefit plan which was open to new members on January 1, 2004, in addition to the reports required by section 13-2402, the pension board of a city of the metropolitan class shall cause to be prepared an annual report and shall file the same with the Public Employees Retirement Board and the Nebraska Retirement Systems Committee of the Legislature and submit to the Auditor of Public Accounts a copy of such report. The Auditor of Public Accounts may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. If the pension board does not submit a copy of the report to the Auditor of Public Accounts within six months after the end of the plan year, the Auditor of Public Accounts may audit, or cause to be audited, the city. All costs of the audit shall be paid by the city. The report shall consist of a full actuarial analysis of each such retirement plan established by the city. The analysis shall be prepared by an independent private organization or public entity employing actuaries who are members in good standing of the American Academy of Actuaries, and which organization or entity has demonstrated expertise to perform this type of analysis and is unrelated to any organization offering investment advice or which provides investment management services to the retirement plan. The report to the Nebraska Retirement Systems Committee shall be submitted electronically.

Source: Laws 1998, LB 1191, § 5; Laws 1999, LB 795, § 3; Laws 2011, LB474, § 3; Laws 2014, LB759, § 4.
Effective date July 18, 2014.

ARTICLE 6
POLICE DEPARTMENT

(a) GENERAL PROVISIONS

Section

14-607. Police officer; reports; duties.

(a) GENERAL PROVISIONS

14-607 Police officer; reports; duties.

It shall be the duty of police officers to make a daily report to the chief of police of the time of lighting and extinguishing of all public lights and lamps upon their beats, and also any lamps that may be broken or out of repair. They shall also report to the same office any defect in any sidewalk, street, alley, or other public highway or the existence of ice or dangerous obstructions on the walks or streets, or break in any sewer, or disagreeable odors emanating from inlets to sewers, or any violation of the health laws or ordinances of the city. Suitable blanks for making such reports shall be furnished to the chief of police by the city electrician and health commissioner. Such reports shall be by the chief of police transmitted to the proper officers of the city. In case of any violation of laws or ordinances the police officer making report shall report the facts to the appropriate prosecuting authority. They shall also perform such other duties as may be required by ordinance.

Source: Laws 1921, c. 116, art. V, § 7, p. 497; C.S.1922, § 3688; C.S. 1929, § 14-607; R.S.1943, § 14-607; Laws 2014, LB464, § 1. Operative date July 18, 2014.

ARTICLE 18
METROPOLITAN TRANSIT AUTHORITY

Section

14-1805.01. Metropolitan transit authority; retirement plan reports; duties.

14-1805.01 Metropolitan transit authority; retirement plan reports; duties.

(1) Beginning December 31, 1998, and each December 31 thereafter, the chairperson of the board shall file with the Public Employees Retirement Board an annual report on each retirement plan established pursuant to section 14-1805 and section 401(a) of the Internal Revenue Code and shall submit copies of such report to the Auditor of Public Accounts. The Auditor of Public Accounts may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. The annual report shall be in a form prescribed by the Public Employees Retirement Board and shall contain the following information for each such retirement plan:

- (a) The number of persons participating in the retirement plan;
- (b) The contribution rates of participants in the plan;
- (c) Plan assets and liabilities;
- (d) The names and positions of persons administering the plan;
- (e) The names and positions of persons investing plan assets;
- (f) The form and nature of investments;

(g) For each defined contribution plan, a full description of investment policies and options available to plan participants; and

(h) For each defined benefit plan, the levels of benefits of participants in the plan, the number of members who are eligible for a benefit, and the total present value of such members' benefits, as well as the funding sources which will pay for such benefits.

If a plan contains no current active participants, the chairperson may file in place of such report a statement with the Public Employees Retirement Board indicating the number of retirees still drawing benefits, and the sources and amount of funding for such benefits.

(2) If such retirement plan is a defined benefit plan which was open to new members on January 1, 2004, in addition to the reports required by section 13-2402, the authority shall cause to be prepared an annual report and the chairperson shall file the same with the Public Employees Retirement Board and the Nebraska Retirement Systems Committee of the Legislature and submit to the Auditor of Public Accounts a copy of such report. The Auditor of Public Accounts may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. If the authority does not submit a copy of the report to the Auditor of Public Accounts within six months after the end of the plan year, the Auditor of Public Accounts may audit, or cause to be audited, the authority. All costs of the audit shall be paid by the authority. The report shall consist of a full actuarial analysis of each such retirement plan established pursuant to section 14-1805. The analysis shall be prepared by an independent private organization or public entity employing actuaries who are members in good standing of the American Academy of Actuaries, and which organization or entity has demonstrated expertise to perform this type of analysis and is unrelated to any organization offering investment advice or which provides investment management services to the retirement plan. The report to the Nebraska Retirement Systems Committee shall be submitted electronically.

Source: Laws 1998, LB 1191, § 8; Laws 1999, LB 795, § 4; Laws 2011, LB474, § 4; Laws 2014, LB759, § 5.
Effective date July 18, 2014.

ARTICLE 21

PUBLIC UTILITIES

Section

- 14-2102. Board of directors; qualifications; election; outside member.
- 14-2103. Board of directors; territory outside city; participation in election; filings; where made.
- 14-2109. Utilities district; personnel; duties; salary.
- 14-2110. Utilities district; employees; removal.
- 14-2111. Utilities district; employees; retirement and other benefits; terms and conditions; reports; payment for civil damages; conditions.
- 14-2126. Utilities district; hydrants; location; maintenance.
- 14-2138. Utilities district; payment to city of the metropolitan class; allocation.
- 14-2139. Utilities district; payment to cities or villages; allocation.

14-2102 Board of directors; qualifications; election; outside member.

(1) In each metropolitan utilities district service area, there shall be a board of directors consisting of seven members. The members shall be elected as provided in section 32-540.

(2) Registered voters within the boundaries of the district shall be registered voters of such district. A registered voter of the district shall be eligible for the office of director subject to the special qualification of residence for the outside member, except that if the board of directors, by resolution, divides the territory of the district into election subdivisions pursuant to subsection (2) of section 32-540, a registered voter of the district shall be eligible for the office of director from the election subdivision in which he or she resides.

(3) The outside member specified in section 32-540 shall be a registered voter residing within the district but outside the corporate limits of the city of the metropolitan class for which the district was created.

In the event of the annexation of the area within which the outside member resides, he or she may continue to serve as the outside member until the expiration of the term of office for which such member was elected and until a successor is elected and qualified.

Source: Laws 1913, c. 143, § 3, p. 350; R.S.1913, § 4245; C.S.1922, § 3747; C.S.1929, § 14-1003; R.S.1943, § 14-1003; Laws 1945, c. 17, § 1, p. 121; Laws 1953, c. 22, § 1, p. 93; Laws 1961, c. 32, § 1, p. 152; Laws 1976, LB 665, § 1; Laws 1977, LB 201, § 3; R.S.1943, (1991), § 14-1003; Laws 1992, LB 746, § 2; Laws 1994, LB 76, § 477; Laws 2009, LB562, § 1; Laws 2014, LB1014, § 1.
Effective date July 18, 2014.

14-2103 Board of directors; territory outside city; participation in election; filings; where made.

Whenever a metropolitan utilities district is extended to include sanitary and improvement districts, unincorporated area, towns, villages, or territory lying outside the corporate limits of cities of the metropolitan class or so extended as to include sanitary and improvement districts, unincorporated area, towns, or villages in an adjoining county or counties, then such sanitary and improvement districts, unincorporated area, towns, or villages shall have a right to participate in the nomination and in the election of members of the board of directors of the metropolitan utilities district. The election commissioner or county clerk of each of the counties in which ballots are cast pursuant to this section shall within seven days after the election transmit, by mail or otherwise, to the election commissioner of the county in which the city of the metropolitan class is located, a copy of the abstract of the votes cast for members of the board of directors. The election commissioner shall in due course deliver to the candidate receiving the highest number of votes a certificate of election as a member of the board of directors. Any and all filings for such office shall be made with the election commissioner of the county in which the city of the metropolitan class is located notwithstanding that the person wishing to file lives in a county adjoining the one in which the city of the metropolitan class is located.

Source: Laws 1921, c. 109, § 1, p. 385; C.S.1922, § 3748; C.S.1929, § 14-1004; R.S.1943, § 14-1004; Laws 1961, c. 32, § 2, p. 152; R.S.1943, (1991), § 14-1004; Laws 1992, LB 746, § 3; Laws 1994, LB 76, § 478; Laws 2014, LB1014, § 2.
Effective date July 18, 2014.

14-2109 Utilities district; personnel; duties; salary.

The board of directors of a metropolitan utilities district shall at its first regular meeting appoint an individual with an official title designated by the board who shall (1) act as secretary of such board, (2) have general supervision of the management, construction, operation, and maintenance of the utility plants and property under the jurisdiction of or owned by such metropolitan utilities district, subject to the direction of the board, (3) hold office at the pleasure of the board, (4) possess business training, executive experience, and knowledge of the development and operation of public utilities, (5) receive such compensation as the board may determine, and (6) devote his or her exclusive time to the duties of the office. The board of directors may employ or authorize the employment of such other employees and assistants as may be deemed necessary for the operation and maintenance of the utility plants under its jurisdiction and of the conduct of the affairs of the board and provide for their compensation. The compensation of the appointed individual and such employees shall be paid from funds under control of the board. In no event shall the compensation, as a salary or otherwise, of any employee or officer exceed ten thousand dollars per annum unless approved by a vote of two-thirds or more of the members of the board of directors. The record of such vote of approval, together with the names of the directors so voting, shall be made a part of the permanent records of the board.

Source: Laws 1913, c. 143, § 13, p. 356; R.S.1913, § 4255; Laws 1919, c. 33, § 2, p. 108; C.S.1922, § 3758; Laws 1923, c. 134, § 1, p. 329; C.S.1929, § 14-1014; R.S.1943, § 14-1020; Laws 1947, c. 20, § 3, p. 108; R.S.1943, (1983), § 14-1020; R.S.1943, (1991), § 14-1101.01; Laws 1992, LB 746, § 9; Laws 2001, LB 177, § 2; Laws 2007, LB207, § 1; Laws 2013, LB208, § 1.

14-2110 Utilities district; employees; removal.

No regular appointee or employee of the metropolitan utilities district, except the individual appointed in section 14-2109, who has been in its service consecutively for more than one year shall be subject to removal except upon a two-thirds vote of the full board and then only for cause which shall be stated in writing and filed with the secretary of the board at least ten days prior to a hearing preceding such removal.

Source: Laws 1913, c. 143, § 14, p. 356; R.S.1913, § 4256; Laws 1919, c. 33, § 3, p. 108; C.S.1922, § 3759; C.S.1929, § 14-1015; Laws 1941, c. 20, § 1, p. 110; C.S.Supp.,1941, § 14-1015; Laws 1943, c. 38, § 1(1), p. 180; R.S.1943, § 14-1021; R.S.1943, (1991), § 14-1021; Laws 1992, LB 746, § 10; Laws 2007, LB207, § 2; Laws 2013, LB208, § 2.

14-2111 Utilities district; employees; retirement and other benefits; terms and conditions; reports; payment for civil damages; conditions.

(1) The board of directors of any metropolitan utilities district may also provide benefits for, insurance of, and annuities for the present and future employees and appointees of the district covering accident, disease, death, total and permanent disability, and retirement, all or any of them, under such terms and conditions as the board may deem proper and expedient from time to time. Any retirement plan adopted by the board of directors shall be upon some

contributory basis requiring contributions by both the district and the employee or appointee, except that the district may pay the entire cost of the fund necessary to cover service rendered prior to the adoption of any new retirement plan. Any retirement plan shall take into consideration the benefits provided for employees and appointees of metropolitan utilities districts under the Social Security Act, and any benefits provided under a contributory retirement plan shall be supplemental to the benefits provided under the Social Security Act as defined in section 68-602 if the employees entitled to vote in a referendum vote in favor of old age and survivors' insurance coverage. To effectuate any plan adopted pursuant to this authority, the board of directors of the district is empowered to establish and maintain reserves and funds, provide for insurance premiums and costs, and make such delegation as may be necessary to carry into execution the general powers granted by this section. Except as provided in subsection (4) of this section, payments made to employees and appointees, under the authority in this section, shall be exempt from attachment or other legal process and shall not be assignable.

(2) Any retirement plan adopted by the board of directors of any metropolitan utilities district may allow the district to pick up the employee contribution required by this section for all compensation paid on or after January 1, 1986, and the contributions so picked up shall be treated as employer contributions in determining federal tax treatment under the Internal Revenue Code, except that the employer shall continue to withhold federal income taxes based upon such contributions until the Internal Revenue Service or the federal courts rule that, pursuant to section 414(h) of the Internal Revenue Code, such contributions shall not be included as gross income of the employee until such time as they are distributed or made available. The employer shall pay the employee contributions from the same source of funds which is used in paying earnings to the employees. The employer shall pick up the contributions by a salary deduction either through a reduction in the cash salary of the employee or a combination of a reduction in salary and offset against a future salary increase. Employee contributions picked up shall be treated in the same manner and to the same extent as employee contributions made prior to the date picked up.

(3)(a) Beginning December 31, 1998, and each December 31 thereafter, the chairperson of the board shall file with the Public Employees Retirement Board an annual report on each retirement plan established pursuant to this section and section 401(a) of the Internal Revenue Code and shall submit copies of such report to the Auditor of Public Accounts. The Auditor of Public Accounts may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. The annual report shall be in a form prescribed by the Public Employees Retirement Board and shall contain the following information for each such retirement plan:

- (i) The number of persons participating in the retirement plan;
- (ii) The contribution rates of participants in the plan;
- (iii) Plan assets and liabilities;
- (iv) The names and positions of persons administering the plan;
- (v) The names and positions of persons investing plan assets;
- (vi) The form and nature of investments;
- (vii) For each defined contribution plan, a full description of investment policies and options available to plan participants; and

(viii) For each defined benefit plan, the levels of benefits of participants in the plan, the number of members who are eligible for a benefit, and the total present value of such members' benefits, as well as the funding sources which will pay for such benefits.

If a plan contains no current active participants, the chairperson may file in place of such report a statement with the Public Employees Retirement Board indicating the number of retirees still drawing benefits, and the sources and amount of funding for such benefits.

(b) If such retirement plan is a defined benefit plan which was open to new members on January 1, 2004, in addition to the reports required by section 13-2402, the board of directors of any metropolitan utilities district shall cause to be prepared an annual report and shall file the same with the Public Employees Retirement Board and the Nebraska Retirement Systems Committee of the Legislature and submit to the Auditor of Public Accounts a copy of such report. The Auditor of Public Accounts may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. If the board of directors does not submit a copy of the report to the Auditor of Public Accounts within six months after the end of the plan year, the Auditor of Public Accounts may audit, or cause to be audited, the metropolitan utilities district. All costs of the audit shall be paid by the metropolitan utilities district. The report shall consist of a full actuarial analysis of each such retirement plan established pursuant to this section. The analysis shall be prepared by an independent private organization or public entity employing actuaries who are members in good standing of the American Academy of Actuaries, and which organization or entity has demonstrated expertise to perform this type of analysis and is unrelated to any organization offering investment advice or which provides investment management services to the retirement plan. The report to the Nebraska Retirement Systems Committee shall be submitted electronically.

(4) If an employee or appointee is convicted of or pleads no contest to a felony that is defined as assault, sexual assault, kidnapping, child abuse, false imprisonment, or theft by embezzlement and is found liable for civil damages as a result of such felony, following distribution of the employee's or appointee's benefits or annuities from the retirement plan, the court may order the payment of the employee's or appointee's benefits or annuities under the retirement plan for such civil damages, except that the benefits or annuities to the extent reasonably necessary for the support of the employee or appointee or any of his or her beneficiaries shall be exempt from such payment. Any order for payment of benefits or annuities shall not be stayed on the filing of any appeal of the conviction. If the conviction is reversed on final judgment, all benefits or annuities paid as civil damages shall be forfeited and returned to the employee or appointee. The changes made to this section by Laws 2012, LB916, shall apply to persons convicted of or who have pled no contest to such a felony and who have been found liable for civil damages as a result of such felony prior to, on, or after April 7, 2012.

Source: Laws 1919, c. 33, § 3, p. 108; C.S.1922, § 3759; C.S.1929, § 14-1015; Laws 1941, c. 20, § 1, p. 110; C.S.Supp.,1941, § 14-1015; Laws 1943, c. 38, § 1(2), p. 181; R.S.1943, § 14-1022; Laws 1951, c. 31, § 1, p. 129; Laws 1955, c. 25, § 1, p. 118; Laws 1985, LB 353, § 1; R.S.1943, (1991), § 14-1022; Laws 1992, LB 746, § 11; Laws 1995, LB 574, § 16; Laws 1998, LB 1191, § 16;

Laws 1999, LB 795, § 5; Laws 2011, LB474, § 5; Laws 2012, LB916, § 1; Laws 2014, LB759, § 6.
Effective date July 18, 2014.

14-2126 Utilities district; hydrants; location; maintenance.

The metropolitan utilities districts shall maintain free of charge the number of hydrants heretofore established for fire protection in the streets of the municipalities constituting such districts and, in addition thereto, maintain regular fire hydrants on service mains in the streets of the municipalities not now equipped therewith and also upon service mains that may hereafter be installed in such municipalities. The board of directors may adopt such rules for the placement and maintenance of such hydrants as long as such rules do not violate any rules and regulations adopted and promulgated by the Department of Health and Human Services. Intermediate hydrants or fire hydrants placed between regular hydrants shall be installed by the district at such points as may be designated and ordered by any one of the municipalities. One-half of the cost of such intermediate hydrants, connections, and installation shall be borne by the municipality ordering the same. The district shall also lower water mains and reset hydrants at their original locations whenever necessary.

Source: Laws 1913, c. 143, § 15, p. 357; R.S.1913, § 4257; Laws 1919, c. 33, § 4, p. 109; C.S.1922, § 3760; C.S.1929, § 14-1016; Laws 1943, c. 42, § 1, p. 186; R.S.1943, § 14-1023; R.S.1943, (1991), § 14-1023; Laws 1992, LB 746, § 26; Laws 2013, LB208, § 3.

14-2138 Utilities district; payment to city of the metropolitan class; allocation.

The metropolitan utilities district shall pay to the city of the metropolitan class a sum equivalent to two percent of the annual gross revenue derived from all retail sales of water and gas sold by such district within such city, except that until January 1, 2020, retail sales of gas shall not include the retail sale of natural gas used as vehicular fuel. Such sum shall be paid on a quarterly basis, the last quarterly payment to be made not later than the thirtieth day of January of the next succeeding year, except that annual payments to such city shall not be less than five hundred thousand dollars. Such city shall not levy or collect any license, occupation, or excise tax upon or from such district. All payments provided by this section shall be allocated by the district among the several utilities operated by it upon such basis as the district shall determine.

Source: Laws 1919, c. 187, § 4, p. 421; C.S.1922, § 3774; C.S.1929, § 14-1030; Laws 1943, c. 36, § 23, p. 177; R.S.1943, § 14-1041; Laws 1945, c. 19, § 5, p. 125; Laws 1947, c. 21, § 2, p. 112; Laws 1961, c. 33, § 1, p. 153; Laws 1967, c. 47, § 1, p. 179; R.S.1943, (1991), § 14-1041; Laws 1992, LB 746, § 38; Laws 2014, LB867, § 4.

Operative date January 1, 2015.

14-2139 Utilities district; payment to cities or villages; allocation.

A metropolitan utilities district shall pay to every city or village of any class, other than metropolitan, in which such district sells water or gas, or both, at retail, a sum equivalent to two percent of the annual gross revenue derived from all retail sales of water or gas, or both, sold by such district within the city

or village, except that until January 1, 2020, retail sales of gas shall not include the retail sale of natural gas used as vehicular fuel. Such sums shall be paid not later than the thirtieth day of January of the next succeeding year. Such cities or villages shall not levy or collect any license, occupation, or excise tax upon or from such district. All payments provided by this section shall be allocated by the district among the several utilities operated by it upon such basis as the district shall determine.

Source: Laws 1967, c. 47, § 2, p. 179; R.S.1943, (1991), § 14-1042; Laws 1992, LB 746, § 39; Laws 2014, LB867, § 5.
Operative date January 1, 2015.



CHAPTER 15

CITIES OF THE PRIMARY CLASS

Article.

2. General Powers. 15-202, 15-203.
9. City Planning, Zoning. 15-905.
10. Pensions. 15-1017.

ARTICLE 2

GENERAL POWERS

Section

- 15-202. Property and occupation taxes; power to levy; limitations.
15-203. Occupation tax; power to levy; exemptions.

15-202 Property and occupation taxes; power to levy; limitations.

A city of the primary class shall have power to levy taxes for general revenue purposes on all property within the corporate limits of the city taxable according to the laws of Nebraska and to levy an occupation tax on public service property or corporations in such amounts as may be proper and necessary, in the judgment of the mayor and council, for purposes of revenue. All such taxes shall be uniform with respect to the class upon which they are imposed. The occupation tax may be based upon a certain percentage of the gross receipts of such public service corporation or upon such other basis as may be determined upon by the mayor and council. After March 27, 2014, any occupation tax imposed pursuant to this section shall make a reasonable classification of businesses, users of space, or kinds of transactions for purposes of imposing such tax, except that no occupation tax shall be imposed on any transaction which is subject to tax under section 53-160, 66-489, 66-489.02, 66-4,140, 66-4,145, 66-4,146, 77-2602, or 77-4008 or which is exempt from tax under section 77-2704.24. The occupation tax shall be imposed in the manner provided in section 18-1208, except that section 18-1208 does not apply to an occupation tax subject to section 86-704.

Source: Laws 1901, c. 16, § 129, I, p. 126; Laws 1905, c. 16, § 11, p. 212; Laws 1907, c. 9, § 12, p. 84; R.S.1913, § 4416; C.S.1922, § 3800; C.S.1929, § 15-203; R.S.1943, § 15-202; Laws 2001, LB 329, § 13; Laws 2012, LB745, § 3; Laws 2014, LB474, § 2.
Effective date March 27, 2014.

15-203 Occupation tax; power to levy; exemptions.

A city of the primary class shall have power to raise revenue by levying and collecting a license or occupation tax on any person, partnership, limited liability company, corporation, or business within the limits of the city and regulate the same by ordinance except as otherwise provided in this section and in section 15-212. After March 27, 2014, any occupation tax imposed pursuant to this section shall make a reasonable classification of businesses, users of space, or kinds of transactions for purposes of imposing such tax, except that no occupation tax shall be imposed on any transaction which is subject to tax

under section 53-160, 66-489, 66-489.02, 66-4,140, 66-4,145, 66-4,146, 77-2602, or 77-4008 or which is exempt from tax under section 77-2704.24. The occupation tax shall be imposed in the manner provided in section 18-1208, except that section 18-1208 does not apply to an occupation tax subject to section 86-704. All such taxes shall be uniform in respect to the class upon which they are imposed. All scientific and literary lectures and entertainments shall be exempt from such taxation as well as concerts and all other musical entertainments given exclusively by the citizens of the city.

Source: Laws 1901, c. 16, § 129, XIV, p. 130; Laws 1905, c. 16, § 11, p. 212; R.S.1913, § 4425; C.S.1922, § 3809; C.S.1929, § 15-212; R.S.1943, § 15-203; Laws 1993, LB 121, § 131; Laws 2012, LB745, § 4; Laws 2014, LB474, § 3.
Effective date March 27, 2014.

ARTICLE 9

CITY PLANNING, ZONING

Section

15-905. Building regulations; zoning; distance from city authorized; powers granted.

15-905 Building regulations; zoning; distance from city authorized; powers granted.

Every city of the primary class may regulate in the area which is within the corporate limits of the city or within three miles of the corporate limits of the city and outside of any organized city or village, except as to construction on farms for farm purposes, (1) the minimum standards of construction of buildings, dwellings, and other structures in order to provide safe and sound condition thereof for the preservation of health, safety, security, and general welfare, which standards may include regulations as to electric wiring, heating, plumbing, pipefitting, sewer connections, ventilation, size of habitable rooms, and the method of constructing buildings, dwellings, and other structures, and to provide for inspection thereof, and building permits and fees therefor, (2) the removal and tearing down of buildings, dwellings, and other structures in such areas which constitute nuisances because of the dilapidated, unsafe, or run-down condition or conditions, and (3) except as to the United States of America, the State of Nebraska, a county, or a village, in the area outside of the corporate limits of the city of the primary class, the nature, kind, and manner of constructing streets, alleys, sidewalks, curbing or abridging curbs, driveway approaches constructed on or to public right-of-way, and sewage disposal facilities.

Source: Laws 1963, c. 57, § 3, p. 240; Laws 1965, c. 40, § 2, p. 233; Laws 2013, LB88, § 1.

ARTICLE 10

PENSIONS

Section

15-1017. Pension funds; investment; reports.

15-1017 Pension funds; investment; reports.

(1) A city of the primary class which has a city pension and retirement plan or fund, or a city fire and police pension plan or fund, or both, may provide by

ordinance as authorized by its home rule charter, and not prohibited by the Constitution of Nebraska, for the investment of any plan or fund, and it may provide that (a) such a city shall place in trust any part of such plan or fund, (b) it shall place in trust any part of any such plan or fund with a corporate trustee in Nebraska, or (c) it shall purchase any part of any such plan from a life insurance company licensed to do business in the State of Nebraska. The powers conferred by this section shall be independent of and in addition and supplemental to any other provisions of the laws of the State of Nebraska with reference to the matters covered hereby and this section shall be considered as a complete and independent act and not as amendatory of or limited by any other provision of the laws of the State of Nebraska.

(2)(a) Beginning December 31, 1998, and each December 31 thereafter, the clerk of a city of the primary class shall file with the Public Employees Retirement Board an annual report on each retirement plan established pursuant to this section, section 15-1026, and section 401(a) of the Internal Revenue Code and shall submit copies of such report to the Auditor of Public Accounts. The Auditor of Public Accounts may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. The annual report shall be in a form prescribed by the Public Employees Retirement Board and shall contain the following information for each such retirement plan:

- (i) The number of persons participating in the retirement plan;
- (ii) The contribution rates of participants in the plan;
- (iii) Plan assets and liabilities;
- (iv) The names and positions of persons administering the plan;
- (v) The names and positions of persons investing plan assets;
- (vi) The form and nature of investments;
- (vii) For each defined contribution plan, a full description of investment policies and options available to plan participants; and
- (viii) For each defined benefit plan, the levels of benefits of participants in the plan, the number of members who are eligible for a benefit, and the total present value of such members' benefits, as well as the funding sources which will pay for such benefits.

If a plan contains no current active participants, the city clerk may file in place of such report a statement with the Public Employees Retirement Board indicating the number of retirees still drawing benefits, and the sources and amount of funding for such benefits.

(b) If such retirement plan is a defined benefit plan which was open to new members on January 1, 2004, in addition to the reports required by section 13-2402, the city council of a city of the primary class shall cause to be prepared an annual report and shall file the same with the Public Employees Retirement Board and the Nebraska Retirement Systems Committee of the Legislature and submit to the Auditor of Public Accounts a copy of such report. The Auditor of Public Accounts may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. If the city council does not submit a copy of the report to the Auditor of Public Accounts within six months after the end of the plan year, the Auditor of Public Accounts may audit, or cause to be audited, the city. All costs of the audit shall be paid by the city. The report shall consist of a full actuarial analysis of each such retirement plan established pursuant to this section and section 15-1026. The analysis shall be

prepared by an independent private organization or public entity employing actuaries who are members in good standing of the American Academy of Actuaries, and which organization or entity has demonstrated expertise to perform this type of analysis and is unrelated to any organization offering investment advice or which provides investment management services to the retirement plan. The report to the Nebraska Retirement Systems Committee shall be submitted electronically.

Source: Laws 1967, c. 52, § 1, p. 188; Laws 1998, LB 1191, § 17; Laws 1999, LB 795, § 6; Laws 2011, LB474, § 6; Laws 2014, LB759, § 7.

Effective date July 18, 2014.

CHAPTER 16

CITIES OF THE FIRST CLASS

Article.

2. General Powers. 16-205, 16-230.
3. Officers, Elections, Employees. 16-313 to 16-318.
10. Retirement Systems.
 - (a) Police Officers Retirement Act. 16-1002 to 16-1017.
 - (b) Firefighters Retirement. 16-1021 to 16-1037.

ARTICLE 2

GENERAL POWERS

Section

- 16-205. License or occupation tax; power to levy; exceptions.
- 16-230. Drainage; nuisance; weeds; litter; removal; notice; action by city council; hearing; violation; penalty; civil action.

16-205 License or occupation tax; power to levy; exceptions.

A city of the first class may raise revenue by levying and collecting a license or occupation tax on any person, partnership, limited liability company, corporation, or business within the limits of the city and may regulate the same by ordinance. After March 27, 2014, any occupation tax imposed pursuant to this section shall make a reasonable classification of businesses, users of space, or kinds of transactions for purposes of imposing such tax, except that no occupation tax shall be imposed on any transaction which is subject to tax under section 53-160, 66-489, 66-489.02, 66-4,140, 66-4,145, 66-4,146, 77-2602, or 77-4008 or which is exempt from tax under section 77-2704.24. The occupation tax shall be imposed in the manner provided in section 18-1208, except that section 18-1208 does not apply to an occupation tax subject to section 86-704. All such taxes shall be uniform in respect to the class upon which they are imposed. All scientific and literary lectures and entertainments shall be exempt from such taxation as well as concerts and all other musical entertainments given exclusively by the citizens of the city.

Source: Laws 1901, c. 18, § 48, IX, p. 247; Laws 1907, c. 13, § 1, p. 110; R.S.1913, § 4821; C.S.1922, § 3989; C.S.1929, § 16-206; R.S. 1943, § 16-205; Laws 1993, LB 121, § 135; Laws 2012, LB745, § 5; Laws 2014, LB474, § 4.
Effective date March 27, 2014.

16-230 Drainage; nuisance; weeds; litter; removal; notice; action by city council; hearing; violation; penalty; civil action.

(1) A city of the first class by ordinance may require lots or pieces of ground within the city or within the city's extraterritorial zoning jurisdiction to be drained or filled so as to prevent stagnant water or any other nuisance accumulating thereon. The city may require the owner or occupant of all lots and pieces of ground within the city to keep the lots and pieces of ground and the adjoining streets and alleys free of excessive growth of weeds, grasses, or

worthless vegetation, and it may prohibit and control the throwing, depositing, or accumulation of litter on any lot or piece of ground within the city.

(2) Any city of the first class may by ordinance declare it to be a nuisance to permit or maintain excessive growth of weeds, grasses, or worthless vegetation or to litter or cause litter to be deposited or remain thereon except in proper receptacles. The city shall establish by ordinance the height at which weeds, grasses, or worthless vegetation are a nuisance.

(3) Any owner or occupant of a lot or piece of ground shall, upon conviction of violating any ordinance authorized under this section, be guilty of a Class V misdemeanor.

(4) Notice to abate and remove such nuisance shall be given to each owner or owner's duly authorized agent and to the occupant, if any. The city shall establish the method of notice by ordinance. If notice is given by first-class mail, such mail shall be conspicuously marked as to its importance. Within five days after receipt of such notice, the owner or occupant of the lot or piece of ground may request a hearing with the city to appeal the decision to abate or remove a nuisance by filing a written appeal with the office of the city clerk. A hearing on the appeal shall be held within fourteen days after the filing of the appeal and shall be conducted by an elected or appointed officer as designated in the ordinance. The hearing officer shall render a decision on the appeal within five business days after the conclusion of the hearing. If the appeal fails, the city may have such work done. Within five days after receipt of such notice, if the owner or occupant of the lot or piece of ground does not request a hearing with the city or fails to comply with the order to abate and remove the nuisance, the city may have such work done. The costs and expenses of any such work shall be paid by the owner. If unpaid for two months after such work is done, the city may either (a) levy and assess the costs and expenses of the work upon the lot or piece of ground so benefited in the same manner as other special taxes for improvements are levied and assessed or (b) recover in a civil action the costs and expenses of the work upon the lot or piece of ground and the adjoining streets and alleys.

(5) For purposes of this section:

(a) Litter includes, but is not limited to: (i) Trash, rubbish, refuse, garbage, paper, rags, and ashes; (ii) wood, plaster, cement, brick, or stone building rubble; (iii) grass, leaves, and worthless vegetation; (iv) offal and dead animals; and (v) any machine or machines, vehicle or vehicles, or parts of a machine or vehicle which have lost their identity, character, utility, or serviceability as such through deterioration, dismantling, or the ravages of time, are inoperative or unable to perform their intended functions, or are cast off, discarded, or thrown away or left as waste, wreckage, or junk;

(b) Weeds includes, but is not limited to, bindweed (*Convolvulus arvensis*), puncture vine (*Tribulus terrestris*), leafy spurge (*Euphorbia esula*), Canada thistle (*Cirsium arvense*), perennial peppergrass (*Lepidium draba*), Russian knapweed (*Centaurea picris*), Johnson grass (*Sorghum halepense*), nodding or musk thistle, quack grass (*Agropyron repens*), perennial sow thistle (*Sonchus arvensis*), horse nettle (*Solanum carolinense*), bull thistle (*Cirsium lanceolatum*), buckthorn (*Rhamnus* sp.) (toun), hemp plant (*Cannabis sativa*), and ragweed (*Ambrosiaceae*); and

(c) Weeds, grasses, and worthless vegetation does not include vegetation applied or grown on a lot or piece of ground outside the corporate limits of the

city but inside the city's extraterritorial zoning jurisdiction expressly for the purpose of weed or erosion control.

Source: Laws 1901, c. 18, § 48, XXXVII, p. 255; R.S.1913, § 4846; Laws 1915, c. 84, § 1, p. 222; C.S.1922, § 4014; C.S.1929, § 16-231; R.S.1943, § 16-230; Laws 1975, LB 117, § 1; Laws 1988, LB 934, § 2; Laws 1991, LB 330, § 1; Laws 1995, LB 42, § 2; Laws 2004, LB 997, § 1; Laws 2009, LB495, § 5; Laws 2013, LB643, § 1.

ARTICLE 3

OFFICERS, ELECTIONS, EMPLOYEES

Section

16-313. Mayor; veto power; passage over veto.

16-317. City clerk; duties.

16-318. City treasurer; bond or insurance; premium; duties; reports.

16-313 Mayor; veto power; passage over veto.

The mayor shall have the power to approve or veto any ordinance passed by the city council and to approve or veto any order, bylaw, resolution, award of or vote to enter into any contract, or the allowance of any claim. If the mayor approves the ordinance, order, bylaw, resolution, contract, or claim, he or she shall sign it, and it shall become effective. If the mayor vetoes the ordinance, order, bylaw, resolution, contract, or any item or items of appropriations or claims, he or she shall return it to the city council stating that the measure is vetoed. The mayor may issue the veto at the meeting at which the measure passed or within seven calendar days after the meeting. If the mayor issues the veto after the meeting, the mayor shall notify the city clerk of the veto in writing. The clerk shall notify the city council in writing of the mayor's veto. Any ordinance, order, bylaw, resolution, award of or vote to enter into any contract, or the allowance of any claim vetoed by the mayor, may be passed over his or her veto by a vote of two-thirds of all the members elected to the council, notwithstanding his or her veto. If the mayor neglects or refuses to sign any ordinance, order, bylaw, resolution, award of or vote to enter into any contract, or the allowance of any claim, but fails to veto the measure within the time required by this section, the measure shall become effective without his or her signature. The mayor may veto any item or items of any appropriation bill or any claims bill, and approve the remainder thereof, and the item or items so vetoed may be passed by the council over the veto as in other cases.

Source: Laws 1901, c. 18, § 20, p. 234; R.S.1913, § 4879; C.S.1922, § 4047; C.S.1929, § 16-309; R.S.1943, § 16-313; Laws 2014, LB803, § 1.

Effective date July 18, 2014.

16-317 City clerk; duties.

The city clerk shall have the custody of all laws and ordinances and shall keep a correct journal of the proceedings of the council. After the period of time specified by the State Records Administrator pursuant to the Records Management Act, the city clerk may transfer such journal of the proceedings of the council to the State Archives of the Nebraska State Historical Society for

permanent preservation. He or she shall also perform such other duties as may be required by the ordinances of the city.

Source: Laws 1901, c. 18, § 25, p. 236; R.S.1913, § 4883; C.S.1922, § 4051; C.S.1929, § 16-313; R.S.1943, § 16-317; Laws 1973, LB 224, § 4; Laws 2013, LB112, § 1.

Cross References

Records Management Act, see section 84-1220.

16-318 City treasurer; bond or insurance; premium; duties; reports.

(1) The treasurer shall be required to give bond or evidence of equivalent insurance of not less than twenty-five thousand dollars, or he or she may be required to give bond in double the sum of money estimated by the city council at any time to be in his or her hands belonging to the city. The treasurer shall be the custodian of all money belonging to the corporation. The city council shall pay the actual premium of the bond or insurance coverage of such treasurer.

(2) The treasurer shall keep a separate account of each fund or appropriation and the debts and credits belonging thereto. He or she shall give every person paying money into the treasury a receipt therefor, specifying date of payment and on what account paid. He or she shall also file copies of such receipts, except tax receipts, with his or her monthly reports, and he or she shall at the end of every month, and as often as may be requested, render an account to the city council, under oath, showing the state of the treasury at the date of such account, the amount of money remaining in each fund and the amount paid therefrom, and the balance of money in the treasury. The treasurer shall also accompany such account with a statement of all receipts and disbursements, together with all warrants redeemed and paid by him or her, which warrants, with all vouchers held by him or her, shall be filed with his or her account in the clerk's office. He or she shall produce and show all funds shown by such report to be on hand, or satisfy the council or its committee that he or she has such funds in his or her custody or under his or her control. If the treasurer fails to render his or her account within twenty days after the end of the month, or by a later date established by the council, the mayor with the consent of the council may consider this failure as cause to remove the treasurer from office.

(3) The treasurer shall keep a record of all outstanding bonds against the city, showing the number and amount of each bond, for and to whom the bonds were issued, and the date upon which any bond is purchased, paid, or canceled. He or she shall accompany the annual statement submitted pursuant to section 19-1101 with a description of the bonds issued and sold in that year and the terms of sale, with every item of expense thereof.

(4) The treasurer may employ and appoint a delinquent tax collector, who shall be allowed a percentage upon his or her collections to be fixed by the council, not to exceed the fees allowed by law to the county treasurer for like services. Upon taxes collected by such delinquent tax collector, the treasurer shall receive no fees.

(5) The treasurer shall prepare all special assessment lists and shall collect all special assessments.

Source: Laws 1901, c. 18, § 26, p. 236; Laws 1909, c. 19, § 1, p. 181; R.S.1913, § 4884; C.S.1922, § 4052; C.S.1929, § 16-314; R.S. 1943, § 16-318; Laws 1969, c. 77, § 1, p. 405; Laws 2005, LB 528, § 1; Laws 2007, LB347, § 10; Laws 2013, LB112, § 2.

ARTICLE 10

RETIREMENT SYSTEMS

(a) POLICE OFFICERS RETIREMENT ACT

Section

- 16-1002. Terms, defined.
 16-1007. Retiring officer; annuity options; how determined; lump-sum payment option.
 16-1011. Police officer; disability in the line of duty; benefit; requirements.
 16-1017. Retirement committee; duties.

(b) FIREFIGHTERS RETIREMENT

- 16-1021. Terms, defined.
 16-1027. Retiring firefighter; annuity options; how determined; lump-sum payment.
 16-1037. Retirement committee; officers; duties.

(a) POLICE OFFICERS RETIREMENT ACT

16-1002 Terms, defined.

For purposes of the Police Officers Retirement Act, unless the context otherwise requires:

(1) Actuarial equivalent means equality in value of the aggregate amount of benefit expected to be received under different forms of benefit or at different times determined as of a given date as adopted by the city or the retirement committee for use by the retirement system. Actuarial equivalencies shall be specified in the funding medium established for the retirement system, except that if benefits under the retirement system are obtained through the purchase of an annuity contract, the actuarial equivalent of any such form of benefit shall be the amount of pension benefit which can be purchased or otherwise provided by the police officer's retirement value. All actuarial and mortality assumptions adopted by the city or retirement committee shall be on a sex-neutral basis;

(2) Beneficiary means the person or persons designated by a police officer, pursuant to a written instrument filed with the retirement committee before the police officer's death, to receive death benefits which may be payable under the retirement system;

(3) Funding agent means any bank, trust company, life insurance company, thrift institution, credit union, or investment management firm selected by the city or retirement committee to hold or invest the funds of the retirement system;

(4) Regular interest means the rate of interest earned each calendar year equal to the rate of net earnings realized for the calendar year from investments of the retirement fund. Net earnings means the amount by which income or gain realized from investments of the retirement fund exceeds the amount of any realized losses from such investments during the calendar year;

(5) Regular pay means the average salary of the police officer for the period of five consecutive years preceding elective retirement, death, or date of disability which produces the highest average;

(6) Salary means all amounts paid to a participating police officer by the employing city for personal services as reported on the participant's federal income tax withholding statement, including the police officer's contributions picked up by the city as provided in subsection (2) of section 16-1005 and any salary reduction contributions which are excludable from income for federal

income tax purposes pursuant to section 125 or 457 of the Internal Revenue Code;

(7) Sex-neutral basis means the benefit calculation provided to the city of the first class by a licensed domestic or foreign insurance or annuity company with a product available for purchase in Nebraska that utilizes a blended, non-gender-specific rate for actuarial assumptions, mortality assumptions, and annuity conversion rates for a particular participant, except that if a blended, non-gender-specific rate is not available for purchase in Nebraska, the benefit calculation shall be performed using the arithmetic mean of the male-specific actuarial assumptions, mortality assumptions, or annuity conversion rates and the female-specific actuarial assumptions, mortality assumptions, or annuity conversion rates, as applicable, for a particular participant, and the arithmetic mean shall be determined by adding the male-specific actuarial assumptions, mortality assumptions, or annuity conversion rates to the female-specific actuarial assumptions, mortality assumptions, or annuity conversion rates applicable to a particular participant and dividing the sum by two;

(8) Retirement committee means the retirement committee created pursuant to section 16-1014;

(9) Retirement system means a retirement system established pursuant to the act;

(10) Retirement value means the accumulated value of the police officer's employee account and employer account. The retirement value consists of the sum of the contributions made or transferred to such accounts by the police officer and by the city on the police officer's behalf and the regular interest credited to the accounts as of the date of computation, reduced by any realized losses which were not taken into account in determining regular interest in any year, and further adjusted each year to reflect the pro rata share for the accounts of the appreciation or depreciation of the fair market value of the assets of the retirement system as determined by the retirement committee. The retirement value shall be reduced by the amount of all distributions made to or on the behalf of the police officer from the retirement system. Such valuation shall be computed annually as of December 31. If separate investment accounts are established pursuant to subsection (3) of section 16-1004, a police officer's retirement value with respect to such accounts shall be equal to the value of his or her separate investment accounts as determined under such subsection;

(11) Annuity contract means the contract or contracts issued by one or more life insurance companies and purchased by the retirement system in order to provide any of the benefits described in the act. Annuity conversion rates contained in any such contract shall be specified on a sex-neutral basis; and

(12) Straight life annuity means an ordinary annuity payable for the life of the primary annuitant only and terminating at his or her death without refund or death benefit of any kind.

Source: Laws 1983, LB 237, § 2; Laws 1992, LB 672, § 7; Laws 1995, LB 574, § 17; Laws 2012, LB1082, § 2; Laws 2014, LB759, § 8. Effective date July 18, 2014.

16-1007 Retiring officer; annuity options; how determined; lump-sum payment option.

(1) At any time before the retirement date, the retiring police officer may elect to receive at his or her retirement date a pension benefit either in the form of a straight life annuity or any optional form of annuity benefit established by the retirement committee and provided under a purchased annuity contract. The optional annuity benefit shall be specified in the funding medium for the retirement system and shall include a straight life annuity with a guarantee of at least sixty monthly payments or an annuity payable for the life of the retiring police officer and, after the death of the retiree, monthly payments, as elected by the retiring police officer, of either one hundred percent, seventy-five percent, or fifty percent of the amount of annuity payable to the retiring police officer during his or her life, to the beneficiary selected by the retiring police officer at the time of the original application for an annuity. The optional benefit forms for the retirement system shall include a single lump-sum payment of the police officer's retirement value. The retiring police officer may further elect to defer the date of the first annuity payment or lump-sum payment to the first day of any specified month prior to age seventy. If the retiring police officer elects to receive his or her pension benefit in the form of an annuity, the amount of annuity benefit shall be the amount paid by the annuity contract purchased or otherwise provided by his or her retirement value as of the date of the first payment. Any such annuity contract purchased by the retirement system may be distributed to the police officer and, upon such distribution, all obligations of the retirement system to pay retirement, death, or disability benefits to the police officer and his or her beneficiaries shall terminate, without exception.

(2)(a) For all officers employed on January 1, 1984, and continuously employed by the city from such date through the date of their retirement, the amount of the pension benefit, when determined on the straight life annuity basis, shall not be less than the following amounts:

(i) If retirement occurs following age sixty and with twenty-five years of service with the city, fifty percent of regular pay; or

(ii) If retirement occurs following age fifty-five but before age sixty and with twenty-five years of service with the city, forty percent of regular pay.

(b) A police officer entitled to a minimum pension benefit under this subsection may elect to receive such pension benefit in any form permitted by subsection (1) of this section, including a single lump-sum payment. If the minimum pension benefit is paid in a form other than a straight life annuity, such benefit shall be the actuarial equivalent of the straight life annuity that would otherwise be paid to the officer pursuant to this subsection.

(c) If the police officer chooses the single lump-sum payment option, the officer can request that the actuarial equivalent be equal to the average of the cost of three annuity contracts based on products available for purchase in Nebraska. Of the three annuity contracts used for comparison, one shall be chosen by the police officer, one shall be chosen by the retirement committee, and one shall be chosen by the city. The annuity contracts used for comparison shall all use the same type of sex-neutral basis benefit calculation.

(3) If the retirement value of an officer entitled to a minimum pension benefit under subsection (2) of this section is not sufficient at the time of the first payment to purchase or provide the required pension benefit, the city shall transfer such funds as may be necessary to the employer account of the police

officer so that the retirement value of such officer is sufficient to purchase or provide for the required pension benefit.

(4) Any retiring police officer whose pension benefit is less than twenty-five dollars per month on the straight life annuity option shall be paid a lump-sum settlement equal to the retirement value and shall not be entitled to elect to receive annuity benefits.

Source: Laws 1983, LB 237, § 7; Laws 1992, LB 672, § 11; Laws 2012, LB1082, § 7; Laws 2014, LB759, § 9.
Effective date July 18, 2014.

16-1011 Police officer; disability in the line of duty; benefit; requirements.

(1) If any police officer becomes disabled, such police officer shall be placed upon the roll of pensioned police officers at the regular retirement pension of fifty percent of regular pay for the period of such disability. For purposes of this section, disability shall mean the complete inability of the police officer, for reasons of accident or other cause while in the line of duty, to perform the duties of a police officer.

(2) No disability benefit payment shall be made except upon adequate proof furnished to the city, such proof to consist of a medical examination conducted by a competent, disinterested physician who is duly licensed to practice medicine and surgery in this state and who certifies to the city that the police officer is unable to perform the duties of a police officer. The city, during the first three years of the payment of such benefits, shall have the right, at reasonable times, to require the disabled police officer to undergo a medical examination at the city's expense to determine the continuance of the disability claimed. After such three-year period, the city may request the district court to order the police officer to submit proof of the continuance of the disability claimed if the city has reasonable grounds to believe the police officer is fraudulently receiving disability payments. The city shall have the right to demand a physical examination of the police officer by a competent, disinterested physician who is duly licensed to practice medicine and surgery in this state, and who is chosen by the city. The expense of such examination shall be borne by the city.

(3) In case of temporary disability of a police officer received while in the line of duty, he or she shall receive his or her salary during the continuance of such disability for a period not to exceed twelve months, except that if it is ascertained by the city council or other proper municipal authorities within twelve months that such temporary disability has become a disability as defined in this section, then the salary shall cease and he or she shall be entitled to the benefits for pensions in case of disability as provided in this section.

(4) All payments of pension or salary provided by this section shall be subject to deduction of amounts paid under the Nebraska Workers' Compensation Act. In case of a permanent disability of a police officer, such payments shall not commence until all credit for unused annual or sick leave and other similar credits have been fully utilized by the disabled police officer if there will be no impairment to his or her salary during the period of disability. Total payments to a disabled police officer, in excess of amounts paid as workers' compensation benefits, shall not be less than the retirement value at the date of disability. If the actuarial equivalent of the disability pension payable under this section exceeds the police officer's retirement value at the time of the first payment, the

city shall contribute such additional amounts as may be necessary, from time to time, to provide for the required disability pension.

(5) If a police officer who was pensioned under this section is later determined to be no longer disabled, the pension provided for under this section shall terminate and the police officer's vested retirement value, as reduced by any disability payments made from the retirement system, shall thereafter be held and administered in the same manner as for any nondisabled police officer or former police officer.

(6) If a police officer who has pensioned under this section is later determined to be no longer disabled during the first three years when disability benefit payments are being paid the police officer may return to duty with the police force under the following conditions:

(a) If a vacancy exists on the police force for which the police officer is qualified and the police officer wishes to return to the police force, the city shall hire the police officer to fill the vacancy at a pay grade of not less than his or her previous pay grade; or

(b) If no vacancy exists on the police force and the police officer wishes to return to the police force, the city may create a vacancy under the city's reduction in force policy adopted under the Civil Service Act and rehire the officer at a pay grade of not less than his or her previous pay grade.

The provisions of this subsection shall not apply to a police officer whose disability benefit payments are terminated because of fraud on the part of the police officer.

Source: Laws 1983, LB 237, § 11; Laws 1986, LB 811, § 4; Laws 1992, LB 672, § 15; Laws 2013, LB263, § 1.

Cross References

Civil Service Act, see section 19-1825.

Nebraska Workers' Compensation Act, see section 48-1,110.

16-1017 Retirement committee; duties.

(1) It shall be the duty of the retirement committee to:

(a) Provide each employee a summary of plan eligibility requirements and benefit provisions;

(b) Provide, within thirty days after a request is made by a participant, a statement describing the amount of benefits such participant is eligible to receive; and

(c) Make available for review an annual report of the retirement system's operations describing both (i) the amount of contributions to the retirement system from both employee and employer sources and (ii) an identification of the total assets of the retirement system.

(2)(a) Beginning December 31, 1998, and each December 31 thereafter, the chairperson of the retirement committee shall file with the Public Employees Retirement Board a report on each retirement plan established pursuant to section 401(a) of the Internal Revenue Code and administered by a retirement system established pursuant to the Police Officers Retirement Act and shall submit copies of such report to the Auditor of Public Accounts. The Auditor of Public Accounts may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. The annual report shall be in a form

prescribed by the Public Employees Retirement Board and shall contain the following information for each such retirement plan:

- (i) The number of persons participating in the retirement plan;
- (ii) The contribution rates of participants in the plan;
- (iii) Plan assets and liabilities;
- (iv) The names and positions of persons administering the plan;
- (v) The names and positions of persons investing plan assets;
- (vi) The form and nature of investments;
- (vii) For each defined contribution plan, a full description of investment policies and options available to plan participants; and
- (viii) For each defined benefit plan, the levels of benefits of participants in the plan, the number of members who are eligible for a benefit, and the total present value of such members' benefits, as well as the funding sources which will pay for such benefits.

If a plan contains no current active participants, the chairperson may file in place of such report a statement with the Public Employees Retirement Board indicating the number of retirees still drawing benefits and the sources and amount of funding for such benefits.

(b) If such retirement plan is a defined benefit plan which was open to new members on January 1, 2004, in addition to the reports required by section 13-2402, the retirement committee shall cause to be prepared an annual report and the chairperson shall file the same with the Public Employees Retirement Board and the Nebraska Retirement Systems Committee of the Legislature and submit to the Auditor of Public Accounts a copy of such report. The Auditor of Public Accounts may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. If the retirement committee does not submit a copy of the report to the Auditor of Public Accounts within six months after the end of the plan year, the Auditor of Public Accounts may audit, or cause to be audited, the city. All costs of the audit shall be paid by the city. The report shall consist of a full actuarial analysis of each such retirement plan administered by a retirement system established pursuant to the act. The analysis shall be prepared by an independent private organization or public entity employing actuaries who are members in good standing of the American Academy of Actuaries, and which organization or entity has demonstrated expertise to perform this type of analysis and is unrelated to any organization offering investment advice or which provides investment management services to the retirement plan. The report to the Nebraska Retirement Systems Committee shall be submitted electronically.

Source: Laws 1983, LB 237, § 17; Laws 1998, LB 1191, § 18; Laws 1999, LB 795, § 7; Laws 2011, LB474, § 7; Laws 2012, LB1082, § 14; Laws 2014, LB759, § 10.
Effective date July 18, 2014.

(b) FIREFIGHTERS RETIREMENT

16-1021 Terms, defined.

For the purposes of sections 16-1020 to 16-1042, unless the context otherwise requires:

(1) Actuarial equivalent means equality in value of the aggregate amount of benefit expected to be received under different forms or at different times determined as of a given date as adopted by the city or the retirement committee for use by the retirement system. Actuarial equivalencies shall be specified in the funding medium established for the retirement system, except that if benefits under the retirement system are obtained through the purchase of an annuity contract, the actuarial equivalency of any such form of benefit shall be the amount of pension benefit which can be purchased or otherwise provided by such contract. All actuarial and mortality assumptions adopted by the city or retirement committee shall be on a sex-neutral basis;

(2) Annuity contract means the contract or contracts issued by one or more life insurance companies or designated trusts and purchased by the retirement system in order to provide any of the benefits described in such sections. Annuity conversion rates contained in any such contract shall be specified on a sex-neutral basis;

(3) Beneficiary means the person or persons designated by a firefighter, pursuant to a written instrument filed with the retirement committee before the firefighter's death, to receive death benefits which may be payable under the retirement system;

(4) Funding agent means any bank, trust company, life insurance company, thrift institution, credit union, or investment management firm selected by the retirement committee, subject to the approval of the city, to hold or invest the funds of the retirement system;

(5) Regular interest means the rate of interest earned each calendar year commencing January 1, 1984, equal to the rate of net earnings realized for the calendar year from investments of the retirement fund. Net earnings means the amount by which income or gain realized from investments of the retirement fund exceeds the amount of any realized losses from such investments during the calendar year. The retirement committee shall annually report the amount of regular interest earned for such year;

(6) Regular pay means the salary of a firefighter at the date such firefighter elects to retire or terminate employment with the city;

(7) Retirement committee means the retirement committee created pursuant to section 16-1034;

(8) Retirement system means a retirement system established pursuant to sections 16-1020 to 16-1042;

(9) Retirement value means the accumulated value of the firefighter's employee account and employer account. The retirement value at any time shall consist of the sum of the contributions made or transferred to such accounts by the firefighter and by the city on the firefighter's behalf and the regular interest credited to the accounts through such date, reduced by any realized losses which were not taken into account in determining regular interest in any year, and as further adjusted each year to reflect the accounts' pro rata share of the appreciation or depreciation of the assets of the retirement system as determined by the retirement committee at their fair market values, including any account under subsection (2) of section 16-1036. Such valuation shall be undertaken at least annually as of December 31 of each year and at such other times as may be directed by the retirement committee. The value of each account shall be reduced each year by the appropriate share of the investment costs as provided in section 16-1036.01. The retirement value shall be further

reduced by the amount of all distributions made to or on the behalf of the firefighter from the retirement system;

(10) Salary means the base rate of pay, excluding overtime, callback pay, clothing allowances, and other such benefits as reported on the participant's federal income tax withholding statement including the firefighters' contributions picked up by the city as provided in subsection (2) of section 16-1024 and any salary reduction contributions which are excludable from income for federal income tax purposes pursuant to section 125 or 457 of the Internal Revenue Code;

(11) Sex-neutral basis means the benefit calculation provided to the city of the first class by a licensed domestic or foreign insurance or annuity company with a product available for purchase in Nebraska that utilizes a blended, non-gender-specific rate for actuarial assumptions, mortality assumptions, and annuity conversion rates for a particular participant, except that if a blended, non-gender-specific rate is not available for purchase in Nebraska, the benefit calculation shall be performed using the arithmetic mean of the male-specific actuarial assumptions, mortality assumptions, or annuity conversion rates and the female-specific actuarial assumptions, mortality assumptions, or annuity conversion rates, as applicable, for a particular participant, and the arithmetic mean shall be determined by adding the male-specific actuarial assumptions, mortality assumptions, or annuity conversion rates to the female-specific actuarial assumptions, mortality assumptions, or annuity conversion rates applicable to a particular participant and dividing the sum by two; and

(12) Straight life annuity means an ordinary annuity payable for the life of the primary annuitant only, and terminating at his or her death without refund or death benefit of any kind.

Source: Laws 1983, LB 531, § 2; Laws 1993, LB 724, § 1; Laws 1995, LB 574, § 21; Laws 2014, LB759, § 11.
Effective date July 18, 2014.

16-1027 Retiring firefighter; annuity options; how determined; lump-sum payment.

(1) At any time before the retirement date, the retiring firefighter may elect to receive his or her pension benefit at retirement either in the form of a straight life annuity or any optional form of annuity benefit established by the retirement committee and provided under a purchased annuity contract. Such optional annuity benefit shall be specified in the funding medium for the retirement system and shall include a straight life annuity with a guarantee of at least sixty monthly payments or an annuity payable for the life of the retiring firefighter and, after the death of the retiree, monthly payments, as elected by the retiring firefighter, of one hundred percent, seventy-five percent, or fifty percent of the amount of annuity payable to the retiring firefighter during his or her life, to the beneficiary selected by the retiring firefighter at the time of the original application for an annuity. For any firefighter whose retirement date is on or after January 1, 1997, the optional benefit forms for the retirement system shall include a single lump-sum payment of the firefighter's retirement value. For firefighters whose retirement date is prior to January 1, 1997, a single lump-sum payment shall be available only if the city has adopted such distribution option in the funding medium established for the retirement system. The retiring firefighter may further elect to defer the date of the first

payment or lump-sum distribution to the first day of any specified month prior to age seventy. In the event the retiring firefighter elects to receive his or her pension benefit in the form of an annuity, the amount of such annuity benefit shall be the amount provided by the annuity contract purchased or otherwise provided by the firefighter's retirement value as of the date of the first payment. Any such annuity contract purchased by the retirement system may be distributed to the retiring firefighter. Upon the payment of a lump sum or the distribution of a paid-up annuity contract, all obligations of the retirement system to pay retirement benefits to the firefighter and his or her beneficiaries shall terminate, without exception.

(2) For all firefighters employed on January 1, 1984, the amount of the pension benefit at the retirement date shall not be less than the following amounts:

(a) If retirement from the city occurs following age fifty-five with twenty-one years of service with the city, fifty percent of regular pay;

(b) If retirement from the city occurs following age fifty but before age fifty-five with at least twenty-one years of service with the city, such firefighter shall receive the actuarial equivalent of the benefit which would otherwise be provided at age fifty-five;

(c) If retirement from the city occurs on or after age fifty-five with less than twenty-one years of service with the city, such firefighter shall receive a pension of at least fifty percent of the salary he or she was receiving at the time of retirement multiplied by the ratio of the years of service to twenty-one;

(d) For terminations of employment from the city on or after September 9, 1993, if such termination of employment as a firefighter occurs before age fifty-five but after completion of twenty-one years of service with the city, such firefighter shall receive upon the attainment of age fifty-five a pension benefit of fifty percent of regular pay;

(e) Unless an optional annuity benefit is selected by the retired firefighter, at the death of any such retired firefighter the same rate of pension as is provided for in this section shall be paid to the surviving spouse of such deceased firefighter during such time as the surviving spouse remains unmarried and, in case there is no surviving spouse, then the minor children, if any, of such deceased firefighter shall equally share such pension benefit during their minority, except that as soon as a child of such deceased firefighter ceases to be a minor, such pension as to such child shall cease; or

(f) In the event a retired firefighter or his or her surviving beneficiaries die before the aggregate amount of pension payments received by the firefighter and his or her survivor beneficiaries, if any, equals the total amount in the firefighter's employee account, at the time of the first benefit payment the difference between the total amount in the employee's account and the aggregate amount of pension payments received by the retired firefighter and his or her surviving beneficiaries, if any, shall be paid in a single sum to the firefighter's estate.

A firefighter entitled to a minimum pension benefit under this subsection may elect to receive such pension benefit in any form permitted by subsection (1) of this section, including a single lump-sum payment, if the firefighter retires on or after January 1, 1997, or if the city has adopted a lump-sum distribution option for firefighters retiring before January 1, 1997, in the funding medium for the retirement system. If the minimum pension benefit is paid in the form of

an optional annuity benefit or a single lump-sum payment, such benefit or payment shall be the actuarial equivalent of the annuity that would otherwise be paid to the firefighter pursuant to this subsection.

If the firefighter chooses the single lump-sum payment option, the firefighter may request that the actuarial equivalent be equal to the average of the cost of two annuity contracts based on products available for purchase in Nebraska, if the difference between the cost of the two annuity contracts does not exceed five percent. Of the two annuity contracts used for comparison, one shall be chosen by the firefighter and one shall be chosen by the city. If the difference between the two annuity contracts exceeds five percent, the retirement committee shall review the costs of the two annuity contracts and make a recommendation to the city council as to the amount of the lump-sum payment to be made to the firefighter. The city council shall, after a hearing, determine the amount of the single lump-sum payment due the firefighter. The annuity contracts used for comparison shall all use the same type of sex-neutral basis benefit calculation.

(3) If the retirement value of a firefighter entitled to a minimum pension benefit under subsection (2) of this section is not sufficient at the time of the first payment to purchase or provide the required pension benefit, the city shall utilize such funds as may be necessary from the unallocated employer account of the retirement system to purchase or provide for the required pension benefit.

(4) Any retiring firefighter whose pension benefit is less than twenty-five dollars per month on the straight life annuity option shall be paid a lump-sum settlement equal to the retirement value in lieu of annuity and shall not be entitled to elect to receive annuity benefits.

Source: Laws 1983, LB 531, § 8; Laws 1992, LB 672, § 22; Laws 1993, LB 724, § 5; Laws 1994, LB 1068, § 1; Laws 2014, LB759, § 12.
Effective date July 18, 2014.

16-1037 Retirement committee; officers; duties.

(1) It shall be the duty of the retirement committee to:

(a) Elect a chairperson, a vice-chairperson, and such other officers as the committee deems appropriate;

(b) Hold regular quarterly meetings and special meetings upon the call of the chairperson;

(c) Conduct meetings pursuant to the Open Meetings Act;

(d) Provide each employee a summary of plan eligibility requirements, benefit provisions, and investment options available to such employee;

(e) Provide, within thirty days after a request is made by a participant, a statement describing the amount of benefits such participant is eligible to receive; and

(f) Make available for review an annual report of the system's operations describing both (i) the amount of contributions to the system from both employee and employer sources and (ii) an identification of the total assets of the retirement system.

(2)(a) Beginning December 31, 1998, and each December 31 thereafter, the chairperson of the retirement committee shall file with the Public Employees

Retirement Board an annual report on each retirement plan established pursuant to section 401(a) of the Internal Revenue Code and administered by a retirement system established pursuant to sections 16-1020 to 16-1042 and shall submit copies of such report to the Auditor of Public Accounts. The Auditor of Public Accounts may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. The annual report shall be in a form prescribed by the Public Employees Retirement Board and shall contain the following information for each such retirement plan:

- (i) The number of persons participating in the retirement plan;
- (ii) The contribution rates of participants in the plan;
- (iii) Plan assets and liabilities;
- (iv) The names and positions of persons administering the plan;
- (v) The names and positions of persons investing plan assets;
- (vi) The form and nature of investments;
- (vii) For each defined contribution plan, a full description of investment policies and options available to plan participants; and
- (viii) For each defined benefit plan, the levels of benefits of participants in the plan, the number of members who are eligible for a benefit, and the total present value of such members' benefits, as well as the funding sources which will pay for such benefits.

If a plan contains no current active participants, the chairperson may file in place of such report a statement with the Public Employees Retirement Board indicating the number of retirees still drawing benefits, and the sources and amount of funding for such benefits.

(b) If such retirement plan is a defined benefit plan which was open to new members on January 1, 2004, in addition to the reports required by section 13-2402, the retirement committee shall cause to be prepared an annual report and the chairperson shall file the same with the Public Employees Retirement Board and the Nebraska Retirement Systems Committee of the Legislature and submit to the Auditor of Public Accounts a copy of such report. The Auditor of Public Accounts may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. If the retirement committee does not submit a copy of the report to the Auditor of Public Accounts within six months after the end of the plan year, the Auditor of Public Accounts may audit, or cause to be audited, the city. All costs of the audit shall be paid by the city. The report shall consist of a full actuarial analysis of each such retirement plan administered by a system established pursuant to sections 16-1020 to 16-1042. The analysis shall be prepared by an independent private organization or public entity employing actuaries who are members in good standing of the American Academy of Actuaries, and which organization or entity has demonstrated expertise to perform this type of analysis and is unrelated to any organization offering investment advice or which provides investment management services to the retirement plan. The report to the Nebraska Retirement Systems Committee shall be submitted electronically.

Source: Laws 1983, LB 531, § 18; Laws 1992, LB 672, § 28; Laws 1998, LB 1191, § 20; Laws 1999, LB 795, § 8; Laws 2004, LB 821, § 8; Laws 2011, LB474, § 8; Laws 2014, LB759, § 13.
Effective date July 18, 2014.

Cross References

Open Meetings Act, see section 84-1407.

CHAPTER 17

CITIES OF THE SECOND CLASS AND VILLAGES

Article.

1. Laws Applicable Only to Cities of the Second Class. 17-101 to 17-111.
2. Laws Applicable Only to Villages. 17-201.
3. Changes in Population or Class.
 - (b) Cities of the Second Class. 17-306, 17-306.01.
 - (c) Villages. 17-312, 17-313.
5. General Grant of Power. 17-525, 17-563.
6. Elections, Officers, Ordinances.
 - (b) Officers. 17-605, 17-606.
 - (c) Ordinances. 17-614.
9. Particular Municipal Enterprises.
 - (c) Cemeteries. 17-934, 17-944.

ARTICLE 1

LAWS APPLICABLE ONLY TO CITIES OF THE SECOND CLASS

Section

- 17-101. Cities of the second class, defined; population; exception.
 17-110. Mayor; general duties and powers.
 17-111. Mayor; ordinances; veto power; passage over veto.

17-101 Cities of the second class, defined; population; exception.

All cities, towns, and villages containing more than eight hundred and not more than five thousand inhabitants shall be cities of the second class and be governed by sections 17-101 to 17-153 unless they adopt or retain a village government as provided in sections 17-306 to 17-312. The population of a city of the second class shall consist of the people residing within the territorial boundaries of such city and the residents of any territory duly and properly annexed to such city.

Source: Laws 1879, § 1, p. 193; Laws 1885, c. 16, § 1, p. 156; R.S.1913, § 4993; C.S.1922, § 4162; C.S.1929, § 17-101; R.S.1943, § 17-101; Laws 1971, LB 62, § 1; Laws 1993, LB 726, § 6; Laws 2014, LB702, § 1.

Effective date April 11, 2014.

17-110 Mayor; general duties and powers.

The mayor shall preside at all meetings of the city council of a city of the second class. The mayor may vote when his or her vote would provide the additional vote required to attain the number of votes equal to a majority of the number of members elected to the city council on any pending matter, legislation, or transaction, and the mayor shall, for the purpose of such vote, be deemed to be a member of the council. He or she shall have superintendence and control of all the officers and affairs of the city and shall take care that the

ordinances of the city and all laws governing cities of the second class are complied with.

Source: Laws 1879, § 10, p. 195; R.S.1913, § 5002; C.S.1922, § 4171; C.S.1929, § 17-110; R.S.1943, § 17-110; Laws 1957, c. 55, § 3, p. 266; Laws 1975, LB 172, § 3; Laws 1980, LB 662, § 4; Laws 2013, LB113, § 1.

17-111 Mayor; ordinances; veto power; passage over veto.

The mayor shall have power to veto or sign any ordinance passed by the city council and to approve or veto any order, bylaw, resolution, award of or vote to enter into any contract, or the allowance of any claim. If the mayor approves the ordinance, order, bylaw, resolution, contract, or claim, he or she shall sign it, and it shall become effective. If the mayor vetoes the ordinance, order, bylaw, resolution, contract, or any item or items of appropriations or claims, he or she shall return it to the city council stating that the measure is vetoed. The mayor may issue the veto at the meeting at which the measure passed or within seven calendar days after the meeting. If the mayor issues the veto after the meeting, the mayor shall notify the city clerk of the veto in writing. The clerk shall notify the city council in writing of the mayor's veto. Any ordinance, order, bylaw, resolution, award of or vote to enter into any contract, or the allowance of any claim vetoed by the mayor may be passed over his or her veto by a vote of two-thirds of the members of the council. If the mayor neglects or refuses to sign any ordinance, order, bylaw, resolution, award of or vote to enter into any contract, or the allowance of any claim, but fails to veto the measure within the time required by this section, the measure shall become effective without his or her signature. The mayor may veto any item or items of any appropriation bill or any claims bill, and approve the remainder thereof, and the item or items vetoed may be passed by the council over the veto as in other cases.

Source: Laws 1879, § 11, p. 195; R.S.1913, § 5003; C.S.1922, § 4172; C.S.1929, § 17-111; R.S.1943, § 17-111; Laws 2014, LB803, § 2. Effective date July 18, 2014.

ARTICLE 2

LAWS APPLICABLE ONLY TO VILLAGES

Section

17-201. Village, defined; incorporation; restriction on territory; condition.

17-201 Village, defined; incorporation; restriction on territory; condition.

(1) Any town or village containing not less than one hundred nor more than eight hundred inhabitants incorporated as a city, town, or village under the laws of this state, any village that votes to retain village government as provided in section 17-312, and any city of the second class that has adopted village government as provided by sections 17-306 to 17-309 shall be a village and shall have the rights, powers, and immunities granted in sections 17-201 to 17-231, and none other, except that all county seat towns shall have the powers and immunities granted in sections 17-201 to 17-231. The population of a village shall consist of the people residing within the territorial boundaries of such village and the residents of any territory duly and properly annexed to such village.

(2) Whenever a majority of the taxable inhabitants of any town or village, not incorporated under any laws of this state, shall present a petition to the county board of the county in which the petitioners reside, praying that they may be incorporated as a village and designating the name they wish to assume and the metes and bounds of the proposed village, and such county board or majority of the members thereof shall be satisfied that a majority of the taxable inhabitants of the proposed village have signed such petition and that inhabitants to the number of one hundred or more are actual residents of the territory described in the petition, the board shall declare the proposed village incorporated, enter the order of incorporation upon its records, and designate the metes and bounds thereof. Thereafter the village shall be governed by the provisions of law applicable to the government of villages. The county board shall, at the time of the incorporation of the village, appoint five persons, having the qualifications provided in section 17-203, as trustees, who shall hold their offices and perform all the duties required of them by law until the election and qualification of their successors at the time and in the manner provided in section 17-202, except that the county board shall not declare a proposed village incorporated or enter an order of incorporation if any portion of the territory of such proposed village is within five miles of a Nebraska incorporated village or city of any class.

Source: Laws 1879, § 40, p. 202; Laws 1881, c. 22, § 1, p. 165; Laws 1913, c. 137, § 1, p. 335; R.S.1913, § 5051; C.S.1922, § 4223; C.S.1929, § 17-201; R.S.1943, § 17-201; Laws 1961, c. 48, § 1, p. 188; Laws 1969, c. 91, § 1, p. 454; Laws 1971, LB 62, § 2; Laws 1993, LB 726, § 7; Laws 2014, LB702, § 2.
Effective date April 11, 2014.

ARTICLE 3

CHANGES IN POPULATION OR CLASS

(b) CITIES OF THE SECOND CLASS

Section

- 17-306. City of the second class; reorganization as village; petition; election.
17-306.01. Village reorganized from city of second class; discontinuation; reorganize as city of the second class; petition; election.

(c) VILLAGES

- 17-312. Village; retention of village government; petition; election.
17-313. Village; organize as city of second class; petition; election.

(b) CITIES OF THE SECOND CLASS

17-306 City of the second class; reorganization as village; petition; election.

(1) The registered voters of a city of the second class may vote to discontinue organization as a city of the second class and organize as a village. The issue may be placed before the voters by a resolution adopted by the city council or by petition signed by one-fourth of the registered voters of such city.

(2) The petitions shall conform to section 32-628. The Secretary of State shall design the form to be used for the petitions. Petition signers and petition circulators shall conform to the requirements of sections 32-629 and 32-630. The city council shall submit the petitions to the election commissioner or county clerk for signature verification pursuant to section 32-631. The required

number of signatures shall be one-fourth of the number of voters registered in the city at the last statewide general election. The election commissioner or county clerk shall notify the city council within thirty days after receiving the petitions from the city council whether the required number of signatures has been gathered. The city shall reimburse the county for any costs incurred by the election commissioner or county clerk.

(3) If the city council determines that the petitions are in proper form and signed by the necessary number of registered voters or after adoption of the resolution by the city council, the city council shall submit the question to the voters of whether to discontinue organization as a city of the second class and organize as a village at a special election pursuant to section 32-559 or at the same time as a local or statewide primary or general election held in the city of the second class. The form of ballot shall be For organization as a village, and Against organization as a village, and at the same election the voters shall vote for five trustees for the village. If a majority of the votes cast are For organization as a village, then such city shall within sixty days after such election become a village and be governed under the laws of this state applicable to a village unless at some future election such village votes to reorganize as a city of the second class in the manner provided in section 17-306.01.

Source: Laws 1879, § 53, p. 205; Laws 1909, c. 21, § 1, p. 189; R.S.1913, § 5077; C.S.1922, § 4249; C.S.1929, § 17-301; R.S.1943, § 17-306; Laws 1972, LB 661, § 3; Laws 2014, LB702, § 3. Effective date April 11, 2014.

17-306.01 Village reorganized from city of second class; discontinuation; reorganize as city of the second class; petition; election.

(1) The registered voters of a village which was reorganized under section 17-306 from a city of the second class to a village may vote to discontinue organization as a village and reorganize as a city of the second class under this section if the population exceeds eight hundred inhabitants. The issue may be placed before the voters by a resolution adopted by the board of trustees of the village or by petition signed by one-fourth of the registered voters of the village.

(2) The petitions shall conform to section 32-628. The Secretary of State shall design the form to be used for the petitions. Petition signers and petition circulators shall conform to the requirements of sections 32-629 and 32-630. The board of trustees shall submit the petitions to the election commissioner or county clerk for signature verification pursuant to section 32-631. The required number of signatures shall be one-fourth of the number of voters registered in the village at the last statewide general election. The election commissioner or county clerk shall notify the board of trustees within thirty days after receiving the petitions from the board of trustees whether the required number of signatures has been gathered. The village shall reimburse the county for any costs incurred by the election commissioner or county clerk.

(3) If the board of trustees determines that the petitions are in proper form and signed by the necessary number of registered voters or after adoption of the resolution by the board of trustees, the board of trustees shall submit the question to the voters of whether to organize as a city of the second class at a special election pursuant to section 32-559 or at the same time as a local or statewide primary or general election held in the village. The form of the ballot

at such election shall be For reorganization of the Village of as a city of the second class and Against reorganization of the Village of as a city of the second class.

(4) If the majority of the votes cast are for reorganization as a city of the second class, the board of trustees shall certify such fact to the Secretary of State who, upon the filing of such a certificate, shall by proclamation so declare and shall declare such village to have become a city of the second class. Thereafter such village shall become a city of the second class and such city shall be governed under the laws of this state applicable to cities of the second class. The government of such city shall continue as organized at the date of such proclamation until the reorganization as a city of the second class.

(5) Upon such proclamation, the governing body of the city shall call a special election for the purpose of electing new members of the city's governing body to be held not more than eight months after the proclamation is issued. At the initial election of officers, the names of the candidates receiving the greatest number of votes at the primary election if one is held shall be placed on the general election ballot. One-half or the bare majority of the candidates in each precinct or ward or at-large candidates, as the case may be, receiving the greatest number of votes at the general election, shall be elected to terms of the longest duration, and those receiving the next greatest number of votes shall be elected to the remaining term or terms. Thereafter all members shall be nominated at the statewide primary election and elected at the statewide general election for four-year terms as provided in section 32-533. The members of the board of trustees shall hold office only until the newly elected city officials assume office.

(6) All ordinances, bylaws, acts, rules, regulations, obligations, and proclamations existing and in force in or with respect to any village at the time of its incorporation as a city of the second class shall remain in full force and effect after such incorporation as a city of the second class until repealed or modified by such city within one year after the date of the filing of the certificate pursuant to subsection (4) of this section.

Source: Laws 2014, LB702, § 4.

Effective date April 11, 2014.

(c) VILLAGES

17-312 Village; retention of village government; petition; election.

(1) Whenever any village attains a population exceeding eight hundred inhabitants, the registered voters of the village may vote to retain a village form of government. The issue may be placed before the voters by a resolution adopted by the board of trustees of the village or by petition signed by one-fourth of the registered voters of the village.

(2) The petitions shall conform to section 32-628. The Secretary of State shall design the form to be used for the petitions. Petition signers and petition circulators shall conform to the requirements of sections 32-629 and 32-630. The board of trustees shall submit the petitions to the election commissioner or county clerk for signature verification pursuant to section 32-631. The required number of signatures shall be one-fourth of the number of voters registered in the village at the last statewide general election. The election commissioner or county clerk shall notify the board of trustees within thirty days after receiving

the petitions from the board of trustees whether the required number of signatures has been gathered. The village shall reimburse the county for any costs incurred by the election commissioner or county clerk.

(3) If the board of trustees determines that the petitions are in proper form and signed by the necessary number of registered voters or after adoption of the resolution by the board of trustees, the board of trustees shall submit the question to the voters of whether to retain the village form of government at a special election pursuant to section 32-559 or at the same time as a local or statewide primary or general election held in the village. The form of the ballot at such election shall be For retention of village government and Against retention of village government. If the majority of the votes cast are for retention of village government, then such village shall remain a village and be governed under the laws of this state applicable to villages unless at some future election such village votes to reorganize as a city of the second class in the manner provided in section 17-313.

(4) If the question is submitted at a special election, such election shall be held not later than October 15 of an odd-numbered year. If the question is rejected, city of the second class officials shall be elected at the next regularly scheduled election.

(5) If the question is submitted at a regularly scheduled election, no village trustees shall be elected at such election, but trustees whose terms are to expire following such election shall hold office until either their successors or city officials take office as follows:

(a) If the question is rejected, the village board shall call a special election, to be held not more than eight months after the election at which the question was rejected, for the purpose of electing city officials under the provisions of law relating to cities of the second class. The terms of office for such officials shall be established pursuant to section 17-311. The members of the board of trustees shall hold office only until the newly elected city officials assume office; and

(b) If the question is approved, the village board shall call a special election, to be held not more than eight months after the election at which the question was approved, for the purpose of electing successors to those members of the village board who held office beyond the normal expiration of their terms. Such special election shall be conducted under the provisions of law relating to villages. Persons so elected shall take office as soon after the completion of the canvass of the votes as is practicable, and their terms of office shall be as if the holdovers had not occurred.

Source: Laws 1909, c. 21, § 1, p. 190; R.S.1913, § 5007; C.S.1922, § 4249; C.S.1929, § 17-301; R.S.1943, § 17-307; Laws 1969, c. 91, § 2, p. 455; Laws 1971, LB 62, § 3; Laws 1972, LB 661, § 4; Laws 1988, LB 796, § 1; C.S.Supp.,1990, § 17-307; Laws 1994, LB 76, § 496; Laws 2014, LB702, § 5.
Effective date April 11, 2014.

17-313 Village; organize as city of second class; petition; election.

(1) The registered voters of a village may vote to discontinue organization as a village and organize as a city of the second class under this section if the population of the village exceeds eight hundred inhabitants and the prior vote pursuant to section 17-312 was in favor of retaining the village form of government. The issue may be placed before the voters by a resolution adopted

by the board of trustees of the village or by petition signed by one-fourth of the registered voters of the village.

(2) The petitions shall conform to section 32-628. The Secretary of State shall design the form to be used for the petitions. Petition signers and petition circulators shall conform to the requirements of sections 32-629 and 32-630. The board of trustees shall submit the petitions to the election commissioner or county clerk for signature verification pursuant to section 32-631. The required number of signatures shall be one-fourth of the number of voters registered in the village at the last statewide general election. The election commissioner or county clerk shall notify the board of trustees within thirty days after receiving the petitions from the board of trustees whether the required number of signatures has been gathered. The village shall reimburse the county for any costs incurred by the election commissioner or county clerk.

(3) If the board of trustees determines that the petitions are in proper form and signed by the necessary number of registered voters or after adoption of the resolution by the board of trustees, the board of trustees shall submit the question to the voters of whether to organize as a city of the second class at a special election pursuant to section 32-559 or at the same time as a local or statewide primary or general election held in the village. The form of the ballot at such election shall be For reorganization of the Village of as a city of the second class and Against reorganization of the Village of as a city of the second class.

(4) If the majority of the votes cast are for reorganization as a city of the second class, the board of trustees shall certify such fact to the Secretary of State who, upon the filing of such a certificate, shall by proclamation declare such village to have become a city of the second class. Thereafter such village is a city of the second class, and such city shall be governed under the laws of this state applicable to cities of the second class. The government of such city shall continue as organized at the date of such proclamation until the reorganization as a city of the second class.

(5) Upon such proclamation, the governing body of the city shall call a special election for the purpose of electing new members of the city's governing body to be held not more than eight months after the proclamation is issued. At the initial election of officers, the names of the candidates receiving the greatest number of votes at the primary election if one is held shall be placed on the general election ballot. One-half or the bare majority of the candidates in each precinct or ward or at-large candidates, as the case may be, receiving the greatest number of votes at the general election, shall be elected to terms of the longest duration, and those receiving the next greatest number of votes shall be elected to the remaining term or terms. Thereafter all members shall be nominated at the statewide primary election and elected at the statewide general election for four-year terms as provided in section 32-533. The members of the board of trustees shall hold office only until the newly elected city officials assume office.

(6) All ordinances, bylaws, acts, rules, regulations, obligations, and proclamations existing and in force in or with respect to any village at the time of its incorporation as a city of the second class shall remain in full force and effect after such incorporation as a city of the second class until repealed or modified

by such city within one year after the date of the filing of the certificate pursuant to subsection (4) of this section.

Source: Laws 2014, LB702, § 6.
Effective date April 11, 2014.

ARTICLE 5 GENERAL GRANT OF POWER

Section

17-525. Occupation tax; power to levy; exceptions.

17-563. Lots; drainage; weeds or litter; nuisance; noncompliance by owner; notice; hearing; assessment of cost; violation; penalty; civil action.

17-525 Occupation tax; power to levy; exceptions.

Second-class cities and villages shall have power to raise revenue by levying and collecting a license tax on any occupation or business within the limits of the city or village, and regulate the same by ordinance. After March 27, 2014, any occupation tax imposed pursuant to this section shall make a reasonable classification of businesses, users of space, or kinds of transactions for purposes of imposing such tax, except that no occupation tax shall be imposed on any transaction which is subject to tax under section 53-160, 66-489, 66-489.02, 66-4,140, 66-4,145, 66-4,146, 77-2602, or 77-4008 or which is exempt from tax under section 77-2704.24. The occupation tax shall be imposed in the manner provided in section 18-1208, except that section 18-1208 does not apply to an occupation tax subject to section 86-704. All such taxes shall be uniform in respect to the classes upon which they are imposed. All scientific and literary lectures and entertainments shall be exempt from such taxation, as well as concerts and other musical entertainments given exclusively by the citizens of the city or village.

Source: Laws 1879, § 69, VIII, p. 212; Laws 1881, c. 23, § 8, VIII, p. 174; Laws 1885, c. 20, § 1, VIII, p. 165; Laws 1887, c. 12, § 1, VIII, p. 293; R.S.1913, § 5114; C.S.1922, § 4287; C.S.1929, § 17-436; R.S.1943, § 17-525; Laws 2012, LB745, § 6; Laws 2014, LB474, § 5.
Effective date March 27, 2014.

17-563 Lots; drainage; weeds or litter; nuisance; noncompliance by owner; notice; hearing; assessment of cost; violation; penalty; civil action.

(1) A city of the second class and village by ordinance (a) may require lots or pieces of ground within the city or village to be drained or filled so as to prevent stagnant water or any other nuisance accumulating thereon, (b) may require the owner or occupant of any lot or piece of ground within the city or village to keep the lot or piece of ground and the adjoining streets and alleys free of excessive growth of weeds, grasses, or worthless vegetation, and (c) may prohibit and control the throwing, depositing, or accumulation of litter on any lot or piece of ground within the city or village.

(2) Any city of the second class and village may by ordinance declare it to be a nuisance to permit or maintain excessive growth of weeds, grasses, or worthless vegetation or to litter or cause litter to be deposited or remain thereon except in proper receptacles. The city or village shall establish by

ordinance the height at which weeds, grasses, or worthless vegetation are a nuisance.

(3) Any owner or occupant of a lot or piece of ground shall, upon conviction of violating any ordinance authorized under this section, be guilty of a Class V misdemeanor.

(4) Notice to abate and remove such nuisance shall be given to each owner or owner's duly authorized agent and to the occupant, if any. The city or village shall establish the method of notice by ordinance. If notice is given by first-class mail, such mail shall be conspicuously marked as to its importance. Within five days after receipt of such notice, the owner or occupant of the lot or piece of ground may request a hearing with the city or village to appeal the decision to abate or remove a nuisance by filing a written appeal with the office of the city or village clerk. A hearing on the appeal shall be held within fourteen days after the filing of the appeal and shall be conducted by an elected or appointed officer as designated in the ordinance. The hearing officer shall render a decision on the appeal within five business days after the conclusion of the hearing. If the appeal fails, the city or village may have such work done. Within five days after receipt of such notice, if the owner or occupant of the lot or piece of ground does not request a hearing with the city or village or fails to comply with the order to abate and remove the nuisance, the city or village may have such work done. The costs and expenses of any such work shall be paid by the owner. If unpaid for two months after such work is done, the city or village may either (a) levy and assess the costs and expenses of the work upon the lot or piece of ground so benefited in the same manner as other special taxes for improvements are levied and assessed or (b) recover in a civil action the costs and expenses of the work upon the lot or piece of ground and the adjoining streets and alleys.

(5) For purposes of this section:

(a) Litter includes, but is not limited to: (i) Trash, rubbish, refuse, garbage, paper, rags, and ashes; (ii) wood, plaster, cement, brick, or stone building rubble; (iii) grass, leaves, and worthless vegetation; (iv) offal and dead animals; and (v) any machine or machines, vehicle or vehicles, or parts of a machine or vehicle which have lost their identity, character, utility, or serviceability as such through deterioration, dismantling, or the ravages of time, are inoperative or unable to perform their intended functions, or are cast off, discarded, or thrown away or left as waste, wreckage, or junk; and

(b) Weeds includes, but is not limited to, bindweed (*Convolvulus arvensis*), puncture vine (*Tribulus terrestris*), leafy spurge (*Euphorbia esula*), Canada thistle (*Cirsium arvense*), perennial peppergrass (*Lepidium draba*), Russian knapweed (*Centaurea picris*), Johnson grass (*Sorghum halepense*), nodding or musk thistle, quack grass (*Agropyron repens*), perennial sow thistle (*Sonchus arvensis*), horse nettle (*Solanum carolinense*), bull thistle (*Cirsium lanceolatum*), buckthorn (*Rhamnus sp.*) (tourn), hemp plant (*Cannabis sativa*), and ragweed (*Ambrosiaceae*).

Source: Laws 1879, § 71, p. 219; R.S.1913, § 5137; C.S.1922, § 4312; C.S.1929, § 17-503; R.S.1943, § 17-563; Laws 1991, LB 330, § 2; Laws 1995, LB 42, § 3; Laws 2004, LB 997, § 2; Laws 2009, LB495, § 8; Laws 2013, LB643, § 2.

ARTICLE 6
ELECTIONS, OFFICERS, ORDINANCES

(b) OFFICERS

Section

17-605. Clerk; duties.

17-606. Treasurer; duties; failure to file account; penalty.

(c) ORDINANCES

17-614. Ordinances; how enacted; title.

(b) OFFICERS

17-605 Clerk; duties.

The city or village clerk shall have the custody of all laws and ordinances and shall keep a correct journal of the proceedings of the council or board of trustees. After the period of time specified by the State Records Administrator pursuant to the Records Management Act, the city or village clerk may transfer such journal of the proceedings of the council or board of trustees to the State Archives of the Nebraska State Historical Society for permanent preservation. He or she shall also perform such other duties as may be required by the ordinances of the city.

Source: Laws 1879, § 63, p. 208; R.S.1913, § 5147; C.S.1922, § 4322; C.S.1929, § 17-513; R.S.1943, § 17-605; Laws 1973, LB 224, § 5; Laws 2013, LB112, § 3.

Cross References

Records Management Act, see section 84-1220.

17-606 Treasurer; duties; failure to file account; penalty.

(1) The treasurer of each city and village shall be the custodian of all money belonging to the corporation. He or she shall keep a separate account of each fund or appropriation and the debts and credits belonging thereto. He or she shall give every person paying money into the treasury a receipt therefor, specifying the date of payment and on what account paid. He or she shall also file copies of such receipts with his or her monthly reports, and he or she shall, at the end of every month, and as often as may be required, render an account to the city council or board of trustees, under oath, showing the state of the treasury at the date of such account and the balance of money in the treasury. He or she shall also accompany such accounts with a statement of all receipts and disbursements, together with all warrants redeemed and paid by him or her, which warrants, with any and all vouchers held by him or her, shall be filed with his or her account in the clerk's office. If the treasurer fails to render his or her account within twenty days after the end of the month, or by a later date established by the governing body, the mayor in a city of the second class or the chairperson of the village board with the advice and consent of the trustees may use this failure as cause to remove the treasurer from office.

(2) The treasurer shall keep a record of all outstanding bonds against the city or village, showing the number and amount of each bond, for and to whom the bonds were issued, and the date upon which any bond is purchased, paid, or canceled. He or she shall accompany the annual statement submitted pursuant

to section 19-1101 with a description of the bonds issued and sold in that year and the terms of sale, with every item of expense thereof.

Source: Laws 1879, § 64, p. 209; R.S.1913, § 5148; C.S.1922, § 4323; C.S.1929, § 17-514; R.S.1943, § 17-606; Laws 2005, LB 528, § 2; Laws 2013, LB112, § 4.

(c) ORDINANCES

17-614 Ordinances; how enacted; title.

(1) All ordinances and resolutions or orders for the appropriation or payment of money shall require for their passage or adoption the concurrence of a majority of all members elected to the council or board of trustees. The mayor of a city of the second class may vote when his or her vote would provide the additional vote required to attain the number of votes equal to a majority of the number of members elected to the council, and the mayor shall, for the purpose of such vote, be deemed to be a member of the council. Ordinances of a general or permanent nature shall be read by title on three different days unless three-fourths of the council or board vote to suspend this requirement, except that such requirement shall not be suspended for any ordinance for the annexation of territory. In case such requirement is suspended, the ordinances shall be read by title and then moved for final passage. Three-fourths of the council or board may require a reading of any such ordinance in full before enactment under either procedure set out in this section.

(2) Ordinances shall contain no subject which is not clearly expressed in the title, and, except as provided in section 19-915, no ordinance or section thereof shall be revised or amended unless the new ordinance contains the entire ordinance or section as revised or amended and the ordinance or section so amended is repealed, except that:

(a) For an ordinance revising all the ordinances of the city or village, the title need only state that the ordinance revises all the ordinances of the city or village. Under such title all the ordinances may be revised in sections and chapters or otherwise, may be corrected, added to, and any part suppressed, and may be repealed with or without a saving clause as to the whole or any part without other title; and

(b) For an ordinance used solely to revise ordinances or code sections or to enact new ordinances or code sections in order to adopt statutory changes made by the Legislature which are specific and mandatory and bring the ordinances or code sections into conformance with state law, the title need only state that the ordinance revises those ordinances or code sections affected by or enacts ordinances or code sections generated by legislative changes. Under such title, all such ordinances or code sections may be revised, repealed, or enacted in sections and chapters or otherwise by a single ordinance without other title.

Source: Laws 1879, § 79, p. 223; R.S.1913, § 5154; C.S.1922, § 4329; Laws 1929, c. 47, § 1, p. 202; C.S.1929, § 17-520; R.S.1943, § 17-614; Laws 1969, c. 108, § 3, p. 510; Laws 1972, LB 1235, § 2; Laws 1994, LB 630, § 3; Laws 2001, LB 484, § 2; Laws 2003, LB 365, § 2; Laws 2013, LB113, § 2.

ARTICLE 9
PARTICULAR MUNICIPAL ENTERPRISES

(c) CEMETERIES

Section

17-934. Cemetery; existing cemetery association; transfer to; conditions.

17-944. Cemetery association; formation; when authorized.

(c) CEMETERIES

17-934 Cemetery; existing cemetery association; transfer to; conditions.

In any city of the second class or village in which there exists a duly perfected cemetery association as defined in section 12-501, if the cemetery association proposes to the mayor and council of such city or to the chairperson and board of trustees of such village by means of a resolution duly enacted by such cemetery association, signed by its president and attested by its secretary, signifying the willingness of the cemetery association to exercise control and management of any cemetery belonging to such city or village, then the mayor and council or chairperson and board of trustees shall submit at the next regular municipal election the question of the management and control over the cemetery under the conveyance made by the proper authorities of such city or village. If a majority of the votes cast at such election are in favor of the transfer of the management and control of the cemetery belonging to such city or village to the cemetery association, the management and control of such cemetery shall be relinquished forthwith by the proper authorities of such city or village to the cemetery association. If the real estate of the cemetery of such city or village has been acquired by gift or devise, the relinquishment of the management and control to the cemetery association shall be subject to the conditions imposed by the donor; and upon acceptance by the president and secretary of the cemetery association, the conditions shall be binding upon the cemetery association.

Source: Laws 1929, c. 46, § 8, p. 198; C.S.1929, § 17-548; R.S.1943, § 17-934; Laws 2014, LB863, § 13.
Effective date April 10, 2014.

17-944 Cemetery association; formation; when authorized.

Whenever, in cities of the second class and villages, one-fifth of the resident lot owners of any cemetery under the control of such city or village shall so desire it, it shall be lawful for such lot owners to associate themselves into and form a cemetery association as defined in section 12-501.

Source: Laws 1887, c. 15, § 1, p. 330; R.S.1913, § 5171; C.S.1922, § 4358; C.S.1929, § 17-556; R.S.1943, § 17-944; Laws 2014, LB863, § 14.
Effective date April 10, 2014.

CHAPTER 18

CITIES AND VILLAGES; LAWS APPLICABLE TO ALL

Article.

- 17. Miscellaneous. 18-1736 to 18-1742.
- 21. Community Development. 18-2101 to 18-2147.
- 27. Municipal Economic Development. 18-2705.

ARTICLE 17

MISCELLANEOUS

Section

- 18-1736. Handicapped or disabled persons; designation of parking spaces.
- 18-1738. Repealed. Laws 2014, LB 657, § 14.
- 18-1738.01. Repealed. Laws 2014, LB 657, § 14.
- 18-1738.02. Repealed. Laws 2014, LB 657, § 14.
- 18-1739. Repealed. Laws 2014, LB 657, § 14.
- 18-1740. Repealed. Laws 2014, LB 657, § 14.
- 18-1741. Repealed. Laws 2014, LB 657, § 14.
- 18-1741.02. Handicapped parking infraction; penalties; suspension of permit; fine.
- 18-1742. Repealed. Laws 2014, LB 657, § 14.

18-1736 Handicapped or disabled persons; designation of parking spaces.

(1) A city or village may designate parking spaces, including access aisles, for the exclusive use of (a) handicapped or disabled persons whose motor vehicles display the distinguishing license plates issued to handicapped or disabled persons pursuant to section 60-3,113, (b) handicapped or disabled persons whose motor vehicles display a distinguishing license plate issued to a handicapped or disabled person by another state, (c) such other handicapped or disabled persons or temporarily handicapped or disabled persons whose motor vehicles display a handicapped or disabled parking permit, and (d) such other motor vehicles which display a handicapped or disabled parking permit.

(2) If a city or village so designates a parking space or access aisle, it shall be indicated by posting aboveground and immediately adjacent to and visible from each space or access aisle a sign as described in section 18-1737. In addition to such sign, the space or access aisle may also be indicated by blue paint on the curb or edge of the paved portion of the street adjacent to the space or access aisle.

(3) For purposes of sections 18-1736 to 18-1741.07:

- (a) Access aisle has the same meaning as in section 60-302.01;
- (b) Handicapped or disabled parking permit has the same meaning as in section 60-331.01;
- (c) Handicapped or disabled person has the same meaning as in section 60-331.02; and
- (d) Temporarily handicapped or disabled person has the same meaning as in section 60-352.01.

Source: Laws 1977, LB 13, § 1; Laws 1979, LB 146, § 1; Laws 1980, LB 717, § 2; Laws 1984, LB 482, § 1; Laws 1987, LB 598, § 1; Laws

1995, LB 593, § 1; Laws 1996, LB 1211, § 1; Laws 1998, LB 299, § 1; Laws 2001, LB 809, § 1; Laws 2005, LB 274, § 225; Laws 2011, LB163, § 1; Laws 2014, LB657, § 1.
Effective date July 18, 2014.

18-1738 Repealed. Laws 2014, LB 657, § 14.

18-1738.01 Repealed. Laws 2014, LB 657, § 14.

18-1738.02 Repealed. Laws 2014, LB 657, § 14.

18-1739 Repealed. Laws 2014, LB 657, § 14.

18-1740 Repealed. Laws 2014, LB 657, § 14.

18-1741 Repealed. Laws 2014, LB 657, § 14.

18-1741.02 Handicapped parking infraction; penalties; suspension of permit; fine.

(1) Any person found guilty of a handicapped parking infraction shall be fined (a) not more than one hundred fifty dollars for the first offense, (b) not more than three hundred dollars for a second offense within a one-year period, and (c) not more than five hundred dollars for a third or subsequent offense within a one-year period.

(2) In addition to any fine imposed under subsection (1) of this section, any person found guilty of a handicapped parking infraction under section 60-3,113.06 shall be subject to suspension of such person's handicapped or disabled parking permit for six months and such other punishment as may be provided by local ordinance. In addition, the court shall impose a fine of not more than two hundred fifty dollars which may be waived by the court if, at the time of sentencing, all handicapped or disabled parking permits issued to or in the possession of the offender are returned to the court. At the expiration of such six-month period, a suspended handicapped or disabled parking permit may be renewed in the manner provided for renewal of the original permit.

Source: Laws 1993, LB 632, § 2; Laws 2009, LB524, § 1; Laws 2011, LB163, § 9; Laws 2014, LB657, § 2.
Effective date July 18, 2014.

18-1742 Repealed. Laws 2014, LB 657, § 14.

ARTICLE 21

COMMUNITY DEVELOPMENT

Section

- 18-2101. Act, how cited.
18-2103. Terms, defined.
18-2115. Plan; public hearing; notice.
18-2123.01. Redevelopment project with property outside corporate limits; formerly used defense site; agreement with county authorized.
18-2142.02. Enhanced employment area; redevelopment project; levy of general business occupation tax authorized; governing body; powers; occupation tax; power to levy; exceptions.
18-2142.04. Enhanced employment area; authorized work within area; levy of general business occupation tax authorized; exceptions; governing body; powers; revenue bonds authorized; terms and conditions.

Section

18-2147. Ad valorem tax; division authorized; limitation; fifteen-year period.

18-2101 Act, how cited.

Sections 18-2101 to 18-2144 shall be known and may be cited as the Community Development Law.

Source: Laws 1951, c. 224, § 1, p. 797; R.R.S.1943, § 14-1601; Laws 1957, c. 52, § 1, p. 247; R.R.S.1943, § 19-2601; Laws 1973, LB 299, § 1; Laws 1997, LB 875, § 2; Laws 2007, LB562, § 1; Laws 2013, LB66, § 1.

18-2103 Terms, defined.

For purposes of the Community Development Law, unless the context otherwise requires:

(1) An authority means any community redevelopment authority created pursuant to section 18-2102.01 and a city or village which has created a community development agency pursuant to the provisions of section 18-2101.01 and does not include a limited community redevelopment authority;

(2) Limited community redevelopment authority means a community redevelopment authority created pursuant to section 18-2102.01 having only one single specific limited pilot project authorized;

(3) City means any city or incorporated village in the state;

(4) Public body means the state or any municipality, county, township, board, commission, authority, district, or other political subdivision or public body of the state;

(5) Governing body or local governing body means the city council, board of trustees, or other legislative body charged with governing the municipality;

(6) Mayor means the mayor of the city or chairperson of the board of trustees of the village;

(7) Clerk means the clerk of the city or village;

(8) Federal government means the United States of America, or any agency or instrumentality, corporate or otherwise, of the United States of America;

(9) Area of operation means and includes the area within the corporate limits of the city and such land outside the city as may come within the purview of sections 18-2123 and 18-2123.01;

(10) Substandard areas means an area in which there is a predominance of buildings or improvements, whether nonresidential or residential in character, which, by reason of dilapidation, deterioration, age or obsolescence, inadequate provision for ventilation, light, air, sanitation, or open spaces, high density of population and overcrowding, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, and crime, (which cannot be remedied through construction of prisons), and is detrimental to the public health, safety, morals, or welfare;

(11) Blighted area means an area, which (a) by reason of the presence of a substantial number of deteriorated or deteriorating structures, existence of defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility, or usefulness, insanitary or unsafe conditions, deterio-

ration of site or other improvements, diversity of ownership, tax or special assessment delinquency exceeding the fair value of the land, defective or unusual conditions of title, improper subdivision or obsolete platting, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, substantially impairs or arrests the sound growth of the community, retards the provision of housing accommodations, or constitutes an economic or social liability and is detrimental to the public health, safety, morals, or welfare in its present condition and use and (b) in which there is at least one of the following conditions: (i) Unemployment in the designated area is at least one hundred twenty percent of the state or national average; (ii) the average age of the residential or commercial units in the area is at least forty years; (iii) more than half of the plotted and subdivided property in an area is unimproved land that has been within the city for forty years and has remained unimproved during that time; (iv) the per capita income of the area is lower than the average per capita income of the city or village in which the area is designated; or (v) the area has had either stable or decreasing population based on the last two decennial censuses. In no event shall a city of the metropolitan, primary, or first class designate more than thirty-five percent of the city as blighted, a city of the second class shall not designate an area larger than fifty percent of the city as blighted, and a village shall not designate an area larger than one hundred percent of the village as blighted. A redevelopment project involving a formerly used defense site as authorized under section 18-2123.01 shall not count towards the percentage limitations contained in this subdivision;

(12) Redevelopment project means any work or undertaking in one or more community redevelopment areas: (a) To acquire substandard and blighted areas or portions thereof, including lands, structures, or improvements the acquisition of which is necessary or incidental to the proper clearance, development, or redevelopment of such substandard and blighted areas; (b) to clear any such areas by demolition or removal of existing buildings, structures, streets, utilities, or other improvements thereon and to install, construct, or reconstruct streets, utilities, parks, playgrounds, public spaces, public parking facilities, sidewalks or moving sidewalks, convention and civic centers, bus stop shelters, lighting, benches or other similar furniture, trash receptacles, shelters, skywalks and pedestrian and vehicular overpasses and underpasses, and any other necessary public improvements essential to the preparation of sites for uses in accordance with a redevelopment plan; (c) to sell, lease, or otherwise make available land in such areas for residential, recreational, commercial, industrial, or other uses, including parking or other facilities functionally related or subordinate to such uses, or for public use or to retain such land for public use, in accordance with a redevelopment plan; and may also include the preparation of the redevelopment plan, the planning, survey, and other work incident to a redevelopment project and the preparation of all plans and arrangements for carrying out a redevelopment project; (d) to dispose of all real and personal property or any interest in such property, or assets, cash, or other funds held or used in connection with residential, recreational, commercial, industrial, or other uses, including parking or other facilities functionally related or subordinate to such uses, or any public use specified in a redevelopment plan or project, except that such disposition shall be at its fair value for uses in accordance with the redevelopment plan; (e) to acquire real property in a community redevelopment area which, under the redevelopment plan, is to be

repaired or rehabilitated for dwelling use or related facilities, repair or rehabilitate the structures, and resell the property; and (f) to carry out plans for a program of voluntary or compulsory repair, rehabilitation, or demolition of buildings or other improvements in accordance with the redevelopment plan;

(13) Redevelopment plan means a plan, as it exists from time to time for one or more community redevelopment areas, or for a redevelopment project, which (a) conforms to the general plan for the municipality as a whole and (b) is sufficiently complete to indicate such land acquisition, demolition and removal of structures, redevelopment, improvements, and rehabilitation as may be proposed to be carried out in the community redevelopment area, zoning and planning changes, if any, land uses, maximum densities, and building requirements;

(14) Redeveloper means any person, partnership, or public or private corporation or agency which enters or proposes to enter into a redevelopment contract;

(15) Redevelopment contract means a contract entered into between an authority and a redeveloper for the redevelopment of an area in conformity with a redevelopment plan;

(16) Real property means all lands, including improvements and fixtures thereon, and property of any nature appurtenant thereto, or used in connection therewith, and every estate, interest and right, legal or equitable, therein, including terms for years and liens by way of judgment, mortgage, or otherwise, and the indebtedness secured by such liens;

(17) Bonds means any bonds, including refunding bonds, notes, interim certificates, debentures, or other obligations issued pursuant to the Community Development Law except for bonds issued pursuant to section 18-2142.04;

(18) Obligee means any bondholder, agent, or trustee for any bondholder, or lessor demising to any authority, established pursuant to section 18-2102.01, property used in connection with a redevelopment project, or any assignee or assignees of such lessor's interest or any part thereof, and the federal government when it is a party to any contract with such authority;

(19) Person means any individual, firm, partnership, limited liability company, corporation, company, association, joint-stock association, or body politic and includes any trustee, receiver, assignee, or other similar representative thereof;

(20) Community redevelopment area means a substandard and blighted area which the community redevelopment authority designates as appropriate for a renewal project;

(21) Redevelopment project valuation means the valuation for assessment of the taxable real property in a redevelopment project last certified for the year prior to the effective date of the provision authorized in section 18-2147;

(22) Enhanced employment area means an area not exceeding six hundred acres (a) within a community redevelopment area which is designated by an authority as eligible for the imposition of an occupation tax or (b) not within a community redevelopment area as may be designated under section 18-2142.04;

(23) Employee means a person employed at a business as a result of a redevelopment project;

(24) Employer-provided health benefit means any item paid for by the employer in total or in part that aids in the cost of health care services, including, but not limited to, health insurance, health savings accounts, and employer reimbursement of health care costs;

(25) Equivalent employees means the number of employees computed by (a) dividing the total hours to be paid in a year by (b) the product of forty times the number of weeks in a year;

(26) Business means any private business located in an enhanced employment area;

(27) New investment means the value of improvements to real estate made in an enhanced employment area by a developer or a business;

(28) Number of new employees means the number of equivalent employees that are employed at a business as a result of the redevelopment project during a year that are in excess of the number of equivalent employees during the year immediately prior to the year that a redevelopment plan is adopted; and

(29) Occupation tax means a tax imposed under section 18-2142.02.

Source: Laws 1951, c. 224, § 3, p. 797; R.R.S.1943, § 14-1603; Laws 1957, c. 52, § 4, p. 249; Laws 1961, c. 61, § 3, p. 227; R.R.S. 1943, § 19-2603; Laws 1965, c. 74, § 3, p. 303; Laws 1969, c. 106, § 2, p. 488; Laws 1973, LB 299, § 3; Laws 1979, LB 158, § 2; Laws 1980, LB 986, § 2; Laws 1984, LB 1084, § 2; Laws 1993, LB 121, § 143; Laws 1997, LB 875, § 5; Laws 2007, LB562, § 2; Laws 2012, LB729, § 1; Laws 2013, LB66, § 2; Laws 2014, LB1012, § 1.
Effective date April 3, 2014.

18-2115 Plan; public hearing; notice.

(1) The governing body of the city shall hold a public hearing on any redevelopment plan or substantial modification thereof recommended by the authority, after reasonable public notice thereof by publication at least once a week for two consecutive weeks in a legal newspaper of general circulation in the community, the time of the hearing to be at least ten days from the last publication. The notice shall describe the time, date, place, and purpose of the hearing and shall specifically identify the area to be redeveloped under the plan. All interested parties shall be afforded at such public hearing a reasonable opportunity to express their views respecting the proposed redevelopment plan.

(2) Except as provided in subsection (3) of this section, the governing body of the city or such other division of the city or person as the governing body shall designate shall, at least ten days prior to the public hearing required by subsection (1) of this section, provide notice of the hearing to each registered neighborhood association whose area of representation is located in whole or in part within a one-mile radius of the area to be redeveloped in the manner requested by the association and mail notice of the hearing by first-class United States mail, postage prepaid, or by certified mail to the president or chairperson of the governing body of each county, school district, community college, educational service unit, and natural resources district in which the real property subject to such plan or major modification is located and whose property tax receipts would be directly affected. The notice shall set out the

time, date, place, and purpose of the hearing and shall include a map of sufficient size to show the area to be redeveloped.

(3) If the planning board or planning commission of the city will conduct a public hearing on the redevelopment plan or substantial modification thereof, the governing body of the city or such other division of the city or person as the governing body shall designate shall, at least ten days prior to the public hearing, provide notice of the hearing to each registered neighborhood association whose area of representation is located in whole or in part within a one-mile radius of the area to be redeveloped in the manner requested by the association and mail notice of the hearing by first-class United States mail, postage prepaid, or by certified mail to the president or chairperson of the governing body of each county, school district, community college, educational service unit, and natural resources district in which the real property subject to such plan or major modification is located and whose property tax receipts would be directly affected. The notice shall set out the time, date, place, and purpose of the hearing and shall include a map of sufficient size to show the area to be redeveloped. If the registered neighborhood association has been given notice of the public hearing to be held by the planning board or planning commission in conformity with the provisions of this subsection, the governing body or its designee shall not be required to comply with the notice requirements of subsection (2) of this section.

(4) Each neighborhood association desiring to receive notice of any hearing as provided in this section shall register with the city's planning department or, if there is no planning department, with the city clerk. The registration shall include a description of the area of representation of the association, the name of and contact information for the individual designated by the association to receive the notice on its behalf, and the requested manner of service, whether by email or regular, certified, or registered mail. Registration of the neighborhood association for the purposes of this section shall be accomplished in accordance with such other rules and regulations as may be adopted and promulgated by the city.

Source: Laws 1951, c. 224, § 6(8), p. 807; R.R.S.1943, § 14-1615; Laws 1957, c. 52, § 10, p. 258; R.R.S.1943, § 19-2615; Laws 1995, LB 140, § 1; Laws 1997, LB 875, § 10; Laws 2014, LB679, § 2. Effective date July 18, 2014.

18-2123.01 Redevelopment project with property outside corporate limits; formerly used defense site; agreement with county authorized.

(1) Notwithstanding any other provisions of the Community Development Law to the contrary, a city may undertake a redevelopment project that includes real property located outside the corporate limits of such city if the following requirements have been met:

(a) The real property located outside the corporate limits of the city is a formerly used defense site;

(b) The formerly used defense site is located within the same county as the city approving such redevelopment project;

(c) The formerly used defense site is located within a sanitary and improvement district;

(d) The governing body of the city approving such redevelopment project passes an ordinance stating such city's intent to annex the formerly used defense site in the future; and

(e) The redevelopment project has been consented to by any city exercising extraterritorial jurisdiction over the formerly used defense site.

(2) For purposes of this section, formerly used defense site means real property that was formerly owned by, leased to, or otherwise possessed by the United States and under the jurisdiction of the United States Secretary of Defense. Formerly used defense site does not include missile silos.

(3) The inclusion of a formerly used defense site in any redevelopment project under this section shall not result in:

(a) Any change in the service area of any electric utility or natural gas utility unless such change has been agreed to by the electric utility or natural gas utility serving the formerly used defense site at the time of approval of such redevelopment project; or

(b) Any change in the service area of any communications company as defined in section 77-2734.04 unless (i) such change has been agreed to by the communications company serving the formerly used defense site at the time of approval of such redevelopment project or (ii) such change occurs pursuant to sections 86-135 to 86-138.

(4) A city approving a redevelopment project under this section and the county in which the formerly used defense site is located may enter into an agreement pursuant to the Interlocal Cooperation Act in which the county agrees to reimburse such city for any services the city provides to the formerly used defense site after approval of the redevelopment project.

Source: Laws 2013, LB66, § 3.

Cross References

Interlocal Cooperation Act, see section 13-801.

18-2142.02 Enhanced employment area; redevelopment project; levy of general business occupation tax authorized; governing body; powers; occupation tax; power to levy; exceptions.

A city may levy a general business occupation tax upon the businesses and users of space within an enhanced employment area for the purpose of paying all or any part of the costs and expenses of any redevelopment project within such enhanced employment area. After March 27, 2014, any occupation tax imposed pursuant to this section shall make a reasonable classification of businesses, users of space, or kinds of transactions for purposes of imposing such tax, except that no occupation tax shall be imposed on any transaction which is subject to tax under section 53-160, 66-489, 66-489.02, 66-4,140, 66-4,145, 66-4,146, 77-2602, or 77-4008 or which is exempt from tax under section 77-2704.24. The collection of a tax imposed pursuant to this section shall be made and enforced in such a manner as the governing body shall by ordinance determine to produce the required revenue. The governing body may provide that failure to pay the tax imposed pursuant to this section shall constitute a violation of the ordinance and subject the violator to a fine or other punishment as provided by ordinance. Any such occupation tax agreed to by the authority and the city shall remain in effect so long as the authority has

bonds outstanding which have been issued stating such occupation tax as an available source for payment.

Source: Laws 2007, LB562, § 8; Laws 2014, LB474, § 6.
Effective date March 27, 2014.

18-2142.04 Enhanced employment area; authorized work within area; levy of general business occupation tax authorized; exceptions; governing body; powers; revenue bonds authorized; terms and conditions.

(1) For purposes of this section:

(a) Authorized work means the performance of any one or more of the following purposes within an enhanced employment area designated pursuant to this section:

(i) The acquisition, construction, maintenance, and operation of public off-street parking facilities for the benefit of the enhanced employment area;

(ii) Improvement of any public place or facility in the enhanced employment area, including landscaping, physical improvements for decoration or security purposes, and plantings;

(iii) Construction or installation of pedestrian shopping malls or plazas, sidewalks or moving sidewalks, parks, meeting and display facilities, bus stop shelters, lighting, benches or other seating furniture, sculptures, trash receptacles, shelters, fountains, skywalks, and pedestrian and vehicular overpasses and underpasses, and any useful or necessary public improvements;

(iv) Leasing, acquiring, constructing, reconstructing, extending, maintaining, or repairing parking lots or parking garages, both above and below ground, or other facilities for the parking of vehicles, including the power to install such facilities in public areas, whether such areas are owned in fee or by easement, in the enhanced employment area;

(v) Creation and implementation of a plan for improving the general architectural design of public areas in the enhanced employment area;

(vi) The development of any public activities and promotion of public events, including the management, promotion, and advocacy of retail trade activities or other promotional activities, in the enhanced employment area;

(vii) Maintenance, repair, and reconstruction of any improvements or facilities authorized by the Community Development Law;

(viii) Any other project or undertaking for the betterment of the public facilities in the enhanced employment area, whether the project is capital or noncapital in nature;

(ix) Enforcement of parking regulations and the provision of security within the enhanced employment area; or

(x) Employing or contracting for personnel, including administrators for any improvement program under the Community Development Law, and providing for any service as may be necessary or proper to carry out the purposes of the Community Development Law;

(b) Employee means a person employed at a business located within an enhanced employment area; and

(c) Number of new employees means the number of equivalent employees that are employed at a business located within an enhanced employment area designated pursuant to this section during a year that are in excess of the

number of equivalent employees during the year immediately prior to the year the enhanced employment area was designated pursuant to this section.

(2) If an area is not blighted or substandard, a city may designate an area as an enhanced employment area if the governing body determines that new investment within such enhanced employment area will result in at least (a) two new employees and new investment of one hundred twenty-five thousand dollars in counties with fewer than fifteen thousand inhabitants, (b) five new employees and new investment of two hundred fifty thousand dollars in counties with at least fifteen thousand inhabitants but fewer than twenty-five thousand inhabitants, (c) ten new employees and new investment of five hundred thousand dollars in counties with at least twenty-five thousand inhabitants but fewer than fifty thousand inhabitants, (d) fifteen new employees and new investment of one million dollars in counties with at least fifty thousand inhabitants but fewer than one hundred thousand inhabitants, (e) twenty new employees and new investment of one million five hundred thousand dollars in counties with at least one hundred thousand inhabitants but fewer than two hundred thousand inhabitants, (f) twenty-five new employees and new investment of two million dollars in counties with at least two hundred thousand inhabitants but fewer than four hundred thousand inhabitants, or (g) thirty new employees and new investment of three million dollars in counties with at least four hundred thousand inhabitants. Any business that has one hundred thirty-five thousand square feet or more and annual gross sales of ten million dollars or more shall provide an employer-provided health benefit of at least three thousand dollars annually to all new employees who are working thirty hours per week or more on average and have been employed at least six months. In making such determination, the governing body may rely upon written undertakings provided by any owner of property within such area.

(3) Upon designation of an enhanced employment area under this section, a city may levy a general business occupation tax upon the businesses and users of space within such enhanced employment area for the purpose of paying all or any part of the costs and expenses of authorized work within such enhanced employment area. After March 27, 2014, any occupation tax imposed pursuant to this section shall make a reasonable classification of businesses, users of space, or kinds of transactions for purposes of imposing such tax, except that no occupation tax shall be imposed on any transaction which is subject to tax under section 53-160, 66-489, 66-489.02, 66-4,140, 66-4,145, 66-4,146, 77-2602, or 77-4008 or which is exempt from tax under section 77-2704.24. The collection of a tax imposed pursuant to this section shall be made and enforced in such a manner as the governing body shall by ordinance determine to produce the required revenue. The governing body may provide that failure to pay the tax imposed pursuant to this section shall constitute a violation of the ordinance and subject the violator to a fine or other punishment as provided by ordinance. Any occupation tax levied by the city under this section shall remain in effect so long as the city has bonds outstanding which have been issued under the authority of this section and are secured by such occupation tax or that state such occupation tax as an available source for payment. The total amount of occupation taxes levied shall not exceed the total costs and expenses of the authorized work including the total debt service requirements of any bonds the proceeds of which are expended for or allocated to such authorized work. The assessments or taxes levied must be specified by ordinance and the proceeds shall not be used for any purpose other than the making of such

improvements and for the repayment of bonds issued in whole or in part for the financing of such improvements. The authority to levy the general business occupation tax contained in this section and the authority to issue bonds secured by or payable from such occupation tax shall be independent of and separate from any occupation tax referenced in section 18-2103.

(4) A city may issue revenue bonds for the purpose of defraying the cost of authorized work and to secure the payment of such bonds with the occupation tax revenue described in this section. Such revenue bonds may be issued in one or more series or issues where deemed advisable, and each such series or issue may contain different maturity dates, interest rates, priorities on revenue available for payment of such bonds and priorities on securities available for guaranteeing payment thereof, and such other differing terms and conditions as are deemed necessary. The following shall apply to any such bonds:

(a) Such bonds shall be limited obligations of the city. Bonds and interest on such bonds, issued under the authority of this section, shall not constitute nor give rise to a pecuniary liability of the city or a charge against its general credit or taxing powers. Such limitation shall be plainly stated upon the face of each of such bonds;

(b) Such bonds may (i) be executed and delivered at any time and from time to time, (ii) be in such form and denominations, (iii) be of such tenor, (iv) be payable in such installments and at such time or times not exceeding twenty years from their date, (v) be payable at such place or places, (vi) bear interest at such rate or rates, payable at such place or places, and evidenced in such manner, (vii) be redeemable prior to maturity, with or without premium, and (viii) contain such provisions as shall be deemed in the best interest of the city and provided for in the proceedings of the governing body under which the bonds shall be authorized to be issued;

(c) The authorization, terms, issuance, execution, or delivery of such bonds shall not be subject to sections 10-101 to 10-126; and

(d) Such bonds may be sold at public or private sale in such manner and at such time or times as may be determined by the governing body to be most advantageous. The city may pay all expenses, premiums, and commissions which the governing body may deem necessary or advantageous in connection with the authorization, sale, and issuance thereof from the proceeds or the sale of the bonds or from the revenue of the occupation tax described in this section.

Source: Laws 2007, LB562, § 10; Laws 2014, LB474, § 7.
Effective date March 27, 2014.

18-2147 Ad valorem tax; division authorized; limitation; fifteen-year period.

(1) Any redevelopment plan as originally approved or as later modified pursuant to section 18-2117 may contain a provision that any ad valorem tax levied upon real property, or any portion thereof, in a redevelopment project for the benefit of any public body shall be divided, for a period not to exceed fifteen years after the effective date as identified in the project redevelopment contract or in the resolution of the authority authorizing the issuance of bonds pursuant to section 18-2124, as follows:

(a) That portion of the ad valorem tax which is produced by the levy at the rate fixed each year by or for each such public body upon the redevelopment project valuation shall be paid into the funds of each such public body in the

same proportion as are all other taxes collected by or for the body. When there is not a redevelopment project valuation on a parcel or parcels, the county assessor shall determine the redevelopment project valuation based upon the fair market valuation of the parcel or parcels as of January 1 of the year prior to the year that the ad valorem taxes are to be divided. The county assessor shall provide written notice of the redevelopment project valuation to the authority as defined in section 18-2103 and the owner. The authority or owner may protest the valuation to the county board of equalization within thirty days after the date of the valuation notice. All provisions of section 77-1502 except dates for filing of a protest, the period for hearing protests, and the date for mailing notice of the county board of equalization's decision are applicable to any protest filed pursuant to this section. The county board of equalization shall decide any protest filed pursuant to this section within thirty days after the filing of the protest. The county clerk shall mail a copy of the decision made by the county board of equalization on protests pursuant to this section to the authority or owner within seven days after the board's decision. Any decision of the county board of equalization may be appealed to the Tax Equalization and Review Commission, in accordance with section 77-5013, within thirty days after the date of the decision;

(b) That portion of the ad valorem tax on real property, as provided in the redevelopment contract or bond resolution, in the redevelopment project in excess of such amount, if any, shall be allocated to and, when collected, paid into a special fund of the authority to be used solely to pay the principal of, the interest on, and any premiums due in connection with the bonds of, loans, notes, or advances of money to, or indebtedness incurred by, whether funded, refunded, assumed, or otherwise, such authority for financing or refinancing, in whole or in part, the redevelopment project. When such bonds, loans, notes, advances of money, or indebtedness, including interest and premiums due, have been paid, the authority shall so notify the county assessor and county treasurer and all ad valorem taxes upon taxable real property in such a redevelopment project shall be paid into the funds of the respective public bodies; and

(c) Any interest and penalties due for delinquent taxes shall be paid into the funds of each public body in the same proportion as are all other taxes collected by or for the public body.

(2) The effective date of a provision dividing ad valorem taxes as provided in subsection (1) of this section shall not occur until such time as the real property in the redevelopment project is within the corporate boundaries of the city. This subsection shall not apply to a redevelopment project involving a formerly used defense site as authorized in section 18-2123.01.

(3) Beginning August 1, 2006, all notices of the provision for dividing ad valorem taxes shall be sent by the authority to the county assessor on forms prescribed by the Property Tax Administrator. The notice shall be sent to the county assessor on or before August 1 of the year of the effective date of the provision. Failure to satisfy the notice requirement of this section shall result in the taxes, for all taxable years affected by the failure to give notice of the effective date of the provision, remaining undivided and being paid into the funds for each public body receiving property taxes generated by the property in the redevelopment project. However, the redevelopment project valuation for the remaining division of ad valorem taxes in accordance with subdivisions (1)(a) and (b) of this section shall be the last certified valuation for the taxable

year prior to the effective date of the provision to divide the taxes for the remaining portion of the fifteen-year period pursuant to subsection (1) of this section.

Source: Laws 1979, LB 158, § 10; Laws 1997, LB 875, § 14; Laws 1999, LB 194, § 2; Laws 2002, LB 994, § 2; Laws 2006, LB 808, § 2; Laws 2006, LB 1175, § 2; Laws 2011, LB54, § 1; Laws 2013, LB66, § 4.

ARTICLE 27

MUNICIPAL ECONOMIC DEVELOPMENT

Section

18-2705. Economic development program, defined.

18-2705 Economic development program, defined.

Economic development program means any project or program utilizing funds derived from local sources of revenue for the purpose of providing direct or indirect financial assistance to a qualifying business or the payment of related costs and expenses or both, without regard to whether that business is identified at the time the project or program is initiated or is to be determined by specified means at some time in the future. An economic development program may include, but shall not be limited to, the following activities: Direct loans or grants to qualifying businesses for fixed assets or working capital or both; loan guarantees for qualifying business; grants for public works improvements which are essential to the location or expansion of, or the provision of new services by, a qualifying business; grants or loans for job training; the purchase of real estate, options for such purchases, and the renewal or extension of such options; relocation incentives for new residents; the issuance of bonds as provided for in the Local Option Municipal Economic Development Act; and payments for salaries and support of city staff to implement the economic development program or the contracting of such to an outside entity. For cities of the first and second class and villages, an economic development program may also include grants or loans for the construction or rehabilitation for sale or lease of housing for persons of low or moderate income. For cities of the first and second class and villages, an economic development program may also include grants, loans, or funds for rural infrastructure development as defined in section 66-2102. An economic development program may be conducted jointly by two or more cities after the approval of the program by the voters of each participating city.

Source: Laws 1991, LB 840, § 6; Laws 1993, LB 732, § 17; Laws 1995, LB 207, § 3; Laws 2001, LB 827, § 13; Laws 2012, LB1115, § 8; Laws 2013, LB295, § 1.



CHAPTER 19

CITIES AND VILLAGES; LAWS APPLICABLE TO MORE THAN ONE AND LESS THAN ALL CLASSES

Article.

- 9. City Planning, Zoning. (Applicable to cities of the first or second class and villages.) 19-922.
- 11. Treasurer's Report and Council Proceedings; Publication. 19-1101.
- 35. Pension Plans. (Applicable to cities of the first or second class and villages.) 19-3501.
- 40. Business Improvement Districts. (Applicable to all cities.) 19-4018 to 19-4034.
- 52. Nebraska Municipal Land Bank Act. 19-5201 to 19-5218.

ARTICLE 9

CITY PLANNING, ZONING

(Applicable to cities of the first or second class and villages.)

Section

- 19-922. Legislative body of municipality; adopt building regulations; publish; reference to existing codes; ordinances open to public; ordinances to apply to entire municipal area.

19-922 Legislative body of municipality; adopt building regulations; publish; reference to existing codes; ordinances open to public; ordinances to apply to entire municipal area.

The legislative body of any city of the first or second class or any village may adopt by ordinance, which shall have the force and effect of law, the conditions, provisions, limitations, and terms of a building code, a plumbing code, an electrical code, a fire prevention code, or any other code relating to building or relating to the erection, construction, reconstruction, alteration, repair, conversion, maintenance, placing, or using of any building, structure, automobile trailer, house trailer, or cabin trailer. The local legislative body shall, before such ordinance takes effect, cause such ordinance setting forth the code to be published one time in book or pamphlet form or in a legal newspaper published in and of general circulation in the municipality or, if none is published in the municipality, in a legal newspaper of general circulation in the municipality. The legislative body may by ordinance, which shall have the force and effect of law, amend such code so adopted.

For this purpose, the local legislative body may adopt any standard code which contains rules or regulations printed as a code in book or pamphlet form, by reference to such code, or portions thereof, alone without setting forth in such ordinance the conditions, provisions, limitations, or terms of such code. When such code or any such standard code, or portion thereof, shall be incorporated by reference into any ordinance pursuant to this section, it shall have the same force and effect as though it has been spread at large in such ordinance without further or additional publication. At least one copy of such code or such standard code, or portion thereof, shall be filed for use and

examination by the public in the office of the clerk of such municipality prior to its adoption.

Any code adopted and approved by the local legislative body as provided in this section and the building permit requirements or occupancy permit requirements imposed by any such code or by section 19-913 shall apply to all of the city or village and within the unincorporated area where a city or village has been granted zoning jurisdiction and is exercising such jurisdiction.

Source: Laws 1975, LB 410, § 8; Laws 1986, LB 960, § 12; Laws 1987, LB 483, § 1; Laws 2014, LB802, § 1.
Effective date July 18, 2014.

ARTICLE 11

TREASURER'S REPORT AND COUNCIL PROCEEDINGS; PUBLICATION

Section

19-1101. City or village treasurer; report for fiscal year; publication.

19-1101 City or village treasurer; report for fiscal year; publication.

The treasurer of each city or village that has a population of not more than one hundred thousand inhabitants shall prepare and publish annually within sixty days after the close of its municipal fiscal year a statement of the receipts and expenditures of funds of the city or village for the preceding fiscal year. The statement shall also include the information required by subsection (3) of section 16-318 or subsection (2) of section 17-606. Not more than the legal rate provided for in section 33-141 shall be charged and paid for such publication.

Source: Laws 1919, c. 183, § 2, p. 410; C.S.1922, § 4377; C.S.1929, § 17-575; R.S.1943, § 19-1101; Laws 1959, c. 66, § 1, p. 292; Laws 1992, LB 415, § 2; Laws 2013, LB112, § 5.

Cross References

City of the first class, receipts and expenditures, publication requirements, see section 16-722.

ARTICLE 35

PENSION PLANS

(Applicable to cities of the first or second class and villages.)

Section

19-3501. Pension plans authorized; employees covered; contributions; funding past service benefits; joinder in plan by two or more cities; reports.

19-3501 Pension plans authorized; employees covered; contributions; funding past service benefits; joinder in plan by two or more cities; reports.

(1) The governing body of cities of the first and second classes and villages may, by appropriate ordinance or proper resolution, establish a pension plan designed and intended for the benefit of the regularly employed or appointed full-time employees of the city. Any recognized method of funding a pension plan may be employed. The plan shall be established by appropriate ordinance or proper resolution, which may provide for mandatory contribution by the employee. The city may also contribute, in addition to any amounts contributed by the employee, amounts to be used for the purpose of funding employee past service benefits. Any two or more cities of the first and second classes and

villages may jointly establish such a pension plan by adoption of appropriate ordinances or resolutions. Such a pension plan may be integrated with old age and survivors insurance, otherwise generally known as social security.

(2)(a) Beginning December 31, 1998, and each December 31 thereafter, the clerk of a city or village with a retirement plan established pursuant to this section and section 401(a) of the Internal Revenue Code shall file with the Public Employees Retirement Board an annual report on such plan and shall submit copies of such report to the Auditor of Public Accounts. The Auditor of Public Accounts may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. The annual report shall be in a form prescribed by the Public Employees Retirement Board and shall contain the following information for each such retirement plan:

- (i) The number of persons participating in the retirement plan;
- (ii) The contribution rates of participants in the plan;
- (iii) Plan assets and liabilities;
- (iv) The names and positions of persons administering the plan;
- (v) The names and positions of persons investing plan assets;
- (vi) The form and nature of investments;
- (vii) For each defined contribution plan, a full description of investment policies and options available to plan participants; and
- (viii) For each defined benefit plan, the levels of benefits of participants in the plan, the number of members who are eligible for a benefit, and the total present value of such members' benefits, as well as the funding sources which will pay for such benefits.

If a plan contains no current active participants, the city or village clerk may file in place of such report a statement with the Public Employees Retirement Board indicating the number of retirees still drawing benefits, and the sources and amount of funding for such benefits.

(b) If such retirement plan is a defined benefit plan which was open to new members on January 1, 2004, in addition to the reports required by section 13-2402, the city council or village board shall cause to be prepared an annual report and shall file the same with the Public Employees Retirement Board and the Nebraska Retirement Systems Committee of the Legislature and submit to the Auditor of Public Accounts a copy of each report. The Auditor of Public Accounts may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. If the city council or village board does not submit a copy of the report to the Auditor of Public Accounts within six months after the end of the plan year, the Auditor of Public Accounts may audit, or cause to be audited, the city or village. All costs of the audit shall be paid by the city or village. The report shall consist of a full actuarial analysis of each such retirement plan established pursuant to this section. The analysis shall be prepared by an independent private organization or public entity employing actuaries who are members in good standing of the American Academy of Actuaries, and which organization or entity has demonstrated expertise to perform this type of analysis and is unrelated to any organization offering investment advice or which provides investment management services to the retirement plan. The report to the Nebraska Retirement Systems Committee shall be submitted electronically.

(3) Subsection (1) of this section shall not apply to firefighters or police officers who are included under an existing pension or retirement system established by the municipality employing such firefighters or police officers or the Legislature. If a city of the first class decreases in population to less than five thousand, as determined by the latest federal census, any police officer or firefighter employed by such city on or prior to the date such city becomes a city of the second class shall retain the level of benefits established by the Legislature for police officers or firefighters employed by a city of the first class on the date such city becomes a city of the second class.

Source: Laws 1957, c. 26, § 1, p. 180; Laws 1963, c. 63, § 10, p. 262; Laws 1967, c. 98, § 1, p. 297; R.S.Supp.,1967, § 16-328; Laws 1969, c. 79, § 1, p. 410; Laws 1974, LB 1002, § 1; Laws 1983, LB 291, § 2; Laws 1989, LB 145, § 1; Laws 1998, LB 1191, § 21; Laws 1999, LB 795, § 9; Laws 2011, LB474, § 9; Laws 2014, LB759, § 14.
Effective date July 18, 2014.

ARTICLE 40

BUSINESS IMPROVEMENT DISTRICTS

(Applicable to all cities.)

Section

- 19-4018. Cities; business improvement district; special assessment; business occupation tax; exceptions; use of proceeds.
19-4031. District; general business occupation tax; purpose; exceptions; notice; appeal; collection; basis.
19-4034. Business improvement district; special assessment or business occupation tax; exceptions; maintenance, repair, or reconstruction; levy; procedure.

19-4018 Cities; business improvement district; special assessment; business occupation tax; exceptions; use of proceeds.

Pursuant to the Business Improvement District Act, cities of the metropolitan, primary, first, or second class may impose (1) a special assessment upon the property within a business improvement district in the city or (2) a general business occupation tax on businesses and users of space within a business improvement district. After March 27, 2014, any occupation tax imposed pursuant to this section shall make a reasonable classification of businesses, users of space, or kinds of transactions for purposes of imposing such tax, except that no occupation tax shall be imposed on any transaction which is subject to tax under section 53-160, 66-489, 66-489.02, 66-4,140, 66-4,145, 66-4,146, 77-2602, or 77-4008 or which is exempt from tax under section 77-2704.24. The proceeds or other available funds may be used for the purposes stated in section 19-4019.

Source: Laws 1979, LB 251, § 4; Laws 2014, LB474, § 8.
Effective date March 27, 2014.

19-4031 District; general business occupation tax; purpose; exceptions; notice; appeal; collection; basis.

(1) In addition to or in place of the special assessments authorized by the Business Improvement District Act, a city may levy a general business occupation tax upon the businesses and users of space within a district established for acquiring, constructing, maintaining or operating public offstreet parking faci-

ties and providing in connection therewith other public improvements and facilities authorized by the Business Improvement District Act, for the purpose of paying all or any part of the total cost and expenses of any authorized improvement or facility within such district. Notice of a hearing on any such tax levied under the Business Improvement District Act shall be given to the businesses and users of space of such districts, and appeals may be taken, all in the manner provided in section 19-4030.

(2) After March 27, 2014, any occupation tax imposed pursuant to this section shall make a reasonable classification of businesses, users of space, or kinds of transactions for purposes of imposing such tax, except that no occupation tax shall be imposed on any transaction which is subject to tax under section 53-160, 66-489, 66-489.02, 66-4,140, 66-4,145, 66-4,146, 77-2602, or 77-4008 or which is exempt from tax under section 77-2704.24. The collection of a tax imposed pursuant to this section shall be made and enforced in such a manner as the city council shall by ordinance determine to produce the required revenue. The city council may provide that failure to pay the tax imposed pursuant to this section shall constitute a violation of the ordinance and subject the violator to a fine or other punishment as provided by ordinance.

Source: Laws 1979, LB 251, § 17; Laws 1983, LB 22, § 11; Laws 2014, LB474, § 9.

Effective date March 27, 2014.

19-4034 Business improvement district; special assessment or business occupation tax; exceptions; maintenance, repair, or reconstruction; levy; procedure.

A city may levy a general business occupation tax, or a special assessment against the real estate located in a district to the extent of special benefit to such real estate, for the purpose of paying all or any part of the cost of maintenance, repair, and reconstruction, including utility costs of any improvement or facility in the district. Districts created for taxation or assessment of maintenance, repair, and reconstruction costs, including utility costs of improvements or facilities which are authorized by the Business Improvement District Act, but which were not acquired or constructed pursuant to the act, may be taxed or assessed as provided in the act. Any occupation tax levied under this section shall be limited to those improvements and facilities authorized by section 19-4030. After March 27, 2014, any occupation tax imposed pursuant to this section shall make a reasonable classification of businesses, users of space, or kinds of transactions for purposes of imposing such tax, except that no occupation tax shall be imposed on any transaction which is subject to tax under section 53-160, 66-489, 66-489.02, 66-4,140, 66-4,145, 66-4,146, 77-2602, or 77-4008 or which is exempt from tax under section 77-2704.24. The city council may levy such taxes or assessments under either of the following methods:

(1) The city council, sitting as a board of equalization, may, not more frequently than annually, determine the costs of maintenance or repair, and reconstruction, of a facility. Such costs shall be either assessed to the real estate located in such district in accordance with the proposed method of assessment, or taxed against the businesses and users of space in the district, whichever may be applicable as determined by the ordinance creating the district. However, if the city council finds that the method of assessment proposed in the ordinance creating the district does not provide a fair and equitable method of

apportioning such costs, then it may assess the costs under such method as the city council finds to be fair and equitable. At the hearing on such taxes or assessments, objections may be made to the total cost and the proposed allocation of such costs among the parcels of real estate or businesses in such district; or

(2) After notice is given to the owners or businesses as provided in section 19-4030 the city council may establish and may change from time to time, the percentage of such costs for maintenance, repair, and reconstruction which each parcel of real estate or each business or user of space in any district shall pay. The city council shall annually determine the total amount of such costs for each period since costs were last taxed or assessed, and shall, after a hearing, tax or assess such costs to the real estate in the district in accordance with the percentages previously established at such hearing. Notice of such hearing shall be given as provided in section 19-4030 and shall state the total costs and percentage to be taxed or assessed to each parcel of real estate. Unless objections are filed with the city clerk at least five days before the hearing, all objections to the amount of total costs and the assessment percentages should be deemed to have been waived and the assessments shall be levied as stated in such notice except that the city council may reduce any assessment percentage.

Source: Laws 1979, LB 251, § 20; Laws 1983, LB 22, § 13; Laws 2014, LB474, § 10.

Effective date March 27, 2014.

ARTICLE 52

NEBRASKA MUNICIPAL LAND BANK ACT

Section

- 19-5201. Act, how cited.
- 19-5202. Legislative findings and declarations.
- 19-5203. Terms, defined.
- 19-5204. Creation of land bank; procedure; use of Interlocal Cooperation Act; goal of land bank.
- 19-5205. Board; requirements; members; qualifications; vacancy; compensation; meetings; actions of board; liability; automatically accepted bid procedure; reasons.
- 19-5206. Agents and employees.
- 19-5207. Land bank; powers; no power of eminent domain.
- 19-5208. Land bank; acquire property; limits; maintenance; accept transfer from land reutilization authority.
- 19-5209. Exemption from taxation.
- 19-5210. Land bank; hold property in own name; inventory; consideration for transfer of property; form; powers; priorities for use; limits on certain dispositions.
- 19-5211. Land bank; funding; real property taxes collected on conveyed property; allocation; notice to county treasurer; when required.
- 19-5212. Land bank; bonds; issuance; procedure; negotiable instruments; tax exempt; liability.
- 19-5213. Board; minutes; record; meetings; public records; reports.
- 19-5214. Land bank; dissolution; procedure; notice; assets.
- 19-5215. Conflicts of interest; board; duties.
- 19-5216. Tax lien or claim; discharge and extinguishment; procedure; remit payments to county treasurer.
- 19-5217. Sale of property for nonpayment of taxes; land bank; power to bid; purchase of tax sale certificate; apply for tax deed or foreclose lien.
- 19-5218. Sale of property as part of foreclosure proceedings; land bank; powers.

19-5201 Act, how cited.

Sections 19-5201 to 19-5218 shall be known and may be cited as the Nebraska Municipal Land Bank Act.

Source: Laws 2013, LB97, § 1.

19-5202 Legislative findings and declarations.

The Legislature finds and declares as follows:

(1) Nebraska's municipalities are important to the social and economic vitality of the state, and many municipalities are struggling to cope with vacant, abandoned, and tax-delinquent properties;

(2) Vacant, abandoned, and tax-delinquent properties represent lost revenue to municipalities and large costs associated with demolition, safety hazards, and the deterioration of neighborhoods;

(3) There is an overriding public need to confront the problems caused by vacant, abandoned, and tax-delinquent properties through the creation of new tools for municipalities to use to turn vacant spaces into vibrant places; and

(4) Land banks are one of the tools that can be utilized by municipalities to facilitate the return of vacant, abandoned, and tax-delinquent properties to productive use.

Source: Laws 2013, LB97, § 2.

19-5203 Terms, defined.

For purposes of the Nebraska Municipal Land Bank Act:

(1) Board means the board of directors of a land bank;

(2) Land bank means a land bank established in accordance with the act;

(3) Municipality means any city or village of this state that is located (a) within a county in which a city of the metropolitan class is located or (b) within a county in which at least three cities of the first class are located; and

(4) Real property means lands, lands under water, structures, and any and all easements, air rights, franchises, and incorporeal hereditaments and every estate and right therein, legal and equitable, including terms for years and liens by way of judgment, mortgage, or otherwise, and any and all fixtures and improvements located thereon.

Source: Laws 2013, LB97, § 3.

19-5204 Creation of land bank; procedure; use of Interlocal Cooperation Act; goal of land bank.

(1) A municipality may elect to create a land bank by the adoption of an ordinance which specifies the following:

(a) The name of the land bank;

(b) The initial individuals to serve as members of the board and the length of terms for which they are to serve; and

(c) The qualifications and terms of office of members of the board.

(2) Two or more municipalities may elect to enter into an agreement pursuant to the Interlocal Cooperation Act to create a single land bank to act

on behalf of such municipalities, which agreement shall contain the information required by subsection (1) of this section.

(3) Each land bank created pursuant to the Nebraska Municipal Land Bank Act shall be deemed to be a public corporation acting in a governmental capacity and a political subdivision of the state and shall have permanent and perpetual duration until terminated and dissolved in accordance with section 19-5214.

(4) The primary goal of any land bank shall be to facilitate the return of vacant, abandoned, and tax-delinquent properties to productive use.

Source: Laws 2013, LB97, § 4.

Cross References

Interlocal Cooperation Act, see section 13-801.

19-5205 Board; requirements; members; qualifications; vacancy; compensation; meetings; actions of board; liability; automatically accepted bid procedure; reasons.

(1) If a land bank is created by a single municipality, the board of such land bank shall meet the following requirements:

(a) The board shall consist of:

(i) Seven voting members appointed by the mayor of the municipality that created the land bank and confirmed by a two-thirds vote of the governing body of such municipality;

(ii) The planning director of the municipality that created the land bank or his or her designee, as a nonvoting, ex officio member; and

(iii) Such other nonvoting members as are appointed by the mayor of the municipality that created the land bank;

(b) The seven voting members of the board shall be residents of the municipality that created the land bank;

(c) If the governing body of the municipality creating the land bank has any of its members elected by district or ward, then at least one voting member of the board shall be appointed from each such district or ward. Such voting members shall represent, to the greatest extent possible, the racial and ethnic diversity of the municipality creating the land bank;

(d) The seven voting members of the board shall have, collectively, verifiable skills, expertise, and knowledge in market-rate and affordable residential, commercial, industrial, and mixed-use real estate development, financing, law, purchasing and sales, asset management, economic and community development, and the acquisition of tax sale certificates; and

(e) The seven voting members of the board shall include:

(i) At least one member representing realtors;

(ii) At least one member representing the banking industry;

(iii) At least one member representing real estate developers;

(iv) At least one member representing a chamber of commerce;

(v) At least one member representing a nonprofit corporation involved in affordable housing; and

(vi) At least one member representing owners of multiple residential or commercial properties.

(2) If a land bank is created by more than one municipality pursuant to an agreement under the Interlocal Cooperation Act, the board of such land bank shall meet the following requirements:

(a) The board shall consist of:

(i) An odd number of voting members, totaling at least seven, appointed by the mayors of the municipalities that created the land bank, as mutually agreed to by such mayors, and confirmed by a two-thirds vote of the governing body of each municipality that created the land bank;

(ii) The planning director of each municipality that created the land bank or his or her designee, as nonvoting, ex officio members; and

(iii) Such other nonvoting members as are appointed by the mayors of the municipalities that created the land bank, as mutually agreed to by such mayors;

(b) Each voting member of the board shall be a resident of one of the municipalities that created the land bank, with at least one voting member appointed from each such municipality;

(c) If the governing body of the largest municipality creating the land bank has any of its members elected by district or ward, then at least one voting member of the board shall be appointed from each such district or ward. Such voting members shall represent, to the greatest extent possible, the racial and ethnic diversity of the largest municipality creating the land bank;

(d) The voting members of the board shall have, collectively, verifiable skills, expertise, and knowledge in market-rate and affordable residential, commercial, industrial, and mixed-use real estate development, financing, law, purchasing and sales, asset management, economic and community development, and the acquisition of tax sale certificates; and

(e) The voting members of the board shall include:

(i) At least one member representing realtors;

(ii) At least one member representing the banking industry;

(iii) At least one member representing real estate developers;

(iv) At least one member representing a chamber of commerce;

(v) At least one member representing a nonprofit corporation involved in affordable housing; and

(vi) At least one member representing owners of multiple residential or commercial properties.

(3) The members of the board shall select annually from among themselves a chairperson, a vice-chairperson, a treasurer, and such other officers as the board may determine.

(4) A public official or public employee shall be eligible to be a member of the board.

(5) A vacancy on the board among the appointed board members shall be filled in the same manner as the original appointment.

(6) Board members shall serve without compensation.

(7) The board shall meet in regular session according to a schedule adopted by the board and shall also meet in special session as convened by the chairperson or upon written notice signed by a majority of the voting members.

The presence of a majority of the voting members of the board shall constitute a quorum.

(8) Except as otherwise provided in subsections (9) and (11) of this section and in sections 19-5210 and 19-5214, all actions of the board shall be approved by the affirmative vote of a majority of the voting members present and voting.

(9) Any action of the board on the following matters shall be approved by a majority of the voting members:

(a) Adoption of bylaws and other rules and regulations for conduct of the land bank's business;

(b) Hiring or firing of any employee or contractor of the land bank. This function may, by majority vote of the voting members, be delegated by the board to a specified officer or committee of the land bank, under such terms and conditions, and to the extent, that the board may specify;

(c) The incurring of debt;

(d) Adoption or amendment of the annual budget; and

(e) Sale, lease, encumbrance, or alienation of real property, improvements, or personal property with a value of more than fifty thousand dollars.

(10) Members of a board shall not be liable personally on the bonds or other obligations of the land bank, and the rights of creditors shall be solely against such land bank.

(11) The board shall adopt policies and procedures to specify the conditions that must be met in order for the land bank to give an automatically accepted bid as authorized in sections 19-5217 and 19-5218. The adoption of such policies and procedures shall require the approval of two-thirds of the voting members of the board. At a minimum, such policies and procedures shall ensure that the automatically accepted bid shall only be given for one of the following reasons:

(a) The real property substantially meets more than one of the following criteria as determined by two-thirds of the voting members of the board:

(i) The property is not occupied by the owner or any lessee or licensee of the owner;

(ii) There are no utilities currently being provided to the property;

(iii) Any buildings on the property have been deemed unfit for human habitation, occupancy, or use by local housing officials;

(iv) Any buildings on the property are exposed to the elements such that deterioration of the building is occurring;

(v) Any buildings on the property are boarded up;

(vi) There have been previous efforts to rehabilitate any buildings on the property;

(vii) There is a presence of vermin, uncut vegetation, or debris accumulation on the property;

(viii) There have been past actions by the municipality to maintain the grounds or any building on the property; or

(ix) The property has been out of compliance with orders of local housing officials;

(b) The real property is contiguous to a parcel that meets more than one of the criteria in subdivision (11)(a) of this section or that is already owned by the land bank; or

(c) Acquisition of the real property by the land bank would serve the best interests of the community as determined by two-thirds of the voting members of the board. In determining whether the acquisition would serve the best interests of the community, the board shall take into consideration the hierarchical ranking of priorities for the use of real property conveyed by a land bank established pursuant to subsection (5) of section 19-5210, if any such hierarchical ranking is established.

Source: Laws 2013, LB97, § 5.

Cross References

Interlocal Cooperation Act, see section 13-801.

19-5206 Agents and employees.

A land bank may employ such agents and employees, permanent or temporary, as it may require, and may determine the qualifications and fix the compensation and benefits of such persons.

Source: Laws 2013, LB97, § 6.

19-5207 Land bank; powers; no power of eminent domain.

(1) A land bank shall have the following powers:

(a) To adopt, amend, and repeal bylaws for the regulation of its affairs and the conduct of its business;

(b) To sue and be sued in its own name and plead and be impleaded in all civil actions;

(c) To borrow money from private lenders, from municipalities, from the state, or from federal government funds as may be necessary for the operation and work of the land bank;

(d) To issue negotiable revenue bonds and notes according to the provisions of the Nebraska Municipal Land Bank Act;

(e) To procure insurance or guarantees from the state or federal government of the payments of any debts or parts thereof incurred by the land bank and to pay premiums in connection therewith;

(f) To enter into contracts and other instruments necessary, incidental, or convenient to the performance of its duties and the exercise of its powers, including, but not limited to, agreements under the Interlocal Cooperation Act for the joint exercise of powers under the Nebraska Municipal Land Bank Act;

(g) To enter into contracts and other instruments necessary, incidental, or convenient to the performance of functions by the land bank on behalf of municipalities or agencies or departments of municipalities, or the performance by municipalities or agencies or departments of municipalities of functions on behalf of the land bank;

(h) To make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the land bank;

(i) To provide foreclosure prevention counseling and re-housing assistance;

(j) To procure insurance against losses in connection with the real property, assets, or activities of the land bank;

(k) To invest money of the land bank, at the discretion of the board, in instruments, obligations, securities, or property determined proper by the board and name and use depositories for its money;

(l) To enter into contracts for the management of, the collection of rent from, or the sale of real property of the land bank;

(m) To design, develop, construct, demolish, reconstruct, rehabilitate, renovate, relocate, and otherwise improve real property or rights or interests in real property of the land bank;

(n) To fix, charge, and collect fees and charges for services provided by the land bank;

(o) To fix, charge, and collect rents and leasehold payments for the use of real property of the land bank for a period not to exceed twelve months, except that such twelve-month limitation shall not apply if the real property of the land bank is subject to a lease with a remaining term of more than twelve months at the time such real property is acquired by the land bank;

(p) To grant or acquire a license, easement, lease, as lessor and as lessee, or option with respect to real property of the land bank;

(q) To enter into partnerships, joint ventures, and other collaborative relationships with municipalities and other public and private entities for the ownership, management, development, and disposition of real property; and

(r) To do all other things necessary or convenient to achieve the objectives and purposes of the land bank or other laws that relate to the purposes and responsibilities of the land bank.

(2) A land bank shall neither possess nor exercise the power of eminent domain.

Source: Laws 2013, LB97, § 7.

Cross References

Interlocal Cooperation Act, see section 13-801.

19-5208 Land bank; acquire property; limits; maintenance; accept transfer from land reutilization authority.

(1) A land bank may acquire real property or interests in real property by gift, devise, transfer, exchange, foreclosure, purchase, or otherwise on terms and conditions and in a manner the land bank considers proper.

(2) A land bank may acquire real property or interests in real property by purchase contracts, lease-purchase agreements, installment sales contracts, or land contracts and may accept transfers from political subdivisions upon such terms and conditions as agreed to by the land bank and the political subdivision. Notwithstanding any other law to the contrary, any political subdivision may transfer to the land bank real property and interests in real property of the political subdivision on such terms and conditions and according to such procedures as determined by the political subdivision.

(3) A land bank shall maintain all of its real property in accordance with the laws and ordinances of the jurisdiction in which the real property is located.

(4) A land bank shall not own or hold real property located outside the jurisdictional boundaries of the municipality or municipalities that created the

land bank. For purposes of this subsection, jurisdictional boundaries of a municipality does not include the extraterritorial zoning jurisdiction of such municipality.

(5) A land bank may accept transfers of real property and interests in real property from a land reutilization authority on such terms and conditions, and according to such procedures, as mutually determined by the transferring land reutilization authority and the land bank.

(6) A land bank shall not hold legal title at any one time to more than seven percent of the total number of parcels of real property located in the municipality or municipalities that created the land bank.

Source: Laws 2013, LB97, § 8.

19-5209 Exemption from taxation.

The real property of a land bank and the land bank's income and operations are exempt from all taxation by the state or any political subdivision thereof.

Source: Laws 2013, LB97, § 9.

19-5210 Land bank; hold property in own name; inventory; consideration for transfer of property; form; powers; priorities for use; limits on certain dispositions.

(1) A land bank shall hold in its own name all real property acquired by the land bank irrespective of the identity of the transferor of such property.

(2) A land bank shall maintain and make available for public review and inspection an inventory of all real property held by the land bank.

(3) A land bank shall determine and set forth in policies and procedures of the board the general terms and conditions for consideration to be received by the land bank for the transfer of real property and interests in real property, which consideration may take the form of monetary payments and secured financial obligations, covenants and conditions related to the present and future use of the property, contractual commitments of the transferee, and such other forms of consideration as determined by the board to be in the best interest of the land bank.

(4) A land bank may convey, exchange, sell, transfer, grant, release and demise, pledge, and hypothecate any and all interests in, upon, or to real property of the land bank. A land bank may lease as lessor real property of the land bank for a period not to exceed twelve months, except that such twelve-month limitation shall not apply if the real property of the land bank is subject to a lease with a remaining term of more than twelve months at the time such real property is acquired by the land bank.

(5) The municipality or municipalities that created the land bank may establish by resolution or ordinance a hierarchical ranking of priorities for the use of real property conveyed by a land bank. Such ranking shall take into consideration the highest and best use that, when possible, will bring the greatest benefit to the community. The priorities may include, but are not limited to, (a) use for purely public spaces and places, (b) use for affordable housing, (c) use for retail, commercial, and industrial activities, and (d) such other uses and in such hierarchical order as determined by the municipality or municipalities.

(6) The municipality or municipalities that created the land bank may require by resolution or ordinance that any particular form of disposition of real property, or any disposition of real property located within specified jurisdictions, be subject to specified voting and approval requirements of the board. Except and unless restricted or constrained in this manner, the board may delegate to officers and employees the authority to enter into and execute agreements, instruments of conveyance, and all other related documents pertaining to the conveyance of real property by the land bank.

Source: Laws 2013, LB97, § 10.

19-5211 Land bank; funding; real property taxes collected on conveyed property; allocation; notice to county treasurer; when required.

(1) A land bank may receive funding through grants and loans from the municipality or municipalities that created the land bank, from other municipalities, from the state, from the federal government, and from other public and private sources.

(2) A land bank may receive and retain payments for services rendered, for rents and leasehold payments received, for consideration for disposition of real and personal property, for proceeds of insurance coverage for losses incurred, for income from investments, and for any other asset and activity lawfully permitted to a land bank under the Nebraska Municipal Land Bank Act.

(3)(a) Except as otherwise provided in subdivision (b) of this subsection, fifty percent of the real property taxes collected on real property conveyed by a land bank pursuant to the laws of this state shall be remitted to the land bank. Such allocation of property tax revenue shall commence with the first taxable year following the date of conveyance and shall continue for a period of five years. Such allocation of property tax revenue shall not occur if such taxes have been divided under section 18-2147 as part of a redevelopment project under the Community Development Law, unless the authority, as defined in section 18-2103, enters into an agreement with the land bank for the remittance of such funds to the land bank.

(b) A land bank may, by resolution of the board, elect not to receive the real property taxes described in subdivision (a) of this subsection for any real property conveyed by the land bank. If such an election is made, the land bank shall notify the county treasurer of the county in which the real property is located by filing a copy of the resolution with the county treasurer, and thereafter the county treasurer shall remit such real property taxes to the appropriate taxing entities.

Source: Laws 2013, LB97, § 11.

Cross References

Community Development Law, see section 18-2101.

19-5212 Land bank; bonds; issuance; procedure; negotiable instruments; tax exempt; liability.

(1) A land bank shall have the power to issue bonds for any of its corporate purposes, the principal and interest of which are payable from its revenue generally. Any of such bonds shall be secured by a pledge of any revenue of the land bank or by a mortgage of any property of the land bank.

(2) The bonds issued by a land bank are hereby declared to have all the qualities of negotiable instruments under the Uniform Commercial Code.

(3) The bonds of a land bank and the income therefrom shall at all times be exempt from all taxes imposed by the state or any political subdivision thereof.

(4) Bonds issued by the land bank shall be authorized by resolution of the board and shall be limited obligations of the land bank. The principal and interest, costs of issuance, and other costs incidental thereto shall be payable solely from the income and revenue derived from the sale, lease, or other disposition of the assets of the land bank. Any refunding bonds issued shall be payable from any source described above or from the investment of any of the proceeds of the refunding bonds, and shall not constitute an indebtedness or pledge of the general credit of any municipality within the meaning of any constitutional or statutory limitation of indebtedness and shall contain a recital to that effect. Bonds of the land bank shall be issued in such form, shall be in such denominations, shall bear interest, shall mature in such manner, and shall be executed by one or more members of the board as provided in the resolution authorizing the issuance thereof. Such bonds may be subject to redemption at the option of and in the manner determined by the board in the resolution authorizing the issuance thereof.

(5) Bonds issued by the land bank shall be issued, sold, and delivered in accordance with the terms and provisions of a resolution adopted by the board. The board may sell such bonds in such manner, either at public or private sale, and for such price as it may determine to be in the best interests of the land bank. The resolution issuing bonds shall be published in a newspaper of general circulation within the municipality or municipalities that created the land bank.

(6) Neither the members of the board nor any person executing the bonds shall be liable personally on any such bonds by reason of the issuance thereof. Such bonds or other obligations of a land bank shall not be a debt of any municipality and shall so state on their face, nor shall any municipality nor any revenue or any property of any municipality be liable therefor.

Source: Laws 2013, LB97, § 12.

Cross References

Uniform Commercial Code, see section 1-101, Uniform Commercial Code.

19-5213 Board; minutes; record; meetings; public records; reports.

(1) The board shall cause minutes and a record to be kept of all its proceedings. Meetings of the board shall be subject to the Open Meetings Act.

(2) All of a land bank's records and documents shall be considered public records for purposes of sections 84-712 to 84-712.09.

(3) The board shall provide monthly reports to the municipality or municipalities that created the land bank on the board's activities pursuant to the Nebraska Municipal Land Bank Act. The board shall also provide an annual report to the municipality or municipalities that created the land bank and to the Revenue Committee of the Legislature by December 31 of each year summarizing the board's activities for the year. The report submitted to the Revenue Committee shall be submitted electronically.

Source: Laws 2013, LB97, § 13.

Open Meetings Act, see section 84-1407.

19-5214 Land bank; dissolution; procedure; notice; assets.

A land bank may be dissolved sixty calendar days after a resolution of dissolution is approved by two-thirds of the voting members of the board and by two-thirds of the membership of the governing body of the municipality or municipalities that created the land bank. The board shall give sixty calendar days' advance written notice of its consideration of a resolution of dissolution by publishing such notice in a newspaper of general circulation within the municipality or municipalities that created the land bank and shall send such notice by certified mail to the trustee of any outstanding bonds of the land bank. Upon dissolution of the land bank, all real property, personal property, and other assets of the land bank shall become the assets of the municipality or municipalities that created the land bank.

Source: Laws 2013, LB97, § 14.

19-5215 Conflicts of interest; board; duties.

(1) No member of the board or employee of a land bank shall acquire any interest, direct or indirect, in real property of the land bank, in any real property to be acquired by the land bank, or in any real property to be acquired from the land bank. No member of the board or employee of a land bank shall have any interest, direct or indirect, in any contract or proposed contract for materials or services to be furnished or used by a land bank.

(2) The board shall adopt:

- (a) Rules addressing potential conflicts of interest; and
- (b) Ethical guidelines for members of the board and employees of the land bank.

Source: Laws 2013, LB97, § 15.

19-5216 Tax lien or claim; discharge and extinguishment; procedure; remit payments to county treasurer.

(1) Whenever any real property is acquired by a land bank and is encumbered by a lien or claim for real property taxes owed to one or more political subdivisions of the state, the land bank may, by resolution of the board, discharge and extinguish any and all such liens or claims, except that no lien or claim represented by a tax sale certificate held by a private third party shall be discharged or extinguished pursuant to this section. To the extent necessary and appropriate, the land bank shall file in appropriate public records evidence of the extinguishment and dissolution of such liens or claims.

(2) To the extent that a land bank receives payments of any kind attributable to liens or claims for real property taxes owed to a political subdivision on property acquired by the land bank, the land bank shall remit the full amount of the payments to the county treasurer of the county that levied such taxes for distribution to the appropriate taxing entity.

Source: Laws 2013, LB97, § 16.

19-5217 Sale of property for nonpayment of taxes; land bank; power to bid; purchase of tax sale certificate; apply for tax deed or foreclose lien.

(1)(a) At any sale of real property for the nonpayment of taxes conducted pursuant to sections 77-1801 to 77-1863, a land bank may:

(i) Bid on such real property in an amount equal to the total amount of taxes, interest, and costs due on the real property. If a bid is given pursuant to this subdivision, the bid shall not receive any special treatment by the county treasurer and shall be accepted or rejected in the same manner as any other bid on such real property; or

(ii) Give an automatically accepted bid on such real property in an amount equal to the total amount of taxes, interest, and costs due on the real property. If an automatically accepted bid is given, it shall be accepted by the county treasurer regardless of any other bids on such real property. An automatically accepted bid may be given only if the conditions for making such a bid prescribed by the board pursuant to subsection (11) of section 19-5205 have been met.

(b) If a land bank's bid pursuant to subdivision (1)(a) of this section is accepted by the county treasurer, the land bank shall pay the county treasurer and shall be entitled to a tax sale certificate for such real property.

(2) If a county holds a tax sale certificate pursuant to section 77-1809, a land bank may purchase such tax sale certificate from the county by paying the county treasurer the amount expressed on the face of the certificate and interest thereon at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, from the date the tax sale certificate was first issued to the county to the date such certificate was purchased by the land bank.

(3)(a) Subdivision (b) of this subsection applies until January 1, 2015. Subdivision (c) of this subsection applies beginning January 1, 2015.

(b) Within six months after the expiration of three years from the date of sale of real property for the nonpayment of taxes pursuant to sections 77-1801 to 77-1863, a land bank that has acquired a tax sale certificate for such real property under this section may:

(i) Apply to the county treasurer for a tax deed for the real property described in the tax sale certificate. A land bank applying for a tax deed shall comply with all the requirements of sections 77-1801 to 77-1863 relating to such tax deed; or

(ii) Foreclose the lien represented by the tax sale certificate as authorized in section 77-1902.

(c) Within nine months after the expiration of three years from the date of sale of real property for the nonpayment of taxes pursuant to sections 77-1801 to 77-1863, a land bank that has acquired a tax sale certificate for such real property under this section may:

(i) Apply to the county treasurer for a tax deed for the real property described in the tax sale certificate. A land bank applying for a tax deed shall comply with all the requirements of sections 77-1801 to 77-1863 relating to such tax deed; or

(ii) Foreclose the lien represented by the tax sale certificate as authorized in section 77-1902.

Source: Laws 2013, LB97, § 17; Laws 2014, LB851, § 1.

Operative date July 18, 2014.

19-5218 Sale of property as part of foreclosure proceedings; land bank; powers.

(1)(a) At any sale of real property conducted as part of foreclosure proceedings under sections 77-1901 to 77-1941, a land bank may:

(i) Bid on such real property in an amount that the land bank would be willing to pay for such real property. If a bid is given pursuant to this subdivision, the bid shall not receive any special treatment by the sheriff conducting the sale and shall be accepted or rejected in the same manner as any other bid on such real property; or

(ii) Give an automatically accepted bid on such real property in an amount equal to the total amount of taxes, interest, and costs due on the real property. If an automatically accepted bid is given, it shall be accepted by the sheriff regardless of any other bids on such real property. An automatically accepted bid may be given only if the conditions for making such a bid prescribed by the board pursuant to subsection (11) of section 19-5205 have been met and only if the land bank has obtained written consent to the tender of an automatically accepted bid from the holder of a mortgage or the beneficiary or trustee under a trust deed giving rise to a lien against such real property. To obtain such written consent, the land bank shall send, by certified mail, a notice of its intent to make an automatically accepted bid to any such holder of a mortgage or beneficiary or trustee under a trust deed and shall request that written consent be given within thirty days. If no response is given within such thirty-day time period, such holder of a mortgage or beneficiary or trustee under a trust deed shall be deemed to have given written consent.

(b) If a land bank's bid pursuant to subdivision (1)(a) of this section is accepted by the sheriff, the land bank shall pay the sheriff and shall be entitled to a deed to the real property in accordance with sections 77-1901 to 77-1941.

(2) If a sheriff attempts to sell real property as part of foreclosure proceedings under sections 77-1901 to 77-1941, there is no bid given at such sale equal to the total amount of taxes, interest, and costs due thereon, and the real property being sold lies within a municipality that has created a land bank, then such land bank shall be deemed to have bid the total amount of taxes, interest, and costs due thereon and such bid shall be accepted by the sheriff. The land bank may then discharge and extinguish the liens for delinquent taxes included in the foreclosure proceedings pursuant to section 19-5216. The land bank shall then be entitled to a deed to the real property in accordance with sections 77-1901 to 77-1941.

Source: Laws 2013, LB97, § 18.

CHAPTER 20

CIVIL RIGHTS

Article.

5. Racial Profiling, 20-501 to 20-506.

ARTICLE 5

RACIAL PROFILING

Section

- 20-501. Racial profiling; legislative intent.
20-502. Racial profiling prohibited.
20-504. Written racial profiling prevention policy; contents; Nebraska Commission on Law Enforcement and Criminal Justice; powers; duties; records maintained; immunity; law enforcement officer, prosecutor, defense attorney, or probation officer; report required.
20-505. Forms authorized.
20-506. Racial Profiling Advisory Committee; created; members; duties.

20-501 Racial profiling; legislative intent.

Racial profiling is a practice that presents a great danger to the fundamental principles of a democratic society. It is abhorrent and cannot be tolerated. An individual who has been detained or whose vehicle has been stopped by the police for no reason other than the color of his or her skin or his or her apparent nationality or ethnicity is the victim of a discriminatory practice.

Source: Laws 2001, LB 593, § 1; Laws 2013, LB99, § 1.

20-502 Racial profiling prohibited.

(1) No member of the Nebraska State Patrol or a county sheriff's office, officer of a city or village police department, or member of any other law enforcement agency in this state shall engage in racial profiling. The disparate treatment of an individual who has been detained or whose motor vehicle has been stopped by a law enforcement officer is inconsistent with this policy.

(2) Racial profiling shall not be used to justify the detention of an individual or to conduct a motor vehicle stop.

Source: Laws 2001, LB 593, § 2; Laws 2013, LB99, § 2.

20-504 Written racial profiling prevention policy; contents; Nebraska Commission on Law Enforcement and Criminal Justice; powers; duties; records maintained; immunity; law enforcement officer, prosecutor, defense attorney, or probation officer; report required.

(1) On or before January 1, 2014, the Nebraska State Patrol, the county sheriffs, all city and village police departments, and any other law enforcement agency in this state shall adopt and provide a copy to the Nebraska Commission on Law Enforcement and Criminal Justice of a written policy that prohibits the detention of any person or a motor vehicle stop when such action is motivated by racial profiling. Such racial profiling prevention policy shall include defini-

tions consistent with section 20-503 and one or more internal methods of prevention and enforcement, including, but not limited to:

- (a) Internal affairs investigation;
- (b) Preventative measures including extra training at the Nebraska Law Enforcement Training Center focused on avoidance of apparent or actual racial profiling;
- (c) Early intervention with any particular personnel determined by the administration of the agency to have committed, participated in, condoned, or attempted to cover up any instance of racial profiling; and
- (d) Disciplinary measures or other formal or informal methods of prevention and enforcement.

None of the preventative or enforcement measures shall be implemented contrary to the collective-bargaining agreement provisions or personnel rules under which the member or officer in question is employed.

(2) The Nebraska Commission on Law Enforcement and Criminal Justice may develop and distribute a suggested model written racial profiling prevention policy for use by law enforcement agencies, but the commission shall not mandate the adoption of the model policy except for any particular law enforcement agency which fails to timely create and provide to the commission a policy for the agency in conformance with the minimum standards set forth in this section.

(3) With respect to a motor vehicle stop, on and after January 1, 2002, the Nebraska State Patrol, the county sheriffs, all city and village police departments, and any other law enforcement agency in this state shall record and retain the following information using the form developed and promulgated pursuant to section 20-505:

- (a) The number of motor vehicle stops;
- (b) The characteristics of race or ethnicity of the person stopped. The identification of such characteristics shall be based on the observation and perception of the law enforcement officer responsible for reporting the motor vehicle stop and the information shall not be required to be provided by the person stopped;
- (c) If the stop is for a law violation, the nature of the alleged law violation that resulted in the motor vehicle stop;
- (d) Whether a warning or citation was issued, an arrest made, or a search conducted as a result of the motor vehicle stop. Search does not include a search incident to arrest or an inventory search; and
- (e) Any additional information that the Nebraska State Patrol, the county sheriffs, all city and village police departments, or any other law enforcement agency in this state, as the case may be, deems appropriate.

(4) The Nebraska Commission on Law Enforcement and Criminal Justice may develop a uniform system for receiving allegations of racial profiling. The Nebraska State Patrol, the county sheriffs, all city and village police departments, and any other law enforcement agency in this state shall provide to the commission (a) a copy of each allegation of racial profiling received and (b) written notification of the review and disposition of such allegation. No information revealing the identity of the law enforcement officer involved in the stop shall be used, transmitted, or disclosed in violation of any collective-bargaining

agreement provision or personnel rule under which such law enforcement officer is employed. No information revealing the identity of the complainant shall be used, transmitted, or disclosed in the form alleging racial profiling.

(5) Any law enforcement officer who in good faith records information on a motor vehicle stop pursuant to this section shall not be held civilly liable for the act of recording such information unless the law enforcement officer's conduct was unreasonable or reckless or in some way contrary to law.

(6) On or before October 1, 2002, and annually thereafter, the Nebraska State Patrol, the county sheriffs, all city and village police departments, and all other law enforcement agencies in this state shall provide to the Nebraska Commission on Law Enforcement and Criminal Justice, in such form as the commission prescribes, a summary report of the information recorded pursuant to subsection (3) of this section.

(7) The Nebraska Commission on Law Enforcement and Criminal Justice shall, within the limits of its existing appropriations, including any grant funds which the commission is awarded for such purpose, provide for an annual review and analysis of the prevalence and disposition of motor vehicle stops based on racial profiling and allegations of racial profiling involved in other detentions reported pursuant to this section. After the review and analysis, the commission may, when it deems warranted, inquire into and study individual law enforcement agency circumstances in which the raw data collected and analyzed raises at least some issue or appearance of possible racial profiling. The commission may make recommendations to any such law enforcement agency for the purpose of improving measures to prevent racial profiling or the appearance of racial profiling. The results of such review, analysis, inquiry, and study and any recommendations by the commission to any law enforcement agency shall be reported annually to the Governor and the Legislature. The report submitted to the Legislature shall be submitted electronically.

(8) Any law enforcement officer, prosecutor, defense attorney, or probation officer, unless restricted by privilege, who becomes aware of incidents of racial profiling by a law enforcement agency, shall report such incidents to the Nebraska Commission on Law Enforcement and Criminal Justice within thirty days after becoming aware of such practice.

Source: Laws 2001, LB 593, § 4; Laws 2004, LB 1162, § 2; Laws 2006, LB 1113, § 19; Laws 2010, LB746, § 1; Laws 2012, LB782, § 21; Laws 2013, LB99, § 3.

20-505 Forms authorized.

On or before January 1, 2002, the Nebraska Commission on Law Enforcement and Criminal Justice, the Superintendent of Law Enforcement and Public Safety, the Attorney General, and the State Court Administrator may adopt and promulgate (1) a form, in printed or electronic format, to be used by a law enforcement officer when making a motor vehicle stop to record personal identifying information about the operator of such motor vehicle, the location of the stop, the reason for the stop, and any other information that is required to be recorded pursuant to subsection (3) of section 20-504 and (2) a form, in printed or electronic format, to be used to report an allegation of racial profiling by a law enforcement officer.

Source: Laws 2001, LB 593, § 5; Laws 2013, LB99, § 4.

20-506 Racial Profiling Advisory Committee; created; members; duties.

(1) The Racial Profiling Advisory Committee is created.

(2)(a) The committee shall consist of:

(i) The executive director of the Nebraska Commission on Law Enforcement and Criminal Justice, who also shall be the chairperson of the committee;

(ii) The Superintendent of Law Enforcement and Public Safety or his or her designee;

(iii) The director of the Commission on Latino-Americans or his or her designee; and

(iv) The executive director of the Commission on Indian Affairs or his or her designee.

(b) The committee shall also consist of the following persons, each appointed by the Governor from a list of five names submitted to the Governor for each position:

(i) A representative of the Fraternal Order of Police;

(ii) A representative of the Nebraska County Sheriffs Association;

(iii) A representative of the Police Officers Association of Nebraska;

(iv) A representative of the American Civil Liberties Union of Nebraska;

(v) A representative of the AFL-CIO;

(vi) A representative of the Police Chiefs Association of Nebraska;

(vii) A representative of the Nebraska branches of the National Association for the Advancement of Colored People; and

(viii) A representative of the Nebraska State Bar Association appointed by the Governor from a list of attorneys submitted by the executive council of the Nebraska State Bar Association.

(3) The committee shall meet and organize within thirty days after the appointment of the members. The committee shall meet semiannually at a time and place to be fixed by the committee. Special meetings may be called by the chairperson or at the request of two or more members of the committee.

(4) The committee shall advise the commission and its executive director in the conduct of their duties regarding (a) the completeness and acceptability of written racial profiling prevention policies submitted by individual law enforcement agencies as required by subsection (1) of section 20-504, (b) the collection of data by law enforcement agencies, any needed additional data, and any needed additional analysis, investigation, or inquiry as to the data provided pursuant to subsection (3) of section 20-504, (c) the review, analysis, inquiry, study, and recommendations required pursuant to subsection (7) of section 20-504, including an analysis of the review, analysis, inquiry, study, and recommendations, and (d) policy recommendations with respect to the prevention of racial profiling and the need, if any, for enforcement by the Department of Justice of the prohibitions found in section 20-502.

Source: Laws 2004, LB 1162, § 5; Laws 2010, LB746, § 2; Laws 2013, LB99, § 5.

CHAPTER 21

CORPORATIONS AND OTHER COMPANIES

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ARTICLE 1**NEBRASKA UNIFORM LIMITED LIABILITY COMPANY ACT****(a) GENERAL PROVISIONS**

Section

21-114. Change of designated office or agent for service of process; change of address.

(b) FORMATION; CERTIFICATE OF ORGANIZATION AND OTHER FILINGS

21-125. Biennial report.

(l) FEES

21-192. Fees.

(a) GENERAL PROVISIONS**21-114 Change of designated office or agent for service of process; change of address.**

(ULLCA 114) (a) A limited liability company or foreign limited liability company may change its designated office, its agent for service of process, or the address of its agent for service of process by delivering to the Secretary of State for filing a statement of change containing:

- (1) the name of the company;
- (2) the street and mailing addresses of its current designated office;
- (3) if the current designated office is to be changed, the street and mailing addresses of the new designated office;
- (4) the name and street and mailing addresses and post office box number, if any, of its current agent for service of process; and
- (5) if the current agent for service of process or an address of the agent is to be changed, the new information.

(b) Subject to subsection (c) of section 21-121, a statement of change is effective when filed by the Secretary of State.

(c) An agent for service of process may change the agent's street and mailing addresses and post office box number, if any, for any limited liability company or foreign limited liability company for which the agent is designated by notifying the limited liability company or foreign limited liability company in writing of the change containing the new information, and by delivering to the Secretary of State for filing a statement of change of address for an agent for service of process which complies with the requirements of subdivisions (a)(1), (4), and (5) of this section and states that the limited liability company or foreign limited liability company has been notified of the change.

Source: Laws 2010, LB888, § 14; Laws 2014, LB753, § 1.
Effective date July 18, 2014.

**(b) FORMATION; CERTIFICATE OF ORGANIZATION
AND OTHER FILINGS****21-125 Biennial report.**

(ULLCA 209) (a) Each odd-numbered year, a limited liability company or a foreign limited liability company authorized to transact business in this state shall deliver to the Secretary of State for filing a biennial report that states:

- (1) the name of the company;

(2) the street and mailing addresses of the company's designated office and the name and street and mailing addresses and post office box number, if any, of its agent for service of process in this state;

(3) the street and mailing addresses of its principal office; and

(4) in the case of a foreign limited liability company, the state or other jurisdiction under whose law the company is formed and any alternate name adopted under subsection (a) of section 21-159.

(b) Information in a biennial report under this section must be current as of the date the report is delivered to the Secretary of State for filing.

(c) The first biennial report under this section must be delivered to the Secretary of State between January 1 and April 1 of the odd-numbered year following the calendar year in which a limited liability company was formed or a foreign limited liability company was authorized to transact business. A report must be delivered to the Secretary of State between January 1 and April 1 of each subsequent odd-numbered calendar year.

(d) If a biennial report under this section does not contain the information required in subsection (a) of this section, the Secretary of State shall promptly notify the reporting limited liability company or foreign limited liability company and return the report to it for correction. If the report is corrected to contain the information required in subsection (a) of this section and delivered to the Secretary of State within thirty days after the effective date of the notice, it is timely delivered.

(e) A correction or an amendment to the biennial report may be delivered to the Secretary of State for filing at any time.

Source: Laws 2010, LB888, § 25; Laws 2014, LB774, § 2.
Effective date July 18, 2014.

(l) FEES

21-192 Fees.

(1) The filing fee for all filings under the Nebraska Uniform Limited Liability Company Act, including amendments and name reservation, shall be ten dollars plus the recording fees set forth in subdivision (4) of section 33-101, except that the filing fee for filing a certificate of organization under section 21-117 and for filing an application for a certificate of authority to transact business in this state as a foreign limited liability company under section 21-156 shall be one hundred dollars plus such recording fees and ten dollars for a certificate. The filing fee for filing a statement of change of address for an agent for service of process shall be ten dollars for each limited liability company or foreign limited liability company for which the agent is designated plus the recording fees set forth in subdivision (4) of section 33-101. There shall be no recording fee collected for the filing of a biennial report required by section 21-125 or any corrections or amendments thereto.

(2) A fee of one dollar per page plus ten dollars per certificate shall be paid for a certified copy of any document on file under the act.

(3) The fees for filings under the act shall be paid to the Secretary of State and remitted by him or her to the State Treasurer. The State Treasurer shall credit two-thirds of the fees to the General Fund and one-third of the fees to the Corporation Cash Fund.

Source: Laws 2010, LB888, § 92; Laws 2014, LB753, § 2.
Effective date July 18, 2014.

NEBRASKA MODEL BUSINESS CORPORATION ACT

ARTICLE 2

NEBRASKA MODEL BUSINESS CORPORATION ACT

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21-201 Short title.

(MBCA 1.01) Sections 21-201 to 21-2,232 shall be known and may be cited as the Nebraska Model Business Corporation Act.

Source: Laws 2014, LB749, § 1.
Operative date January 1, 2016.

21-202 Reservation of power to amend or repeal.

(MBCA 1.02) The Legislature has power to amend or repeal all or part of the Nebraska Model Business Corporation Act at any time and all domestic and foreign corporations subject to the act are governed by the amendment or repeal.

Source: Laws 2014, LB749, § 2.
Operative date January 1, 2016.

SUBPART 2—FILING DOCUMENTS

21-203 Requirements for documents; extrinsic facts.

(MBCA 1.20) (a) A document must satisfy the requirements of this section, and of any other section that adds to or varies these requirements, to be entitled to filing by the Secretary of State.

(b) The Nebraska Model Business Corporation Act must require or permit filing the document in the office of the Secretary of State.

(c) The document must contain the information required by the act. It may contain other information as well.

(d) The document must be typewritten or printed or, if electronically transmitted, it must be in a format that can be retrieved or reproduced in typewritten or printed form.

(e) The document must be in the English language. A corporate name need not be in English if written in English letters or Arabic or Roman numerals, and the certificate of existence required of foreign corporations need not be in English if accompanied by a reasonably authenticated English translation.

(f) The document must be signed:

(1) By the chairperson of the board of directors of a domestic or foreign corporation, by its president, or by another of its officers;

(2) If directors have not been selected or the corporation has not been formed, by an incorporator; or

(3) If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

(g) The person executing the document shall sign it and state beneath or opposite the person's signature the person's name and the capacity in which the document is signed. The document may but need not contain a corporate seal, attestation, acknowledgment, or verification.

(h) If the Secretary of State has prescribed a mandatory form for the document under section 21-204, the document must be in or on the prescribed form.

(i) The document must be delivered to the office of the Secretary of State for filing. Delivery may be made by electronic transmission if and to the extent permitted by the Secretary of State. If it is filed in typewritten or printed form and not transmitted electronically, the Secretary of State may require one exact or conformed copy to be delivered with the document, except as provided in sections 21-235 and 21-2,211.

(j) When the document is delivered to the office of the Secretary of State for filing, the correct filing fee, and any tax, license fee, or penalty required to be paid therewith by the Nebraska Model Business Corporation Act or other law must be paid or provision for payment made in a manner permitted by the Secretary of State.

(k) Whenever a provision of the Nebraska Model Business Corporation Act permits any of the terms of a plan or a filed document to be dependent on facts objectively ascertainable outside the plan or filed document, the following provisions apply:

(1) The manner in which the facts will operate upon the terms of the plan or filed document shall be set forth in the plan or filed document;

(2) The facts may include, but are not limited to:

(i) Any of the following that is available in a nationally recognized news or information medium either in print or electronically: Statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data;

(ii) A determination or action by any person or body, including the corporation or any other party to a plan or filed document; or

(iii) The terms of, or actions taken under, an agreement to which the corporation is a party, or any other agreement or document;

(3) As used in this subsection (k):

(i) Filed document means a document filed with the Secretary of State under any provision of the act except sections 21-2,203 to 21-2,220 or section 21-2,228; and

(ii) Plan means a plan of domestication, nonprofit conversion, entity conversion, merger, or share exchange;

(4) The following provisions of a plan or filed document may not be made dependent on facts outside the plan or filed document:

(i) The name and address of any person required in a filed document;

(ii) The registered office of any entity required in a filed document;

(iii) The registered agent of any entity required in a filed document;

(iv) The number of authorized shares and designation of each class or series of shares;

(v) The effective date of a filed document; or

(vi) Any required statement in a filed document of the date on which the underlying transaction was approved or the manner in which that approval was given; and

(5) If a provision of a filed document is made dependent on a fact ascertainable outside of the filed document, and that fact is not ascertainable by reference to a source described in subdivision (k)(2)(i) of this section or a document that is a matter of public record, or the affected shareholders have not received notice of the fact from the corporation, then the corporation shall file with the Secretary of State articles of amendment setting forth the fact promptly after the time when the fact referred to is first ascertainable or thereafter changes. Articles of amendment under this subdivision (k)(5) of this section are deemed to be authorized by the authorization of the original filed document or plan to which they relate and may be filed by the corporation without further action by the board of directors or the shareholders.

Source: Laws 2014, LB749, § 3.

Operative date January 1, 2016.

21-204 Forms.

(MBCA 1.21) (a) The Secretary of State may prescribe and furnish on request forms for (1) an application for a certificate of existence, (2) a foreign corporation's application for a certificate of authority to transact business in this state, and (3) a foreign corporation's application for a certificate of withdrawal. If the Secretary of State so requires, use of these forms is mandatory.

(b) The Secretary of State may prescribe and furnish on request forms for other documents required or permitted to be filed by the Nebraska Model Business Corporation Act but their use is not mandatory.

Source: Laws 2014, LB749, § 4.

Operative date January 1, 2016.

21-205 Filing, service, and copying fees.

(MBCA 1.22) (a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to the Secretary of State for filing:

(1) Articles of incorporation, articles of domestication, or articles of domestication and conversion:

(i) If the capital stock is \$10,000 or less, the fee shall be \$60;

(ii) If the capital stock is more than \$10,000 but does not exceed \$25,000, the fee shall be \$100;

(iii) If the capital stock is more than \$25,000 but does not exceed \$50,000, the fee shall be \$150;

(iv) If the capital stock is more than \$50,000 but does not exceed \$75,000, the fee shall be \$225;

(v) If the capital stock is more than \$75,000 but does not exceed \$100,000, the fee shall be \$300; and

(vi) If the capital stock is more than \$100,000, the fee shall be \$300, plus \$3 additional for each \$1,000 in excess of \$100,000.

For purposes of computing this fee, the capital stock of a corporation organized under the laws of any other state that domesticates in this state, and which stock does not have a par value, shall be deemed to have a par value of an amount per share equal to the amount paid in as capital for each of such shares as are then issued and outstanding, and in no event less than one dollar per share;

(2) Articles of incorporation or articles of domestication if filed by an insurer holding a certificate of authority issued by the Director of Insurance, the fee shall be \$300;

(3) Application for use of deceptively similar name \$25;

(4) Application for reserved name \$25;

(5) Notice of transfer of reserved name \$25;

(6) Application for registered name \$25;

(7) Application for renewal of registered name \$25;

(8) Corporation's statement of change of registered agent or registered office or both \$25;

(9) Agent's statement of change of registered office for each affected corporation \$25 not to exceed a total of \$1,000;

(10) Agent's statement of resignation No fee;

(11) Articles of charter surrender \$25;

(12) Articles of nonprofit conversion \$25;

(13) Articles of entity conversion \$25;

(14) Amendment of articles of incorporation \$25;

- (15) Restatement of articles of incorporation.....\$25
with amendment of articles.....\$25;
 - (16) Articles of merger or share exchange.....\$25;
 - (17) Articles of dissolution.....\$45;
 - (18) Articles of revocation of dissolution.....\$25;
 - (19) Certificate of administrative dissolution.....No fee;
 - (20) Application for reinstatement following administrative dissolution or
revocation.....\$25;
 - (21) Certificate of reinstatement..... No fee;
 - (22) Certificate of judicial dissolution..... No fee;
 - (23) Application for certificate of authority.....\$130;
 - (24) Application for amended certificate of authority.....\$25;
 - (25) Application for certificate of withdrawal.....\$25;
 - (26) Application for transfer of authority.....\$25;
 - (27) Certificate of revocation of authority to transact business.....No
fee;
 - (28) Articles of correction.....\$25;
 - (29) Application for certificate of existence or authorization.....\$25;
- and
- (30) Any other document required or permitted to be filed by the Nebraska
Model Business Corporation Act.....\$25.

(b) The Secretary of State shall collect a recording fee of five dollars per page in addition to the fees set forth in subsection (a) of this section.

(c) The Secretary of State shall collect the following fees for copying and certifying the copy of any filed document relating to a domestic or foreign corporation:

- (1) One dollar per page for copying; and
- (2) Ten dollars for the certificate.

(d) All fees set forth in this section shall be collected by the Secretary of State and remitted to the State Treasurer and credited two-thirds to the General Fund and one-third to the Corporation Cash Fund.

Source: Laws 2014, LB749, § 5.
Operative date January 1, 2016.

21-206 Effective time and date of document.

(MBCA 1.23) (a) Except as provided in subsection (b) of this section and subsection (c) of section 21-207, a document accepted for filing is effective:

- (1) At the date and time of filing, as evidenced by such means as the Secretary of State may use for the purpose of recording the date and time of filing; or
- (2) At the time specified in the document as its effective time on the date it is filed.

(b) A document may specify a delayed effective time and date, and if it does so the document becomes effective at the time and date specified. If a delayed effective date but no time is specified, the document is effective at the close of

business on that date. A delayed effective date for a document may not be later than the ninetieth day after the date it is filed.

Source: Laws 2014, LB749, § 6.

Operative date January 1, 2016.

21-207 Correcting filed document.

(MBCA 1.24) (a) A domestic or foreign corporation may correct a document filed with the Secretary of State if (1) the document contains an inaccuracy, or (2) the document was defectively signed, attested, sealed, verified, or acknowledged, or (3) the electronic transmission was defective.

(b) A document is corrected:

(1) By preparing articles of correction that:

(i) Describe the document, including its filing date, or attach a copy of it to the articles;

(ii) Specify the inaccuracy or defect to be corrected; and

(iii) Correct the inaccuracy or defect; and

(2) By delivering the articles to the Secretary of State for filing.

(c) Articles of correction are effective on the effective date of the document they correct except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, articles of correction are effective when filed.

Source: Laws 2014, LB749, § 7.

Operative date January 1, 2016.

21-208 Filing duty of Secretary of State.

(MBCA 1.25) (a) If a document delivered to the office of the Secretary of State for filing satisfies the requirements of section 21-203, the Secretary of State shall file it.

(b) The Secretary of State files a document by recording it as filed on the date and at the time of receipt. After filing a document, except as provided in sections 21-235 and 21-2,211, the Secretary of State shall deliver to the domestic or foreign corporation or its representative a copy of the document with an acknowledgment of the date and time of filing.

(c) If the Secretary of State refuses to file a document, it shall be returned to the domestic or foreign corporation or its representative within five days after the document was delivered, together with a brief, written explanation of the reason for refusal.

(d) The Secretary of State's duty to file documents under this section is ministerial. The Secretary of State's filing or refusing to file a document does not:

(1) Affect the validity or invalidity of the document in whole or part;

(2) Relate to the correctness or incorrectness of information contained in the document; or

(3) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

Source: Laws 2014, LB749, § 8.

Operative date January 1, 2016.

21-209 Appeal from Secretary of State's refusal to file document.

(MBCA 1.26) (a) If the Secretary of State refuses to file a document delivered for filing, the domestic or foreign corporation may appeal the refusal within thirty days after the return of the document to the district court of Lancaster County. The appeal is commenced by petitioning the court to compel filing the document and by attaching to the petition the document and the Secretary of State's explanation of his or her refusal to file.

(b) The court may summarily order the Secretary of State to file the document or take other action the court considers appropriate.

(c) The court's final decision may be appealed as in other civil proceedings.

Source: Laws 2014, LB749, § 9.
Operative date January 1, 2016.

21-210 Evidentiary effect of copy of filed document.

(MBCA 1.27) A certificate from the Secretary of State delivered with a copy of a document filed by the Secretary of State, is conclusive evidence that the original document is on file with the Secretary of State.

Source: Laws 2014, LB749, § 10.
Operative date January 1, 2016.

21-211 Certificate of existence.

(MBCA 1.28) (a) Anyone may apply to the Secretary of State to furnish a certificate of existence for a domestic corporation or a certificate of authorization for a foreign corporation.

(b) A certificate of existence or authorization sets forth:

(1) The domestic corporation's corporate name or the foreign corporation's corporate name used in this state;

(2) That:

(i) The domestic corporation is duly incorporated under the law of this state, the date of its incorporation, and the period of its duration if less than perpetual; or

(ii) That the foreign corporation is authorized to transact business in this state;

(3) That all fees, taxes, and penalties owed to this state have been paid, if:

(i) Payment is reflected in the records of the Secretary of State; and

(ii) Nonpayment affects the existence or authorization of the domestic or foreign corporation;

(4) That its most recent biennial report required by section 21-2,228 has been filed with the Secretary of State;

(5) That articles of dissolution have not been filed; and

(6) Other facts of record in the office of the Secretary of State that may be requested by the applicant.

(c) Subject to any qualification stated in the certificate, a certificate of existence or authorization issued by the Secretary of State may be relied upon

as conclusive evidence that the domestic or foreign corporation is in existence or is authorized to transact business in this state.

Source: Laws 2014, LB749, § 11.
Operative date January 1, 2016.

21-212 Penalty for signing false document.

(MBCA 1.29) (a) A person commits an offense by signing a document that the person knows is false in any material respect with intent that the document be delivered to the Secretary of State for filing.

(b) An offense under this section is a Class I misdemeanor.

Source: Laws 2014, LB749, § 12.
Operative date January 1, 2016.

SUBPART 3—SECRETARY OF STATE

21-213 Powers.

(MBCA 1.30) The Secretary of State has the power reasonably necessary to perform the duties required of the Secretary of State by the Nebraska Model Business Corporation Act.

Source: Laws 2014, LB749, § 13.
Operative date January 1, 2016.

SUBPART 4—DEFINITIONS

21-214 Act definitions.

(MBCA 1.40) In the Nebraska Model Business Corporation Act:

(1) Articles of incorporation means the original articles of incorporation, all amendments thereof, and any other documents permitted or required to be filed by a domestic business corporation with the Secretary of State under any provision of the act except section 21-2,228. If an amendment of the articles or any other document filed under the act restates the articles in their entirety, thenceforth the articles shall not include any prior documents.

(2) Authorized shares means the shares of all classes a domestic or foreign corporation is authorized to issue.

(3) Conspicuous means so written, displayed, or presented that a reasonable person against whom the writing is to operate should have noticed it. For example, text in italics, boldface, contrasting color, capitals, or underlined, is conspicuous.

(4) Corporation, domestic corporation, or domestic business corporation means a corporation for profit, which is not a foreign corporation, incorporated under or subject to the provisions of the act.

(5) Deliver or delivery means any method of delivery used in conventional commercial practice, including delivery by hand, mail, commercial delivery, and, if authorized in accordance with section 21-215, by electronic transmission.

(6) Distribution means a direct or indirect transfer of money or other property, except its own shares, or incurrence of indebtedness by a corporation to or for the benefit of its shareholders in respect of any of its shares. A distribution may be in the form of a declaration or payment of a dividend; a

purchase, redemption, or other acquisition of shares; a distribution of indebtedness; or otherwise.

(7) Document means (i) any tangible medium on which information is inscribed, and includes any writing or written instrument, or (ii) an electronic record.

(8) Domestic unincorporated entity means an unincorporated entity whose internal affairs are governed by the laws of this state.

(9) Effective date of notice is defined in section 21-215.

(10) Electronic means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(11) Electronic record means information that is stored in an electronic or other medium and is retrievable in paper form through an automated process used in conventional commercial practice, unless otherwise authorized in accordance with subsection (k) of section 21-215.

(12) Electronic transmission or electronically transmitted means any form or process of communication not directly involving the physical transfer of paper or another tangible medium, which (i) is suitable for the retention, retrieval, and reproduction of information by the recipient and (ii) is retrievable in paper form by the recipient through an automated process used in conventional commercial practice, unless otherwise authorized in accordance with subsection (k) of section 21-215.

(13) Eligible entity means a domestic or foreign unincorporated entity or a domestic or foreign nonprofit corporation.

(14) Eligible interests means interests or memberships.

(15) Employee includes an officer but not a director. A director may accept duties that make the director also an employee.

(16) Entity includes domestic and foreign business corporation; domestic and foreign nonprofit corporation; estate; trust; domestic and foreign unincorporated entity; and state, United States, and foreign government.

(17) The phrase facts objectively ascertainable outside of a filed document or plan is defined in subsection (k) of section 21-203.

(18) Expenses means reasonable expenses of any kind that are incurred in connection with a matter.

(19) Filing entity means an unincorporated entity that is of a type that is created by filing a public organic document.

(20) Foreign corporation means a corporation incorporated under a law other than the law of this state which would be a business corporation if incorporated under the laws of this state.

(21) Foreign nonprofit corporation means a corporation incorporated under a law other than the law of this state which would be a nonprofit corporation if incorporated under the laws of this state.

(22) Foreign unincorporated entity means an unincorporated entity whose internal affairs are governed by an organic law of a jurisdiction other than this state.

(23) Governmental subdivision includes authority, county, district, and municipality.

(24) Includes denotes a partial definition.

(25) Individual means a natural person.

(26) Interest means either or both of the following rights under the organic law of an unincorporated entity:

(i) The right to receive distributions from the entity either in the ordinary course or upon liquidation; or

(ii) The right to receive notice or vote on issues involving its internal affairs, other than as an agent, assignee, proxy, or person responsible for managing its business and affairs.

(27) Interest holder means a person who holds of record an interest.

(28) Means denotes an exhaustive definition.

(29) Membership means the rights of a member in a domestic or foreign nonprofit corporation.

(30) Nonfiling entity means an unincorporated entity that is of a type that is not created by filing a public organic document.

(31) Nonprofit corporation or domestic nonprofit corporation means a corporation incorporated under the laws of this state and subject to the provisions of the Nebraska Nonprofit Corporation Act.

(32) Notice is defined in section 21-215.

(33) Organic document means a public organic document or a private organic document.

(34) Organic law means the statute governing the internal affairs of a domestic or foreign business or nonprofit corporation or unincorporated entity.

(35) Owner liability means personal liability for a debt, obligation, or liability of a domestic or foreign business or nonprofit corporation or unincorporated entity that is imposed on a person:

(i) Solely by reason of the person's status as a shareholder, member, or interest holder; or

(ii) By the articles of incorporation, bylaws, or an organic document under a provision of the organic law of an entity authorizing the articles of incorporation, bylaws, or an organic document to make one or more specified shareholders, members, or interest holders liable in their capacity as shareholders, members, or interest holders for all or specified debts, obligations, or liabilities of the entity.

(36) Person includes an individual and an entity.

(37) Principal office means the office, in or out of this state, so designated in the biennial report where the principal executive offices of a domestic or foreign corporation are located.

(38) Private organic document means any document, other than the public organic document, if any, that determines the internal governance of an unincorporated entity. Where a private organic document has been amended or restated, the term means the private organic document as last amended or restated.

(39) Public organic document means the document, if any, that is filed of public record to create an unincorporated entity. Where a public organic document has been amended or restated, the term means the public organic document as last amended or restated.

(40) Proceeding includes civil suit and criminal, administrative, and investigatory action.

(41) Public corporation means a corporation that has shares listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national securities association.

(42) Qualified director is defined in section 21-217.

(43) Record date means the date established under sections 21-237 to 21-252 or 21-253 to 21-283 on which a corporation determines the identity of its shareholders and their shareholdings for purposes of the Nebraska Model Business Corporation Act. The determinations shall be made as of the close of business on the record date unless another time for doing so is specified when the record date is fixed.

(44) Secretary means the corporate officer to whom the board of directors has delegated responsibility under subsection (c) of section 21-2,105 for custody of the minutes of the meetings of the board of directors and of the shareholders and for authenticating records of the corporation.

(45) Shareholder means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.

(46) Shares means the units into which the proprietary interests in a corporation are divided.

(47) Sign or signature means, with present intent to authenticate or adopt a document:

(i) To execute or adopt a tangible symbol to a document, and includes any manual, facsimile, or conformed signature; or

(ii) To attach to or logically associate with an electronic transmission an electronic sound, symbol, or process, and includes an electronic signature in an electronic transmission.

(48) State, when referring to a part of the United States, includes a state and commonwealth, and their agencies and governmental subdivisions, and a territory and insular possession, and their agencies and governmental subdivisions, of the United States.

(49) Subscriber means a person who subscribes for shares in a corporation, whether before or after incorporation.

(50) Unincorporated entity means an organization or artificial legal person that either has a separate legal existence or has the power to acquire an estate in real property in its own name and that is not any of the following: A domestic or foreign business or nonprofit corporation, an estate, a trust, a state, the United States, or a foreign government. The term includes a general partnership, limited liability company, limited partnership, business trust, joint stock association, and unincorporated nonprofit association.

(51) United States includes district, authority, bureau, commission, department, and any other agency of the United States.

(52) Voting group means all shares of one or more classes or series that under the articles of incorporation or the act are entitled to vote and be counted together collectively on a matter at a meeting of shareholders. All shares entitled by the articles of incorporation or the act to vote generally on the matter are for that purpose a single voting group.

(53) Voting power means the current power to vote in the election of directors.

(54) Writing or written means any information in the form of a document.

Source: Laws 2014, LB749, § 14.

Operative date January 1, 2016.

Cross References

Nebraska Nonprofit Corporation Act, see section 21-1901.

21-215 Notices and other communications.

(MBCA 1.41) (a) Notice under the Nebraska Model Business Corporation Act must be in writing unless oral notice is reasonable in the circumstances. Unless otherwise agreed between the sender and the recipient, words in a notice or other communication under the act must be in English.

(b) A notice or other communication may be given or sent by any method of delivery, except that electronic transmissions must be in accordance with this section. If these methods of delivery are impractical, a notice or other communication may be communicated by a newspaper of general circulation in the area where published, or by radio, television, or other form of public broadcast communication.

(c) Written notice by a domestic or foreign corporation to its shareholder, if in a comprehensible form, is effective (1) when mailed, if mailed postage prepaid and correctly addressed to the shareholder's address shown in the corporation's current record of shareholders, or (2) when electronically transmitted to the shareholder in a manner authorized by the shareholder. Notice by a public corporation to its shareholder is effective if the notice is addressed to the shareholder or group of shareholders in a manner permitted by rules and regulations adopted and promulgated under the federal Securities Exchange Act of 1934, as amended, 15 U.S.C. 78a et seq., if the public corporation has first received affirmative written consent or implied consent required under such rules and regulations.

(d) Notice or other communication to a domestic or foreign corporation authorized to transact business in this state may be delivered to its registered agent at its registered office or to the secretary of the corporation at its principal office shown in its most recent biennial report or, in the case of a foreign corporation that has not yet delivered a biennial report, in its application for a certificate of authority.

(e) Notice or other communications may be delivered by electronic transmission if consented to by the recipient or if authorized by subsection (k) of this section.

(f) Any consent under subsection (e) of this section may be revoked by the person who consented by written or electronic notice to the person to whom the consent was delivered. Any such consent is deemed revoked if (1) the corporation is unable to deliver two consecutive electronic transmissions given by the corporation in accordance with such consent and (2) such inability becomes known to the secretary or an assistant secretary of the corporation or to the transfer agent, or other person responsible for the giving of notice or other communications, except that the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action.

(g) Unless otherwise agreed between the sender and the recipient, an electronic transmission is received when:

(1) It enters an information processing system that the recipient has designated or uses for the purposes of receiving electronic transmissions or information of the type sent and from which the recipient is able to retrieve the electronic transmission; and

(2) It is in a form capable of being processed by that system.

(h) Receipt of an electronic acknowledgment from an information processing system described in subdivision (g)(1) of this section establishes that an electronic transmission was received but, by itself, does not establish that the content sent corresponds to the content received.

(i) An electronic transmission is received under this section even if no individual is aware of its receipt.

(j) Notice or other communication, if in a comprehensible form or manner, is effective at the earliest of the following:

(1) If in a physical form, the earliest of when it is actually received or when it is left at:

(i) A shareholder's address shown on the corporation's record of shareholders maintained by the corporation under subsection (c) of section 21-2,221;

(ii) A director's residence or usual place of business; or

(iii) The corporation's principal place of business;

(2) If mailed postage prepaid and correctly addressed to a shareholder, upon deposit in the United States mail;

(3) If mailed by United States mail postage prepaid and correctly addressed to a recipient other than a shareholder, the earliest of when it is actually received, or:

(i) If sent by registered or certified mail, return receipt requested, the date shown on the return receipt signed by or on behalf of the addressee; or

(ii) Five days after it is deposited in the United States mail;

(4) If an electronic transmission, when it is received as provided in subsection (g) of this section; and

(5) If oral, when communicated.

(k) A notice or other communication may be in the form of an electronic transmission that cannot be directly reproduced in paper form by the recipient through an automated process used in conventional commercial practice only if (1) the electronic transmission is otherwise retrievable in perceivable form and (2) the sender and the recipient have consented in writing to the use of such form of electronic transmission.

(l) If the Nebraska Model Business Corporation Act prescribes requirements for notices or other communications in particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe requirements for notices or other communications, not inconsistent with this section or other provisions of the act, those requirements govern. The articles of incorporation or bylaws may authorize or require delivery of notices of meetings of directors by electronic transmission.

Source: Laws 2014, LB749, § 15.

Operative date January 1, 2016.

21-216 Number of shareholders.

(MBCA 1.42) (a) For purposes of the Nebraska Model Business Corporation Act, the following identified as a shareholder in a corporation's current record of shareholders constitutes one shareholder:

- (1) Three or fewer co-owners;
- (2) A corporation, partnership, trust, estate, or other entity; or
- (3) The trustees, guardians, custodians, or other fiduciaries of a single trust, estate, or account.

(b) For purposes of the act, shareholdings registered in substantially similar names constitute one shareholder if it is reasonable to believe that the names represent the same person.

Source: Laws 2014, LB749, § 16.

Operative date January 1, 2016.

21-217 Qualified director.

(MBCA 1.43) (a) A qualified director is a director who, at the time action is to be taken under:

(1) Section 21-279, does not have (i) a material interest in the outcome of the proceeding or (ii) a material relationship with a person who has such an interest;

(2) Section 21-2,113 or 21-2,115, (i) is not a party to the proceeding, (ii) is not a director as to whom a transaction is a director's conflicting interest transaction or who sought a disclaimer of the corporation's interest in a business opportunity under section 21-2,124, which transaction or disclaimer is challenged in the proceeding, and (iii) does not have a material relationship with a director described in either subdivision (a)(2)(i) or (ii) of this section;

(3) Section 21-2,122, is not a director (i) as to whom the transaction is a director's conflicting interest transaction or (ii) who has a material relationship with another director as to whom the transaction is a director's conflicting interest transaction; or

(4) Section 21-2,124, would be a qualified director under subdivision (a)(3) of this section if the business opportunity were a director's conflicting interest transaction.

(b) For purposes of this section:

(1) Material relationship means a familial, financial, professional, employment, or other relationship that would reasonably be expected to impair the objectivity of the director's judgment when participating in the action to be taken; and

(2) Material interest means an actual or potential benefit or detriment, other than one which would devolve on the corporation or the shareholders generally, that would reasonably be expected to impair the objectivity of the director's judgment when participating in the action to be taken.

(c) The presence of one or more of the following circumstances shall not automatically prevent a director from being a qualified director:

(1) Nomination or election of the director to the current board by any director who is not a qualified director with respect to the matter or by any

person that has a material relationship with that director, acting alone or participating with others;

(2) Service as a director of another corporation of which a director who is not a qualified director with respect to the matter, or any individual who has a material relationship with that director, is or was also a director; or

(3) With respect to action to be taken under section 21-279, status as a named defendant, as a director against whom action is demanded, or as a director who approved the conduct being challenged.

Source: Laws 2014, LB749, § 17.

Operative date January 1, 2016.

21-218 Householdings.

(MBCA 1.44) (a) A corporation has delivered written notice or any other report or statement under the Nebraska Model Business Corporation Act, the articles of incorporation, or the bylaws to all shareholders who share a common address if:

(1) The corporation delivers one copy of the notice, report, or statement to the common address;

(2) The corporation addresses the notice, report, or statement to those shareholders as a group, to each of those shareholders individually, or to the shareholders in a form to which each of those shareholders has consented; and

(3) Each of those shareholders consents to delivery of a single copy of such notice, report, or statement to the shareholders' common address. Any such consent shall be revocable by any of such shareholders who deliver written notice of revocation to the corporation. If such written notice of revocation is delivered, the corporation shall begin providing individual notices, reports, or other statements to the revoking shareholder no later than thirty days after delivery of the written notice of revocation.

(b) Any shareholder who fails to object by written notice to the corporation, within sixty days of written notice by the corporation of its intention to send single copies of notices, reports, or statements to shareholders who share a common address as permitted by subsection (a) of this section, shall be deemed to have consented to receiving such single copy at the common address.

Source: Laws 2014, LB749, § 18.

Operative date January 1, 2016.

PART 2—INCORPORATION

21-219 Incorporators.

(MBCA 2.01) One or more persons may act as the incorporator or incorporators of a corporation by delivering articles of incorporation to the Secretary of State for filing.

Source: Laws 2014, LB749, § 19.

Operative date January 1, 2016.

21-220 Articles of incorporation.

(MBCA 2.02) (a) The articles of incorporation must set forth:

(1) A corporate name for the corporation that satisfies the requirements of section 21-230;

(2) The number of shares the corporation is authorized to issue and, if such shares are to consist of one class only, the par value of each of such shares or, if such shares are to be divided into classes, the number of shares of each class and a statement of the par value of the shares of each such class;

(3) The street address of the corporation's initial registered office and the name of its initial registered agent at that office. A post office box number may be provided in addition to the street address;

(4) The name and address of each incorporator; and

(5) Any provision limiting or eliminating the requirement to hold an annual meeting of the shareholders if the corporation is registered or intends to register as an investment company under the federal Investment Company Act of 1940, as amended, 15 U.S.C. 80a-1 et seq. The provision is not effective if such corporation does not become or ceases to be so registered.

(b) The articles of incorporation may set forth:

(1) The names and addresses of the individuals who are to serve as the initial directors;

(2) Provisions not inconsistent with law regarding:

(i) The purpose or purposes for which the corporation is organized;

(ii) Managing the business and regulating the affairs of the corporation;

(iii) Defining, limiting, and regulating the powers of the corporation, its board of directors, and shareholders;

(iv) A par value for authorized shares or classes of shares; or

(v) The imposition of personal liability on shareholders for the debts of the corporation to a specified extent and upon specified conditions;

(3) Any provision that under the Nebraska Model Business Corporation Act is required or permitted to be set forth in the bylaws;

(4) A provision eliminating or limiting the liability of a director to the corporation or its shareholders for money damages for any action taken, or any failure to take any action, as a director, except liability for (i) the amount of a financial benefit received by a director to which the director is not entitled, (ii) an intentional infliction of harm on the corporation or the shareholders, (iii) a violation of section 21-2,104, or (iv) an intentional violation of criminal law; and

(5) A provision permitting or making obligatory indemnification of a director for liability, as defined in subdivision (3) of section 21-2,110, to any person for any action taken, or any failure to take any action, as a director, except liability for (i) receipt of a financial benefit to which the director is not entitled, (ii) an intentional infliction of harm on the corporation or its shareholders, (iii) a violation of section 21-2,104, or (iv) an intentional violation of criminal law.

(c) The articles of incorporation need not set forth any of the corporate powers enumerated in the Nebraska Model Business Corporation Act.

(d) Provisions of the articles of incorporation may be made dependent upon facts objectively ascertainable outside the articles of incorporation in accordance with subsection (k) of section 21-203.

Source: Laws 2014, LB749, § 20.

Operative date January 1, 2016.

21-221 Incorporation.

(MBCA 2.03) (a) Unless a delayed effective date is specified, the corporate existence begins when the articles of incorporation are filed.

(b) The Secretary of State's filing of the articles of incorporation is conclusive proof that the incorporators satisfied all conditions precedent to incorporation except in a proceeding by the state to cancel or revoke the incorporation or involuntarily dissolve the corporation.

Source: Laws 2014, LB749, § 21.

Operative date January 1, 2016.

21-222 Liability for preincorporation transactions.

(MBCA 2.04) All persons purporting to act as or on behalf of a corporation, knowing there was no incorporation under the Nebraska Model Business Corporation Act, are jointly and severally liable for all liabilities created while so acting.

Source: Laws 2014, LB749, § 22.

Operative date January 1, 2016.

21-223 Organization of corporation.

(MBCA 2.05) (a) After incorporation:

(1) If initial directors are named in the articles of incorporation, the initial directors shall hold an organizational meeting, at the call of a majority of the directors, to complete the organization of the corporation by appointing officers, adopting bylaws, and carrying on any other business brought before the meeting; or

(2) If initial directors are not named in the articles, the incorporator or incorporators shall hold an organizational meeting at the call of a majority of the incorporators:

(i) To elect directors and complete the organization of the corporation; or

(ii) To elect a board of directors who shall complete the organization of the corporation.

(b) Action required or permitted by the Nebraska Model Business Corporation Act to be taken by incorporators at an organizational meeting may be taken without a meeting if the action taken is evidenced by one or more written consents describing the action taken and signed by each incorporator.

(c) An organizational meeting may be held in or out of this state.

Source: Laws 2014, LB749, § 23.

Operative date January 1, 2016.

21-224 Bylaws.

(MBCA 2.06) (a) The incorporators or board of directors of a corporation shall adopt initial bylaws for the corporation.

(b) The bylaws of a corporation may contain any provision that is not inconsistent with law or the articles of incorporation.

(c) The bylaws may contain one or both of the following provisions:

(1) A requirement that if the corporation solicits proxies or consents with respect to an election of directors, the corporation include in its proxy state-

ment and any form of its proxy or consent, to the extent and subject to such procedures or conditions as are provided in the bylaws, one or more individuals nominated by a shareholder in addition to individuals nominated by the board of directors; and

(2) A requirement that the corporation reimburse the expenses incurred by a shareholder in soliciting proxies or consents in connection with an election of directors, to the extent and subject to such procedures and conditions as are provided in the bylaws, except that no bylaw so adopted shall apply to elections for which any record date precedes its adoption.

(d) Notwithstanding subdivision (b)(2) of section 21-2,159, the shareholders in amending, repealing, or adopting a bylaw described in subsection (c) of this section may not limit the authority of the board of directors to amend or repeal any condition or procedure set forth in or to add any procedure or condition to such a bylaw in order to provide for a reasonable, practicable, and orderly process.

Source: Laws 2014, LB749, § 24.

Operative date January 1, 2016.

21-225 Emergency bylaws.

(MBCA 2.07) (a) Unless the articles of incorporation provide otherwise, the board of directors of a corporation may adopt bylaws to be effective only in an emergency defined in subsection (d) of this section. The emergency bylaws, which are subject to amendment or repeal by the shareholders, may make all provisions necessary for managing the corporation during the emergency, including:

- (1) Procedures for calling a meeting of the board of directors;
- (2) Quorum requirements for the meeting; and
- (3) Designation of additional or substitute directors.

(b) All provisions of the regular bylaws consistent with the emergency bylaws remain effective during the emergency. The emergency bylaws are not effective after the emergency ends.

(c) Corporate action taken in good faith in accordance with the emergency bylaws:

- (1) Binds the corporation; and
- (2) May not be used to impose liability on a corporate director, officer, employee, or agent.

(d) An emergency exists for purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event.

Source: Laws 2014, LB749, § 25.

Operative date January 1, 2016.

PART 3—PURPOSES AND POWERS

21-226 Purposes.

(MBCA 3.01) (a) Every corporation incorporated under the Nebraska Model Business Corporation Act has the purpose of engaging in any lawful business unless a more limited purpose is set forth in the articles of incorporation.

(b) A corporation engaging in a business that is subject to regulation under another statute of this state may incorporate under the Nebraska Model Business Corporation Act only if permitted by, and subject to all limitations of, the other statute.

(c) Corporations shall not be organized under the act to perform any professional services as specified in section 21-2202 except for professional services rendered by a designated broker as defined in section 81-885.01.

(d) A designated broker as defined in section 81-885.01 may be organized as a corporation under the Nebraska Model Business Corporation Act.

Source: Laws 2014, LB749, § 26.

Operative date January 1, 2016.

21-227 General powers.

(MBCA 3.02) Unless its articles of incorporation provide otherwise, every corporation has perpetual duration and succession in its corporate name and has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including without limitation power:

- (1) To sue and be sued, complain, and defend in its corporate name;
- (2) To have a corporate seal, which may be altered at will, and to use it, or a facsimile of it, by impressing or affixing it or in any other manner reproducing it;
- (3) To make and amend bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for managing the business and regulating the affairs of the corporation;
- (4) To purchase, receive, lease, or otherwise acquire and own, hold, improve, use, and otherwise deal with real or personal property or any legal or equitable interest in property, wherever located;
- (5) To sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property. A corporation may transfer any interest in real estate by instrument, with or without a corporate seal, signed by the president, a vice president, or the presiding officer of the board of directors of the corporation. Such instrument, when acknowledged by such officer to be an act of the corporation, is presumed to be valid and may be recorded in the proper office of the county in which the real estate is located in the same manner as other such instruments;
- (6) To purchase, receive, subscribe for, or otherwise acquire; own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of; and deal in and with shares or other interests in, or obligations of, any other entity;
- (7) To make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds, and other obligations, which may be convertible into or include the option to purchase other securities of the corporation, and secure any of its obligations by mortgage or pledge of any of its property, franchises, or income;
- (8) To lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;
- (9) To be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity;

(10) To conduct its business, locate offices, and exercise the powers granted by the Nebraska Model Business Corporation Act within or without this state;

(11) To elect directors and appoint officers, employees, and agents of the corporation, define their duties, fix their compensation, and lend them money and credit;

(12) To pay pensions and establish pension plans, pension trusts, profit-sharing plans, share bonus plans, share option plans, and benefit or incentive plans for any or all of its current or former directors, officers, employees, and agents;

(13) To make donations for the public welfare or for charitable, scientific, or educational purposes;

(14) To transact any lawful business that will aid governmental policy; and

(15) To make payments or donations, or do any other act, not inconsistent with law, that furthers the business and affairs of the corporation.

Source: Laws 2014, LB749, § 27.

Operative date January 1, 2016.

21-228 Emergency powers.

(MBCA 3.03) (a) In anticipation of or during an emergency defined in subsection (d) of this section, the board of directors of a corporation may:

(1) Modify lines of succession to accommodate the incapacity of any director, officer, employee, or agent; and

(2) Relocate the principal office, designate alternative principal offices or regional offices, or authorize the officers to do so.

(b) During an emergency defined in subsection (d) of this section, unless emergency bylaws provide otherwise:

(1) Notice of a meeting of the board of directors need be given only to those directors whom it is practicable to reach and may be given in any practicable manner, including by publication and radio; and

(2) One or more officers of the corporation present at a meeting of the board of directors may be deemed to be directors for the meeting, in order of rank and within the same rank in order of seniority, as necessary to achieve a quorum.

(c) Corporate action taken in good faith during an emergency under this section to further the ordinary business affairs of the corporation:

(1) Binds the corporation; and

(2) May not be used to impose liability on a corporate director, officer, employee, or agent.

(d) An emergency exists for purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event.

Source: Laws 2014, LB749, § 28.

Operative date January 1, 2016.

21-229 Ultra vires.

(MBCA 3.04) (a) Except as provided in subsection (b) of this section, the validity of corporate action may not be challenged on the ground that the corporation lacks or lacked power to act.

(b) A corporation's power to act may be challenged:

(1) In a proceeding by a shareholder against the corporation to enjoin the act;

(2) In a proceeding by the corporation, directly, derivatively, or through a receiver, trustee, or other legal representative, against an incumbent or former director, officer, employee, or agent of the corporation; or

(3) In a proceeding by the Attorney General under section 21-2,197.

(c) In a shareholder's proceeding under subdivision (b)(1) of this section to enjoin an unauthorized corporate act, the court may enjoin or set aside the act, if equitable and if all affected persons are parties to the proceeding, and may award damages for loss, other than anticipated profits, suffered by the corporation or another party because of enjoining the unauthorized act.

(d) Venue for a proceeding under subdivision (b)(1) or (b)(2) of this section lies in the district court of the county where the corporation's principal office, or, if none in this state, its registered office, is located.

Source: Laws 2014, LB749, § 29.

Operative date January 1, 2016.

PART 4—NAME

21-230 Corporate name.

(MBCA 4.01) (a) A corporate name:

(1) Must contain the word corporation, incorporated, company, or limited, or the abbreviation corp., inc., co., or ltd., or words or abbreviations of like import in another language, except that a corporation organized to conduct a banking business under the Nebraska Banking Act may use a name which includes the word bank without using any such words or abbreviations; and

(2) May not contain language stating or implying that the corporation is organized for a purpose other than that permitted by section 21-226 and its articles of incorporation.

(b) Except as authorized by subsections (c) and (d) of this section, a corporate name must not be the same as or deceptively similar to, upon the records of the Secretary of State:

(1) The corporate name of a corporation incorporated or authorized to transact business in this state;

(2) A corporate name reserved or registered under section 21-231 or 21-232;

(3) The fictitious name adopted by a foreign corporation authorized to transact business in this state because its real name is unavailable;

(4) The corporate name of a not-for-profit corporation incorporated or authorized to transact business in this state;

(5) A trade name registered in this state pursuant to sections 87-208 to 87-219.01; and

(6) Any other business entity name registered or filed with the Secretary of State pursuant to the law of this state.

(c) A corporation may apply to the Secretary of State for authorization to use a name that is deceptively similar to, upon the records of the Secretary of State, one or more of the names described in subsection (b) of this section. The Secretary of State shall authorize use of the name applied for if:

(1) The other corporation or business entity consents to the use in writing; or

(2) The applicant delivers to the Secretary of State a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(d) A corporation may use the name, including the fictitious name, of another domestic or foreign corporation or business entity that is used in this state if the other corporation or business entity is incorporated or authorized to transact business in this state and the proposed user corporation:

(1) Has merged with the other corporation or business entity;

(2) Has been formed by reorganization of the other corporation or business entity; or

(3) Has acquired all or substantially all of the assets, including the corporate name, of the other corporation or business entity.

(e) The Nebraska Model Business Corporation Act does not control the use of fictitious names.

Source: Laws 2014, LB749, § 30.

Operative date January 1, 2016.

Cross References

Nebraska Banking Act, see section 8-101.01.

21-231 Reserved name.

(MBCA 4.02) (a) A person may reserve the exclusive use of a corporate name, including a fictitious name for a foreign corporation whose corporate name is not available, by delivering an application to the Secretary of State for filing. The application must set forth the name and address of the applicant and the name proposed to be reserved. If the Secretary of State finds that the corporate name applied for is available, the Secretary of State shall reserve the name for the applicant's exclusive use for a nonrenewable one-hundred-twenty-day period.

(b) The owner of a reserved corporate name may transfer the reservation to another person by delivering to the Secretary of State a signed notice of the transfer that states the name and address of the transferee.

Source: Laws 2014, LB749, § 31.

Operative date January 1, 2016.

21-232 Registered name.

(MBCA 4.03) (a) A foreign corporation may register its corporate name, or its corporate name with any addition required by section 21-2,208, if the name is not the same as or deceptively similar to, upon the records of the Secretary of State, the corporate names that are not available under subsection (b) of section 21-230.

(b) A foreign corporation registers its corporate name, or its corporate name with any addition required by section 21-2,208, by delivering to the Secretary of State for filing an application:

(1) Setting forth its corporate name, or its corporate name with any addition required by section 21-2,208, the state or country and date of its incorporation, and a brief description of the nature of the business in which it is engaged; and

(2) Accompanied by a certificate of existence, or a document of similar import, from the state or country of incorporation. Such certificate or document shall not bear a date of more than sixty days prior to the date the application is delivered.

(c) The name is registered for the applicant's exclusive use upon the effective date of the application.

(d) A foreign corporation whose registration is effective may renew it for successive years by delivering to the Secretary of State for filing a renewal application, which complies with the requirements of subsection (b) of this section, between October 1 and December 31 of the preceding year. The renewal application when filed renews the registration for the following calendar year.

(e) A foreign corporation whose registration is effective may thereafter qualify as a foreign corporation under the registered name or consent in writing to the use of that name by a corporation thereafter incorporated under the Nebraska Model Business Corporation Act or by another foreign corporation thereafter authorized to transact business in this state. The registration terminates when the domestic corporation is incorporated or the foreign corporation qualifies or consents to the qualification of another foreign corporation under the registered name.

Source: Laws 2014, LB749, § 32.

Operative date January 1, 2016.

PART 5—OFFICE AND AGENT

21-233 Registered office and registered agent.

(MBCA 5.01) Each corporation must continuously maintain in this state:

(1) A registered office that may be the same as any of its places of business; and

(2) A registered agent, who may be:

(i) An individual who resides in this state and whose business office is identical with the registered office; or

(ii) A domestic or foreign corporation or other eligible entity whose business office is identical with the registered office and, in the case of a foreign corporation or foreign eligible entity, is authorized to transact business in the state.

Source: Laws 2014, LB749, § 33.

Operative date January 1, 2016.

21-234 Change of registered office or registered agent.

(MBCA 5.02) (a) A corporation may change its registered office or registered agent by delivering to the Secretary of State for filing a statement of change that sets forth:

(1) The name of the corporation;

(2) The street address of its current registered office;

(3) If the current registered office is to be changed, the street address of the new registered office;

(4) The name and street address of its current registered agent. A post office box number may be provided in addition to the street address;

(5) If the current registered agent is to be changed, the name of the new registered agent and the new agent's written consent, either on the statement or attached to it, to the appointment; and

(6) That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

(b) If the street address or post office box number of a registered agent's business office changes, the agent may change the street address or, if one exists, the post office box number, of the registered office of any corporation for which the agent is the registered agent by delivering a signed written notice of the change to the corporation and signing, either manually or in facsimile, and delivering to the Secretary of State for filing a signed statement that complies with the requirements of subsection (a) of this section and recites that the corporation has been notified of the change.

Source: Laws 2014, LB749, § 34.

Operative date January 1, 2016.

21-235 Resignation of registered agent.

(MBCA 5.03) (a) A registered agent may resign the agent's appointment by signing and delivering to the Secretary of State for filing the signed original and two exact or conformed copies of a statement of resignation. The statement may include a statement that the registered office is also discontinued.

(b) After filing the statement the Secretary of State shall mail one copy to the registered office, if not discontinued, and the other copy to the corporation at its principal office.

(c) The agency appointment is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.

Source: Laws 2014, LB749, § 35.

Operative date January 1, 2016.

21-236 Service on corporation.

(MBCA 5.04) (a) A corporation's registered agent is the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the corporation.

(b) If a corporation has no registered agent, or the agent cannot with reasonable diligence be served, the corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the corporation at its principal office. Service is perfected under this subsection at the earliest of:

(1) The date the corporation receives the mail;

(2) The date shown on the return receipt, if signed on behalf of the corporation; or

(3) Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.

(c) This section does not prescribe the only means, or necessarily the required means, of serving a corporation.

Source: Laws 2014, LB749, § 36.

Operative date January 1, 2016.

PART 6—SHARES AND DISTRIBUTIONS

SUBPART 1—SHARES

21-237 Authorized shares.

(MBCA 6.01) (a) The articles of incorporation must set forth any classes of shares and series of shares within a class, and the number of shares of each class and series, that the corporation is authorized to issue. If more than one class or series of shares is authorized, the articles of incorporation must prescribe a distinguishing designation for each class or series and must describe, prior to the issuance of shares of a class or series, the terms, including the preferences, rights, and limitations, of that class or series. Except to the extent varied as permitted by this section, all shares of a class or series must have terms, including preferences, rights, and limitations that are identical with those of other shares of the same class or series.

(b) The articles of incorporation must authorize:

(1) One or more classes or series of shares that together have unlimited voting rights; and

(2) One or more classes or series of shares, which may be the same class or classes as those with voting rights, that together are entitled to receive the net assets of the corporation upon dissolution.

(c) The articles of incorporation may authorize one or more classes or series of shares that:

(1) Have special, conditional, or limited voting rights, or no right to vote, except to the extent otherwise provided by the Nebraska Model Business Corporation Act;

(2) Are redeemable or convertible as specified in the articles of incorporation:

(i) At the option of the corporation, the shareholder, or another person or upon the occurrence of a specified event;

(ii) For cash, indebtedness, securities, or other property; and

(iii) At prices and in amounts specified or determined in accordance with a formula;

(3) Entitle the holders to distributions calculated in any manner, including dividends that may be cumulative, noncumulative, or partially cumulative; or

(4) Have preference over any other class or series of shares with respect to distributions, including distributions upon the dissolution of the corporation.

(d) Terms of shares may be made dependent upon facts objectively ascertainable outside the articles of incorporation in accordance with subsection (k) of section 21-203.

(e) Any of the terms of shares may vary among holders of the same class or series so long as such variations are expressly set forth in the articles of incorporation.

(f) The description of the preferences, rights, and limitations of classes or series of shares in subsection (c) of this section is not exhaustive.

Source: Laws 2014, LB749, § 37.

Operative date January 1, 2016.

21-238 Terms of class or series determined by board of directors.

(MBCA 6.02) (a) If the articles of incorporation so provide, the board of directors is authorized, without shareholder approval, to:

(1) Classify any unissued shares into one or more classes or into one or more series within a class;

(2) Reclassify any unissued shares of any class into one or more classes or into one or more series within one or more classes; or

(3) Reclassify any unissued shares of any series of any class into one or more classes or into one or more series within a class.

(b) If the board of directors acts pursuant to subsection (a) of this section, it must determine the terms, including the preferences, rights, and limitations, to the same extent permitted under section 21-237, of:

(1) Any class of shares before the issuance of any shares of that class; or

(2) Any series within a class before the issuance of any shares of that series.

(c) Before issuing any shares of a class or series created under this section, the corporation must deliver to the Secretary of State for filing articles of amendment setting forth the terms determined under subsection (a) of this section.

Source: Laws 2014, LB749, § 38.

Operative date January 1, 2016.

21-239 Issued and outstanding shares.

(MBCA 6.03) (a) A corporation may issue the number of shares of each class or series authorized by the articles of incorporation. Shares that are issued are outstanding shares until they are reacquired, redeemed, converted, or canceled.

(b) The reacquisition, redemption, or conversion of outstanding shares is subject to the limitations of subsection (c) of this section and to section 21-252.

(c) At all times that shares of the corporation are outstanding, one or more shares that together have unlimited voting rights and one or more shares that together are entitled to receive the net assets of the corporation upon dissolution must be outstanding.

Source: Laws 2014, LB749, § 39.

Operative date January 1, 2016.

21-240 Fractional shares.

(MBCA 6.04) (a) A corporation may:

(1) Issue fractions of a share or pay in money the value of fractions of a share;

(2) Arrange for disposition of fractional shares by the shareholders; and

(3) Issue scrip in registered or bearer form entitling the holder to receive a full share upon surrendering enough scrip to equal a full share.

(b) Each certificate representing scrip must be conspicuously labeled scrip and must contain the information required by subsection (b) of section 21-246.

(c) The holder of a fractional share is entitled to exercise the rights of a shareholder, including the right to vote, to receive dividends, and to participate in the assets of the corporation upon liquidation. The holder of scrip is not entitled to any of these rights unless the scrip provides for them.

(d) The board of directors may authorize the issuance of scrip subject to any condition considered desirable, including:

(1) That the scrip will become void if not exchanged for full shares before a specified date; and

(2) That the shares for which the scrip is exchangeable may be sold and the proceeds paid to the scripholders.

Source: Laws 2014, LB749, § 40.

Operative date January 1, 2016.

SUBPART 2—ISSUANCE OF SHARES

21-241 Subscription for shares before incorporation.

(MBCA 6.20) (a) A subscription for shares entered into before incorporation is irrevocable for six months unless the subscription agreement provides a longer or shorter period or all the subscribers agree to revocation.

(b) The board of directors may determine the payment terms of subscription for shares that were entered into before incorporation, unless the subscription agreement specifies them. A call for payment by the board of directors must be uniform so far as practicable as to all shares of the same class or series, unless the subscription agreement specifies otherwise.

(c) Shares issued pursuant to subscriptions entered into before incorporation are fully paid and nonassessable when the corporation receives the consideration specified in the subscription agreement.

(d) If a subscriber defaults in payment of money or property under a subscription agreement entered into before incorporation, the corporation may collect the amount owed as any other debt. Alternatively, unless the subscription agreement provides otherwise, the corporation may rescind the agreement and may sell the shares if the debt remains unpaid for more than twenty days after the corporation sends written demand for payment to the subscriber.

(e) A subscription agreement entered into after incorporation is a contract between the subscriber and the corporation subject to section 21-242.

Source: Laws 2014, LB749, § 41.

Operative date January 1, 2016.

21-242 Issuance of shares.

(MBCA 6.21) (a) The powers granted in this section to the board of directors may be reserved to the shareholders by the articles of incorporation.

(b) The board of directors may authorize shares to be issued for consideration consisting of any tangible or intangible property or benefit to the corporation, including cash, promissory notes, services performed, contracts for services to be performed, or other securities of the corporation.

(c) Before the corporation issues shares, the board of directors must determine that the consideration received or to be received for shares to be issued is

adequate. That determination by the board of directors is conclusive insofar as the adequacy of consideration for the issuance of shares relates to whether the shares are validly issued, fully paid, and nonassessable.

(d) When the corporation receives the consideration for which the board of directors authorized the issuance of shares, the shares issued therefor are fully paid and nonassessable.

(e) The corporation may place in escrow shares issued for a contract for future services or benefits or a promissory note, or make other arrangements to restrict the transfer of the shares, and may credit distributions in respect of the shares against their purchase price until the services are performed, the note is paid, or the benefits received. If the services are not performed, the note is not paid, or the benefits are not received, the shares escrowed or restricted and the distributions credited may be canceled in whole or part.

(f)(1) An issuance of shares or other securities convertible into or rights exercisable for shares, in a transaction or a series of integrated transactions, requires approval of the shareholders at a meeting at which a quorum consisting of at least a majority of the votes entitled to be cast on the matter exists if:

(i) The shares, other securities, or rights are issued for consideration other than cash or cash equivalents; and

(ii) The voting power of shares that are issued and issuable as a result of the transaction or series of integrated transactions will comprise more than twenty percent of the voting power of the shares of the corporation that were outstanding immediately before the transaction.

(2) In this subsection:

(i) For purposes of determining the voting power of shares issued and issuable as a result of a transaction or series of integrated transactions, the voting power of shares shall be the greater of (A) the voting power of the shares to be issued or (B) the voting power of the shares that would be outstanding after giving effect to the conversion of convertible shares and other securities and the exercise of rights to be issued; and

(ii) A series of transactions is integrated if consummation of one transaction is made contingent on consummation of one or more of the other transactions.

Source: Laws 2014, LB749, § 42.

Operative date January 1, 2016.

21-243 Liability of shareholders.

(MBCA 6.22) (a) A purchaser from a corporation of its own shares is not liable to the corporation or its creditors with respect to the shares except to pay the consideration for which the shares were authorized to be issued under section 21-242 or specified in the subscription agreement under section 21-241.

(b) Unless otherwise provided in the articles of incorporation, a shareholder of a corporation is not personally liable for the acts or debts of the corporation, except that he or she may become personally liable by reason of his or her own acts or conduct.

Source: Laws 2014, LB749, § 43.

Operative date January 1, 2016.

21-244 Share dividends.

(MBCA 6.23) (a) Unless the articles of incorporation provide otherwise, shares may be issued pro rata and without consideration to the corporation's shareholders or to the shareholders of one or more classes or series. An issuance of shares under this subsection is a share dividend.

(b) Shares of one class or series may not be issued as a share dividend in respect of shares of another class or series unless (1) the articles of incorporation so authorize, (2) a majority of the votes entitled to be cast by the class or series to be issued approve the issue, or (3) there are no outstanding shares of the class or series to be issued.

(c) If the board of directors does not fix the record date for determining shareholders entitled to a share dividend, it is the date the board of directors authorizes the share dividend.

Source: Laws 2014, LB749, § 44.

Operative date January 1, 2016.

21-245 Share options and other awards.

(MBCA 6.24) (a) A corporation may issue rights, options, or warrants for the purchase of shares or other securities of the corporation. The board of directors shall determine (1) the terms upon which the rights, options, or warrants are issued and (2) the terms, including the consideration for which the shares or other securities are to be issued. The authorization by the board of directors for the corporation to issue such rights, options, or warrants constitutes authorization of the issuance of the shares or other securities for which the rights, options, or warrants are exercisable.

(b) The terms and conditions of such rights, options, or warrants, including those outstanding on January 1, 2016, may include, without limitation, restrictions or conditions that:

(1) Preclude or limit the exercise, transfer, or receipt of such rights, options, or warrants by any person or persons owning or offering to acquire a specified number or percentage of the outstanding shares or other securities of the corporation or by any transferee or transferees of any such person or persons; or

(2) Invalidate or void such rights, options, or warrants held by any such person or persons or any such transferee or transferees.

(c) The board of directors may authorize one or more officers to (1) designate the recipients of rights, options, warrants, or other equity compensation awards that involve the issuance of shares and (2) determine, within an amount and subject to any other limitations established by the board and, if applicable, the stockholders, the number of such rights, options, warrants, or other equity compensation awards and the terms thereof to be received by the recipients, except that an officer may not use such authority to designate himself or herself or any other persons as the board of directors may specify as a recipient of such rights, options, warrants, or other equity compensation awards.

Source: Laws 2014, LB749, § 45.

Operative date January 1, 2016.

21-246 Form and content of certificates.

(MBCA 6.25) (a) Shares may but need not be represented by certificates. Unless the Nebraska Model Business Corporation Act or another statute ex-

pressly provides otherwise, the rights and obligations of shareholders are identical whether or not their shares are represented by certificates.

(b) At a minimum each share certificate must state on its face:

(1) The name of the issuing corporation and that it is organized under the law of this state;

(2) The name of the person to whom issued; and

(3) The number and class of shares and the designation of the series, if any, the certificate represents.

(c) If the issuing corporation is authorized to issue different classes of shares or different series within a class, the designations, relative rights, preferences, and limitations applicable to each class and the variations in rights, preferences, and limitations determined for each series, and the authority of the board of directors to determine variations for future series, must be summarized on the front or back of each certificate. Alternatively, each certificate may state conspicuously on its front or back that the corporation will furnish the shareholder this information on request in writing and without charge.

(d) Each share certificate (1) must be signed, either manually or in facsimile, by two officers designated in the bylaws or by the board of directors and (2) may bear the corporate seal or its facsimile.

(e) If the person who signed, either manually or in facsimile, a share certificate no longer holds office when the certificate is issued, the certificate is nevertheless valid.

Source: Laws 2014, LB749, § 46.

Operative date January 1, 2016.

21-247 Shares without certificates.

(MBCA 6.26) (a) Unless the articles of incorporation or bylaws provide otherwise, the board of directors of a corporation may authorize the issue of some or all of the shares of any or all of its classes or series without certificates. The authorization does not affect shares already represented by certificates until they are surrendered to the corporation.

(b) Within a reasonable time after the issue or transfer of shares without certificates, the corporation shall send the shareholder a written statement of the information required on certificates by subsections (b) and (c) of section 21-246, and, if applicable, section 21-248.

Source: Laws 2014, LB749, § 47.

Operative date January 1, 2016.

21-248 Restriction on transfer of shares and other securities.

(MBCA 6.27) (a) The articles of incorporation, bylaws, an agreement among shareholders, or an agreement between shareholders and the corporation may impose restrictions on the transfer or registration of transfer of shares of the corporation. A restriction does not affect shares issued before the restriction was adopted unless the holders of the shares are parties to the restriction agreement or voted in favor of the restriction.

(b) A restriction on the transfer or registration of transfer of shares is valid and enforceable against the holder or a transferee of the holder if the restriction is authorized by this section and its existence is noted conspicuously on the

front or back of the certificate or is contained in the information statement required by subsection (b) of section 21-247. Unless so noted or contained, a restriction is not enforceable against a person without knowledge of the restriction.

(c) A restriction on the transfer or registration of transfer of shares is authorized:

(1) To maintain the corporation's status when it is dependent on the number or identity of its shareholders;

(2) To preserve exemptions under federal or state securities law or under the Internal Revenue Code; or

(3) For any other reasonable purpose.

(d) A restriction on the transfer or registration of transfer of shares may:

(1) Obligate the shareholder first to offer the corporation or other persons, separately, consecutively, or simultaneously, an opportunity to acquire the restricted shares;

(2) Obligate the corporation or other persons, separately, consecutively, or simultaneously, to acquire the restricted shares;

(3) Require the corporation, the holders of any class of its shares, or another person to approve the transfer of the restricted shares, if the requirement is not manifestly unreasonable; or

(4) Prohibit the transfer of the restricted shares to designated persons or classes of persons, if the prohibition is not manifestly unreasonable.

(e) For purposes of this section, shares includes a security convertible into or carrying a right to subscribe for or acquire shares.

Source: Laws 2014, LB749, § 48.

Operative date January 1, 2016.

21-249 Expense of issue.

(MBCA 6.28) A corporation may pay the expenses of selling or underwriting its shares and of organizing or reorganizing the corporation from the consideration received for shares.

Source: Laws 2014, LB749, § 49.

Operative date January 1, 2016.

SUBPART 3—SUBSEQUENT ACQUISITION OF SHARES BY SHAREHOLDERS AND CORPORATION

21-250 Shareholders' preemptive rights.

(MBCA 6.30) (a) The shareholders of a corporation do not have a preemptive right to acquire the corporation's unissued shares except to the extent the articles of incorporation so provide.

(b) A statement included in the articles of incorporation that the corporation elects to have preemptive rights, or words of similar import, means that the following principles apply except to the extent the articles of incorporation expressly provide otherwise:

(1) The shareholders of the corporation have a preemptive right, granted on uniform terms and conditions prescribed by the board of directors to provide a fair and reasonable opportunity to exercise the right, to acquire proportional

amounts of the corporation's unissued shares upon the decision of the board of directors to issue them;

(2) A shareholder may waive his or her preemptive right. A waiver evidenced by a writing is irrevocable even though it is not supported by consideration;

(3) There is no preemptive right with respect to:

(i) Shares issued as compensation to directors, officers, agents, or employees of the corporation, its subsidiaries or affiliates;

(ii) Shares issued to satisfy conversion or option rights created to provide compensation to directors, officers, agents, or employees of the corporation, its subsidiaries or affiliates;

(iii) Shares authorized in articles of incorporation that are issued within six months from the effective date of incorporation; and

(iv) Shares sold otherwise than for money;

(4) Holders of shares of any class without general voting rights but with preferential rights to distributions or assets have no preemptive rights with respect to shares of any class;

(5) Holders of shares of any class with general voting rights but without preferential rights to distributions or assets have no preemptive rights with respect to shares of any class with preferential rights to distributions or assets unless the shares with preferential rights are convertible into or carry a right to subscribe for or acquire shares without preferential rights; and

(6) Shares subject to preemptive rights that are not acquired by shareholders may be issued to any person for a period of one year after being offered to shareholders at a consideration set by the board of directors that is not lower than the consideration set for the exercise of preemptive rights. An offer at a lower consideration or after the expiration of one year is subject to the shareholders' preemptive rights.

(c) For purposes of this section, shares includes a security convertible into or carrying a right to subscribe for or acquire shares.

Source: Laws 2014, LB749, § 50.

Operative date January 1, 2016.

21-251 Corporation's acquisition of its own shares.

(MBCA 6.31) (a) A corporation may acquire its own shares, and shares so acquired constitute authorized but unissued shares.

(b) If the articles of incorporation prohibit the reissue of the acquired shares, the number of authorized shares is reduced by the number of shares acquired.

Source: Laws 2014, LB749, § 51.

Operative date January 1, 2016.

SUBPART 4—DISTRIBUTIONS

21-252 Distributions to shareholders.

(MBCA 6.40) (a) A board of directors may authorize and the corporation may make distributions to its shareholders subject to restriction by the articles of incorporation and the limitation in subsection (c) of this section.

(b) If the board of directors does not fix the record date for determining shareholders entitled to a distribution, other than one involving a purchase,

redemption, or other acquisition of the corporation's shares, it is the date the board of directors authorizes the distribution.

(c) No distribution may be made if, after giving it effect:

(1) The corporation would not be able to pay its debts as they become due in the usual course of business; or

(2) The corporation's total assets would be less than the sum of its total liabilities plus, unless the articles of incorporation permit otherwise, the amount that would be needed, if the corporation were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of shareholders whose preferential rights are superior to those receiving the distribution.

(d) The board of directors may base a determination that a distribution is not prohibited under subsection (c) of this section either on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances.

(e) Except as provided in subsection (g) of this section, the effect of a distribution under subsection (c) of this section is measured:

(1) In the case of distribution by purchase, redemption, or other acquisition of the corporation's shares, as of the earlier of (i) the date money or other property is transferred or debt incurred by the corporation or (ii) the date the shareholder ceases to be a shareholder with respect to the acquired shares;

(2) In the case of any other distribution of indebtedness, as of the date the indebtedness is distributed; and

(3) In all other cases, as of (i) the date the distribution is authorized if the payment occurs within one hundred twenty days after the date of authorization or (ii) the date the payment is made if it occurs more than one hundred twenty days after the date of authorization.

(f) A corporation's indebtedness to a shareholder incurred by reason of a distribution made in accordance with this section is at parity with the corporation's indebtedness to its general, unsecured creditors except to the extent subordinated by agreement.

(g) Indebtedness of a corporation, including indebtedness issued as a distribution, is not considered a liability for purposes of determinations under subsection (c) of this section if its terms provide that payment of principal and interest are made only if and to the extent that payment of a distribution to shareholders could then be made under this section. If the indebtedness is issued as a distribution, each payment of principal or interest is treated as a distribution, the effect of which is measured on the date the payment is actually made.

(h) This section shall not apply to distributions in liquidation under sections 21-2,184 to 21-2,202.

Source: Laws 2014, LB749, § 52.

Operative date January 1, 2016.

PART 7—SHAREHOLDERS

SUBPART 1—MEETINGS

21-253 Annual meeting.

(MBCA 7.01) (a) Unless directors are elected by written consent in lieu of an annual meeting as permitted by section 21-256, a corporation shall hold a meeting of shareholders annually at a time stated in or fixed in accordance with the bylaws, except that directors may not be elected by less than unanimous consent.

(b) Annual shareholders' meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated in or fixed in accordance with the bylaws, annual meetings shall be held at the corporation's principal office.

(c) The failure to hold an annual meeting at the time stated in or fixed in accordance with a corporation's bylaws does not affect the validity of any corporate action.

(d) Notwithstanding the provisions of this section, a corporation registered as an investment company under the federal Investment Company Act of 1940, as amended, 15 U.S.C. 80a-1 et seq., which, pursuant to section 21-220, has included in its articles of incorporation a provision limiting or eliminating the requirement to hold an annual meeting of the shareholders, is not required to hold an annual meeting of the shareholders except as provided in such articles of incorporation or as otherwise required by such act and the rules and regulations adopted and promulgated under such act.

Source: Laws 2014, LB749, § 53.

Operative date January 1, 2016.

21-254 Special meeting.

(MBCA 7.02) (a) A corporation shall hold a special meeting of shareholders:

(1) On call of its board of directors or the person or persons authorized to do so by the articles of incorporation or bylaws; or

(2) If the holders of at least ten percent of all the votes entitled to be cast on an issue proposed to be considered at the proposed special meeting sign, date, and deliver to the corporation one or more written demands for the meeting describing the purpose or purposes for which it is to be held, except that the articles of incorporation may fix a lower percentage or a higher percentage not exceeding twenty-five percent of all the votes entitled to be cast on any issue proposed to be considered. Unless otherwise provided in the articles of incorporation, a written demand for a special meeting may be revoked by a writing to that effect received by the corporation prior to the receipt by the corporation of demands sufficient in number to require the holding of a special meeting.

(b) If not otherwise fixed under section 21-255 or 21-259, the record date for determining shareholders entitled to demand a special meeting is the date the first shareholder signs the demand.

(c) Special shareholders' meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated or fixed in accordance with the bylaws, special meetings shall be held at the corporation's principal office.

(d) Only business within the purpose or purposes described in the meeting notice required by subsection (c) of section 21-257 may be conducted at a special shareholders' meeting.

Source: Laws 2014, LB749, § 54.

Operative date January 1, 2016.

21-255 Court-ordered meeting.

(MBCA 7.03) (a) The district court of the county where a corporation's principal office, or, if none in this state, its registered office, is located may summarily order a meeting to be held:

(1) On application of any shareholder of the corporation entitled to participate in an annual meeting if an annual meeting was not held or action by written consent in lieu thereof did not become effective within the earlier of six months after the end of the corporation's fiscal year or fifteen months after its last annual meeting; or

(2) On application of a shareholder who signed a demand for a special meeting valid under section 21-254, if:

(i) Notice of the special meeting was not given within thirty days after the date the demand was delivered to the corporation's secretary; or

(ii) The special meeting was not held in accordance with the notice.

(b) The court may fix the time and place of the meeting, determine the shares entitled to participate in the meeting, specify a record date or dates for determining shareholders entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the quorum required for specific matters to be considered at the meeting or direct that the votes represented at the meeting constitute a quorum for action on those matters, and enter other orders necessary to accomplish the purpose or purposes of the meeting.

Source: Laws 2014, LB749, § 55.

Operative date January 1, 2016.

21-256 Action without meeting.

(MBCA 7.04) (a) Action required or permitted by the Nebraska Model Business Corporation Act to be taken at a shareholders' meeting may be taken without a meeting if the action is taken by all the shareholders entitled to vote on the action. The action must be evidenced by one or more written consents bearing the date of signature and describing the action taken, signed by all the shareholders entitled to vote on the action and delivered to the corporation for inclusion in the minutes or filing with the corporation records.

(b) The articles of incorporation may provide that any action required or permitted by the Nebraska Model Business Corporation Act to be taken at a shareholders' meeting may be taken without a meeting, and without prior notice, if consents in writing setting forth the action so taken are signed by the holders of outstanding shares having not less than the minimum number of votes that would be required to authorize or take the action at a meeting at which all shares entitled to vote on the action were present and voted. The written consent shall bear the date of signature of the shareholder who signs the consent and be delivered to the corporation for inclusion in the minutes or filing with the corporation records.

(c) If not otherwise fixed under section 21-259 and if prior board action is not required respecting the action to be taken without a meeting, the record date for determining the shareholders entitled to take action without a meeting shall be the first date on which a signed written consent is delivered to the corporation. If not otherwise fixed under section 21-259 and if prior board action is required respecting the action to be taken without a meeting, the

record date shall be the close of business on the day the resolution of the board taking such prior action is adopted. No written consent shall be effective to take the corporate action referred to therein unless, within sixty days of the earliest date on which a consent delivered to the corporation as required by this section was signed, written consents signed by sufficient shareholders to take the action have been delivered to the corporation. A written consent may be revoked by a writing to that effect delivered to the corporation before unrevoked written consents sufficient in number to take the corporate action are delivered to the corporation.

(d) A consent signed pursuant to the provisions of this section has the effect of a vote taken at a meeting and may be described as such in any document. Unless the articles of incorporation, bylaws, or a resolution of the board of directors provides for a reasonable delay to permit tabulation of written consents, the action taken by written consent shall be effective when written consents signed by sufficient shareholders to take the action are delivered to the corporation.

(e) If the Nebraska Model Business Corporation Act requires that notice of a proposed action be given to nonvoting shareholders and the action is to be taken by written consent of the voting shareholders, the corporation must give its nonvoting shareholders written notice of the action not more than ten days after (1) written consents sufficient to take the action have been delivered to the corporation or (2) such later date that tabulation of consents is completed pursuant to an authorization under subsection (d) of this section. The notice must reasonably describe the action taken and contain or be accompanied by the same material that, under any provision of the act, would have been required to be sent to nonvoting shareholders in a notice of a meeting at which the proposed action would have been submitted to the shareholders for action.

(f) If action is taken by less than unanimous written consent of the voting shareholders, the corporation must give its nonconsenting voting shareholders written notice of the action not more than ten days after (1) written consents sufficient to take the action have been delivered to the corporation or (2) such later date that tabulation of consents is completed pursuant to an authorization under subsection (d) of this section. The notice must reasonably describe the action taken and contain or be accompanied by the same material that, under any provision of the Nebraska Model Business Corporation Act, would have been required to be sent to voting shareholders in a notice of a meeting at which the action would have been submitted to the shareholders for action.

(g) The notice requirements in subsections (e) and (f) of this section shall not delay the effectiveness of actions taken by written consent, and a failure to comply with such notice requirements shall not invalidate actions taken by written consent, except that this subsection shall not be deemed to limit judicial power to fashion any appropriate remedy in favor of a shareholder adversely affected by a failure to give such notice within the required time period.

Source: Laws 2014, LB749, § 56.

Operative date January 1, 2016.

21-257 Notice of meeting.

(MBCA 7.05) (a) A corporation shall notify shareholders of the date, time, and place of each annual and special shareholders' meeting no fewer than ten nor more than sixty days before the meeting date. If the board of directors has

authorized participation by means of remote communication pursuant to section 21-261 for any class or series of shareholders, the notice to such class or series of shareholders shall describe the means of remote communication to be used. The notice shall include the record date for determining the shareholders entitled to vote at the meeting, if such date is different than the record date for determining shareholders entitled to notice of the meeting. Unless the Nebraska Model Business Corporation Act or the articles of incorporation require otherwise, the corporation is required to give notice only to shareholders entitled to vote at the meeting as of the record date for determining the shareholders entitled to notice of the meeting.

(b) Unless the Nebraska Model Business Corporation Act or the articles of incorporation require otherwise, notice of an annual meeting need not include a description of the purpose or purposes for which the meeting is called.

(c) Notice of a special meeting must include a description of the purpose or purposes for which the meeting is called.

(d) If not otherwise fixed under section 21-255 or 21-259, the record date for determining shareholders entitled to notice of and to vote at an annual or special shareholders' meeting is the day before the first notice is delivered to shareholders.

(e) Unless the bylaws require otherwise, if an annual or special shareholders' meeting is adjourned to a different date, time, or place, notice need not be given of the new date, time, or place if the new date, time, or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed under section 21-259, however, notice of the adjourned meeting must be given under this section to shareholders entitled to vote at such adjourned meeting as of the record date fixed for notice of such adjourned meeting.

Source: Laws 2014, LB749, § 57.

Operative date January 1, 2016.

21-258 Waiver of notice.

(MBCA 7.06) (a) A shareholder may waive any notice required by the Nebraska Model Business Corporation Act, the articles of incorporation, or bylaws before or after the date and time stated in the notice. The waiver must be in writing, be signed by the shareholder entitled to the notice, and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(b) A shareholder's attendance at a meeting:

(1) Waives objection to lack of notice or defective notice of the meeting, unless the shareholder at the beginning of the meeting objects to holding the meeting or transacting business at the meeting; and

(2) Waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the shareholder objects to considering the matter when it is presented.

Source: Laws 2014, LB749, § 58.

Operative date January 1, 2016.

21-259 Record date.

(MBCA 7.07) (a) The bylaws may fix or provide the manner of fixing the record date or dates for one or more voting groups in order to determine the shareholders entitled to notice of a shareholders' meeting, to demand a special meeting, to vote, or to take any other action. If the bylaws do not fix or provide for fixing a record date, the board of directors of the corporation may fix a future date as the record date.

(b) A record date fixed under this section may not be more than seventy days before the meeting or action requiring a determination of shareholders.

(c) A determination of shareholders entitled to notice of or to vote at a shareholders' meeting is effective for any adjournment of the meeting unless the board of directors fixes a new record date or dates which it must do if the meeting is adjourned to a date more than one hundred twenty days after the date fixed for the original meeting.

(d) If a court orders a meeting adjourned to a date more than one hundred twenty days after the date fixed for the original meeting, it may provide that the original record date or dates continue in effect or it may fix a new record date or dates.

(e) The record date for a shareholders' meeting fixed by or in the manner provided in the bylaws or by the board of directors shall be the record date for determining shareholders entitled both to notice of and to vote at the shareholders' meeting, unless in the case of a record date fixed by the board of directors and to the extent not prohibited by the bylaws, the board, at the time it fixes the record date for shareholders entitled to notice of the meeting, fixes a later record date on or before the date of the meeting to determine the shareholders entitled to vote at the meeting.

Source: Laws 2014, LB749, § 59.

Operative date January 1, 2016.

21-260 Conduct of the meeting.

(MBCA 7.08) (a) At each meeting of shareholders, a chairperson shall preside. The chairperson shall be appointed as provided in the bylaws or, in the absence of such provision, by the board.

(b) The chairperson, unless the articles of incorporation or bylaws provide otherwise, shall determine the order of business and shall have the authority to establish rules for the conduct of the meeting.

(c) Any rules adopted for, and the conduct of, the meeting shall be fair to shareholders.

(d) The chairperson of the meeting shall announce at the meeting when the polls close for each matter voted upon. If no announcement is made, the polls shall be deemed to have closed upon the final adjournment of the meeting. After the polls close, no ballots, proxies, or votes nor any revocations or changes thereto may be accepted.

Source: Laws 2014, LB749, § 60.

Operative date January 1, 2016.

21-261 Remote participation in annual and special meetings.

(MBCA 7.09) (a) Shareholders of any class or series may participate in any meeting of shareholders by means of remote communication to the extent the board of directors authorizes such participation for such class or series.

Participation by means of remote communication shall be subject to such guidelines and procedures as the board of directors adopts and shall be in conformity with subsection (b) of this section.

(b) Shareholders participating in a shareholders' meeting by means of remote communication shall be deemed present and may vote at such a meeting if the corporation has implemented reasonable measures:

(1) To verify that each person participating remotely is a shareholder; and

(2) To provide such shareholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the shareholders, including an opportunity to communicate and to read or hear the proceedings of the meeting substantially concurrently with such proceedings.

Source: Laws 2014, LB749, § 61.

Operative date January 1, 2016.

SUBPART 2—VOTING

21-262 Shareholders' list for meeting.

(MBCA 7.20) (a) After fixing a record date for a meeting, a corporation shall prepare an alphabetical list of the names of all its shareholders who are entitled to notice of a shareholders' meeting. If the board of directors fixes a different record date under subsection (e) of section 21-259 to determine the shareholders entitled to vote at the meeting, a corporation also shall prepare an alphabetical list of the names of all its shareholders who are entitled to vote at the meeting. A list must be arranged by voting group, and within each voting group by class or series of shares, and show the address of and number of shares held by each shareholder.

(b) The shareholders' list for notice must be available for inspection by any shareholder, beginning two business days after notice of the meeting is given for which the list was prepared and continuing through the meeting, at the corporation's principal office or at a place identified in the meeting notice in the city where the meeting will be held. A shareholders' list for voting must be similarly available for inspection promptly after the record date for voting. A shareholder, or the shareholder's agent or attorney, is entitled upon written demand to inspect and, subject to the requirements of subsection (c) of section 21-2,222, to copy a list, during regular business hours and at the shareholder's expense, during the period it is available for inspection.

(c) The corporation shall make the list of shareholders entitled to vote available at the meeting, and any shareholder, or the shareholder's agent or attorney, is entitled to inspect the list at any time during the meeting or any adjournment.

(d) If the corporation refuses to allow a shareholder, or the shareholder's agent or attorney, to inspect a shareholders' list before or at the meeting or copy a list as permitted by subsection (b) of this section, the district court of the county where a corporation's principal office, or, if none in this state, its registered office, is located, on application of the shareholder, may summarily order the inspection or copying at the corporation's expense and may postpone the meeting for which the list was prepared until the inspection or copying is complete.

(e) Refusal or failure to prepare or make available the shareholders' list does not affect the validity of action taken at the meeting.

Source: Laws 2014, LB749, § 62.

Operative date January 1, 2016.

21-263 Voting entitlement of shares.

(MBCA 7.21) (a) Except as provided in subsections (b) and (d) of this section or unless the articles of incorporation provide otherwise, each outstanding share, regardless of class, is entitled to one vote on each matter voted on at a shareholders' meeting. Only shares are entitled to vote.

(b) Absent special circumstances, the shares of a corporation are not entitled to vote if they are owned, directly or indirectly, by a second corporation, domestic or foreign, and the first corporation owns, directly or indirectly, a majority of the shares entitled to vote for directors of the second corporation.

(c) Subsection (b) of this section does not limit the power of a corporation to vote any shares, including its own shares, held by it in a fiduciary capacity.

(d) Redeemable shares are not entitled to vote after notice of redemption is mailed to the holders and a sum sufficient to redeem the shares has been deposited with a bank, trust company, or other financial institution under an irrevocable obligation to pay the holders the redemption price on surrender of the shares.

Source: Laws 2014, LB749, § 63.

Operative date January 1, 2016.

21-264 Proxies.

(MBCA 7.22) (a) A shareholder may vote the shareholder's shares in person or by proxy.

(b) A shareholder, or the shareholder's agent or attorney-in-fact, may appoint a proxy to vote or otherwise act for the shareholder by signing an appointment form or by an electronic transmission. An electronic transmission must contain or be accompanied by information from which the recipient can determine the date of the transmission and that the transmission was authorized by the sender or the sender's agent or attorney-in-fact.

(c) An appointment of a proxy is effective when a signed appointment form or an electronic transmission of the appointment is received by the inspector of election or the officer or agent of the corporation authorized to tabulate votes. An appointment is valid for eleven months unless a longer period is expressly provided in the appointment form.

(d) An appointment of a proxy is revocable unless the appointment form or electronic transmission states that it is irrevocable and the appointment is coupled with an interest. Appointments coupled with an interest include the appointment of:

- (1) A pledgee;
- (2) A person who purchased or agreed to purchase the shares;
- (3) A creditor of the corporation who extended it credit under terms requiring the appointment;
- (4) An employee of the corporation whose employment contract requires the appointment; or

(5) A party to a voting agreement created under section 21-273.

(e) The death or incapacity of the shareholder appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises authority under the appointment.

(f) An appointment made irrevocable under subsection (d) of this section is revoked when the interest with which it is coupled is extinguished.

(g) A transferee for value of shares subject to an irrevocable appointment may revoke the appointment if the transferee did not know of its existence when acquiring the shares and the existence of the irrevocable appointment was not noted conspicuously on the certificate representing the shares or on the information statement for shares without certificates.

(h) Subject to section 21-266 and to any express limitation on the proxy's authority stated in the appointment form or electronic transmission, a corporation is entitled to accept the proxy's vote or other action as that of the shareholder making the appointment.

Source: Laws 2014, LB749, § 64.

Operative date January 1, 2016.

21-265 Shares held by nominees.

(MBCA 7.23) (a) A corporation may establish a procedure by which the beneficial owner of shares that are registered in the name of a nominee is recognized by the corporation as the shareholder. The extent of this recognition may be determined in the procedure.

(b) The procedure may set forth:

(1) The types of nominees to which it applies;

(2) The rights or privileges that the corporation recognizes in a beneficial owner;

(3) The manner in which the procedure is selected by the nominee;

(4) The information that must be provided when the procedure is selected;

(5) The period for which selection of the procedure is effective; and

(6) Other aspects of the rights and duties created.

Source: Laws 2014, LB749, § 65.

Operative date January 1, 2016.

21-266 Corporation's acceptance of votes.

(MBCA 7.24) (a) If the name signed on a vote, consent, waiver, or proxy appointment corresponds to the name of a shareholder, the corporation if acting in good faith is entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the shareholder.

(b) If the name signed on a vote, consent, waiver, or proxy appointment does not correspond to the name of its shareholder, the corporation if acting in good faith is nevertheless entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the shareholder if:

(1) The shareholder is an entity and the name signed purports to be that of an officer or agent of the entity;

(2) The name signed purports to be that of an administrator, executor, guardian, or conservator representing the shareholder and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment;

(3) The name signed purports to be that of a receiver or trustee in bankruptcy of the shareholder and, if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment;

(4) The name signed purports to be that of a pledgee, beneficial owner, or attorney-in-fact of the shareholder and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the shareholder has been presented with respect to the vote, consent, waiver, or proxy appointment; or

(5) Two or more persons are the shareholder as cotenants or fiduciaries and the name signed purports to be the name of at least one of the co-owners and the person signing appears to be acting on behalf of all the co-owners.

(c) The corporation is entitled to reject a vote, consent, waiver, or proxy appointment if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the shareholder.

(d) The corporation and its officer or agent who accepts or rejects a vote, consent, waiver, or proxy appointment in good faith and in accordance with the standards of this section or subsection (b) of section 21-264 are not liable in damages to the shareholder for the consequences of the acceptance or rejection.

(e) Corporate action based on the acceptance or rejection of a vote, consent, waiver, or proxy appointment under this section is valid unless a court of competent jurisdiction determines otherwise.

Source: Laws 2014, LB749, § 66.

Operative date January 1, 2016.

21-267 Quorum and voting requirements for voting groups.

(MBCA 7.25) (a) Shares entitled to vote as a separate voting group may take action on a matter at a meeting only if a quorum of those shares exists with respect to that matter. Unless the articles of incorporation provide otherwise, a majority of the votes entitled to be cast on the matter by the voting group constitutes a quorum of that voting group for action on that matter.

(b) Once a share is represented for any purpose at a meeting, it is deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting unless a new record date is or must be set for that adjourned meeting.

(c) If a quorum exists, action on a matter, other than the election of directors, by a voting group is approved if the votes cast within the voting group favoring the action exceed the votes cast opposing the action, unless the articles of incorporation require a greater number of affirmative votes.

(d) An amendment of articles of incorporation adding, changing, or deleting a quorum or voting requirement for a voting group greater than specified in subsection (a) or (c) of this section is governed by section 21-269.

(e) The election of directors is governed by section 21-270.

(f) Whenever a provision of the Nebraska Model Business Corporation Act provides for voting of classes or series as separate voting groups, the rules provided in subsection (c) of section 21-2,153 for amendments of articles of incorporation apply to that provision.

Source: Laws 2014, LB749, § 67.
Operative date January 1, 2016.

21-268 Action by single and multiple voting groups.

(MBCA 7.26) (a) If the articles of incorporation or the Nebraska Model Business Corporation Act provide for voting by a single voting group on a matter, action on that matter is taken when voted upon by that voting group as provided in section 21-267.

(b) If the articles of incorporation or the act provide for voting by two or more voting groups on a matter, action on that matter is taken only when voted upon by each of those voting groups counted separately as provided in section 21-267. Action may be taken by one voting group on a matter even though no action is taken by another voting group entitled to vote on the matter.

Source: Laws 2014, LB749, § 68.
Operative date January 1, 2016.

21-269 Greater quorum or voting requirements.

(MBCA 7.27) (a) The articles of incorporation may provide for a greater quorum or voting requirement for shareholders, or voting groups of shareholders, than is provided for by the Nebraska Model Business Corporation Act.

(b) An amendment to the articles of incorporation that adds, changes, or deletes a greater quorum or voting requirement must meet the same quorum requirement and be adopted by the same vote and voting groups required to take action under the quorum and voting requirements then in effect or proposed to be adopted, whichever is greater.

Source: Laws 2014, LB749, § 69.
Operative date January 1, 2016.

21-270 Voting for directors; cumulative voting.

(MBCA 7.28) (a) Unless otherwise provided in the articles of incorporation, directors are elected by a plurality of the votes cast by the shares entitled to vote in the election at a meeting at which a quorum is present.

(b) In all elections for directors, every shareholder entitled to vote at such elections shall have the right to vote in person or by proxy for the number of shares owned by him or her, for as many persons as there are directors to be elected or to cumulate such shares and give one candidate as many votes as the number of directors multiplied by the number of his or her shares shall equal, or to distribute them upon the same principle among as many candidates as he or she thinks fit, and such directors shall not be elected in any other manner.

Source: Laws 2014, LB749, § 70.
Operative date January 1, 2016.

21-271 Inspectors of election.

(MBCA 7.29) (a) A public corporation shall, and any other corporation may, appoint one or more inspectors to act at a meeting of shareholders and make a written report of the inspectors' determinations. Each inspector shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of the inspector's ability.

(b) The inspectors shall:

- (1) Ascertain the number of shares outstanding and the voting power of each;
- (2) Determine the shares represented at a meeting;
- (3) Determine the validity of proxies and ballots;
- (4) Count all votes; and
- (5) Determine the result.

(c) An inspector may be an officer or employee of the corporation.

Source: Laws 2014, LB749, § 71.

Operative date January 1, 2016.

SUBPART 3—VOTING TRUSTS AND AGREEMENTS

21-272 Voting trusts.

(MBCA 7.30) (a) One or more shareholders may create a voting trust, conferring on a trustee the right to vote or otherwise act for them, by signing an agreement setting out the provisions of the trust, which may include anything consistent with its purpose, and transferring their shares to the trustee. When a voting trust agreement is signed, the trustee must prepare a list of the names and addresses of all voting trust beneficial owners, together with the number and class of shares each transferred to the trust, and deliver copies of the list and agreement to the corporation's principal office.

(b) A voting trust becomes effective on the date the first shares subject to the trust are registered in the trustee's name.

(c) Limits, if any, on the duration of a voting trust shall be as set forth in the voting trust. A voting trust that became effective when the business corporation statutes repealed by Laws 2014, LB749, provided a ten-year limit on its duration remains governed by the provisions of such statutes then in effect, unless the voting trust is amended to provide otherwise by unanimous agreement of the parties to the voting trust.

Source: Laws 2014, LB749, § 72.

Operative date January 1, 2016.

21-273 Voting agreements.

(MBCA 7.31) (a) Two or more shareholders may provide for the manner in which they will vote their shares by signing an agreement for that purpose. A voting agreement created under this section is not subject to the provisions of section 21-272.

(b) A voting agreement created under this section is specifically enforceable.

Source: Laws 2014, LB749, § 73.

Operative date January 1, 2016.

21-274 Shareholder agreements.

(MBCA 7.32) (a) An agreement among the shareholders of a corporation that complies with this section is effective among the shareholders and the corporation even though it is inconsistent with one or more other provisions of the Nebraska Model Business Corporation Act in that it:

(1) Eliminates the board of directors or restricts the discretion or powers of the board of directors;

(2) Governs the authorization or making of distributions whether or not in proportion to ownership of shares, subject to the limitations in section 21-252;

(3) Establishes who shall be directors or officers of the corporation or their terms of office or manner of selection or removal;

(4) Governs, in general or in regard to specific matters, the exercise or division of voting power by or between the shareholders and directors or by or among any of them, including use of weighted voting rights or director proxies;

(5) Establishes the terms and conditions of any agreement for the transfer or use of property or the provision of services between the corporation and any shareholder, director, officer, or employee of the corporation or among any of them;

(6) Transfers to one or more shareholders or other persons all or part of the authority to exercise the corporate powers or to manage the business and affairs of the corporation, including the resolution of any issue about which there exists a deadlock among directors or shareholders;

(7) Requires dissolution of the corporation at the request of one or more of the shareholders or upon the occurrence of a specified event or contingency; or

(8) Otherwise governs the exercise of the corporate powers or the management of the business and affairs of the corporation or the relationship among the shareholders, the directors, and the corporation, or among any of them, and is not contrary to public policy.

(b) An agreement authorized by this section shall be:

(1) As set forth (i) in the articles of incorporation or bylaws and approved by all persons who are shareholders at the time of the agreement or (ii) in a written agreement that is signed by all persons who are shareholders at the time of the agreement and is made known to the corporation; and

(2) Subject to amendment only by all persons who are shareholders at the time of the amendment, unless the agreement provides otherwise.

(c) The existence of an agreement authorized by this section shall be noted conspicuously on the front or back of each certificate for outstanding shares or on the information statement required by subsection (b) of section 21-247. If at the time of the agreement the corporation has shares outstanding represented by certificates, the corporation shall recall the outstanding certificates and issue substitute certificates that comply with this subsection. The failure to note the existence of the agreement on the certificate or information statement shall not affect the validity of the agreement or any action taken pursuant to it. Any purchaser of shares who, at the time of purchase, did not have knowledge of the existence of the agreement shall be entitled to rescission of the purchase. A purchaser shall be deemed to have knowledge of the existence of the agreement if its existence is noted on the certificate or information statement for the shares in compliance with this subsection and, if the shares are not represented by a certificate, the information statement is delivered to the purchaser at or prior to the time of purchase of the shares. An action to enforce the right of

rescission authorized by this subsection must be commenced within the earlier of ninety days after discovery of the existence of the agreement or two years after the time of purchase of the shares.

(d) An agreement authorized by this section shall cease to be effective when the corporation becomes a public corporation. If the agreement ceases to be effective for any reason, the board of directors may, if the agreement is contained or referred to in the corporation's articles of incorporation or bylaws, adopt an amendment to the articles of incorporation or bylaws, without shareholder action, to delete the agreement and any references to it.

(e) An agreement authorized by this section that limits the discretion or powers of the board of directors shall relieve the directors of, and impose upon the person or persons in whom such discretion or powers are vested, liability for acts or omissions imposed by law on directors to the extent that the discretion or powers of the directors are limited by the agreement.

(f) The existence or performance of an agreement authorized by this section shall not be a ground for imposing personal liability on any shareholder for the acts or debts of the corporation even if the agreement or its performance treats the corporation as if it were a partnership or results in failure to observe the corporate formalities otherwise applicable to the matters governed by the agreement.

(g) Incorporators or subscribers for shares may act as shareholders with respect to an agreement authorized by this section if no shares have been issued when the agreement is made.

(h) Limits, if any, on the duration of an agreement authorized by this section shall be as set forth in the agreement. An agreement that became effective when the business corporation statutes repealed by Laws 2014, LB749, provided for a ten-year limit on duration of shareholder agreements, unless the agreement provided otherwise, remains governed by the provisions of such statutes then in effect.

Source: Laws 2014, LB749, § 74.
Operative date January 1, 2016.

SUBPART 4—DERIVATIVE PROCEEDINGS

21-275 Subpart definitions.

(MBCA 7.40) In sections 21-275 to 21-282:

(1) Derivative proceeding means a civil suit in the right of a domestic corporation or, to the extent provided in section 21-282, in the right of a foreign corporation.

(2) Shareholder includes a beneficial owner whose shares are held in a voting trust or held by a nominee on the beneficial owner's behalf.

Source: Laws 2014, LB749, § 75.
Operative date January 1, 2016.

21-276 Standing.

(MBCA 7.41) A shareholder may not commence or maintain a derivative proceeding unless the shareholder:

(1) Was a shareholder of the corporation at the time of the act or omission complained of or became a shareholder through transfer by operation of law from one who was a shareholder at that time; and

(2) Fairly and adequately represents the interests of the corporation in enforcing the right of the corporation.

Source: Laws 2014, LB749, § 76.

Operative date January 1, 2016.

21-277 Demand.

(MBCA 7.42) (a) No shareholder may commence a derivative proceeding until:

(1) A written demand has been made upon the corporation to take suitable action; and

(2) Ninety days have expired from the date delivery of the demand was made unless the shareholder has earlier been notified that the demand has been rejected by the corporation or unless irreparable injury to the corporation would result by waiting for the expiration of the ninety-day period.

(b) Venue for a proceeding under this section lies in the district court of the county where the corporation's principal office, or, if none in this state, its registered office, is located.

Source: Laws 2014, LB749, § 77.

Operative date January 1, 2016.

21-278 Stay of proceedings.

(MBCA 7.43) If the corporation commences an inquiry into the allegations made in the demand or complaint, the court may stay any derivative proceeding for such period as the court deems appropriate.

Source: Laws 2014, LB749, § 78.

Operative date January 1, 2016.

21-279 Dismissal.

(MBCA 7.44) (a) A derivative proceeding shall be dismissed by the court on motion by the corporation if one of the groups specified in subsection (b) or (e) of this section has determined in good faith, after conducting a reasonable inquiry upon which its conclusions are based, that the maintenance of the derivative proceeding is not in the best interests of the corporation.

(b) Unless a panel is appointed pursuant to subsection (e) of this section, the determination in subsection (a) of this section shall be made by:

(1) A majority vote of qualified directors present at a meeting of the board of directors if the qualified directors constitute a quorum; or

(2) A majority vote of a committee consisting of two or more qualified directors appointed by majority vote of qualified directors present at a meeting of the board of directors, regardless of whether such qualified directors constitute a quorum.

(c) If a derivative proceeding is commenced after a determination has been made rejecting a demand by a shareholder, the complaint shall allege with particularity facts establishing either (1) that a majority of the board of directors did not consist of qualified directors at the time the determination was

made or (2) that the requirements of subsection (a) of this section have not been met.

(d) If a majority of the board of directors consisted of qualified directors at the time the determination was made, the plaintiff shall have the burden of proving that the requirements of subsection (a) of this section have not been met, and if not, the corporation shall have the burden of proving that the requirements of subsection (a) of this section have been met.

(e) Upon motion by the corporation, the court may appoint a panel of one or more individuals to make a determination whether the maintenance of the derivative proceeding is in the best interests of the corporation. In such case, the plaintiff shall have the burden of proving that the requirements of subsection (a) of this section have not been met.

Source: Laws 2014, LB749, § 79.
Operative date January 1, 2016.

21-280 Discontinuance or settlement.

(MBCA 7.45) A derivative proceeding may not be discontinued or settled without the court's approval. If the court determines that a proposed discontinuance or settlement will substantially affect the interests of the corporation's shareholders or a class of shareholders, the court shall direct that notice be given to the shareholders affected.

Source: Laws 2014, LB749, § 80.
Operative date January 1, 2016.

21-281 Payment of expenses.

(MBCA 7.46) On termination of the derivative proceeding the court may:

(1) Order the corporation to pay the plaintiff's reasonable expenses, including attorney's fees, incurred in the proceeding if it finds that the proceeding has resulted in a substantial benefit to the corporation;

(2) Order the plaintiff to pay any defendant's reasonable expenses, including attorney's fees, incurred in defending the proceeding if it finds that the proceeding was commenced or maintained without reasonable cause or for an improper purpose; or

(3) Order a party to pay an opposing party's reasonable expenses, including attorney's fees, incurred because of the filing of a pleading, motion, or other paper, if it finds that the pleading, motion, or other paper was not well grounded in fact, after reasonable inquiry, or warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law and was interposed for an improper purpose, such as to harass or cause unnecessary delay or needless increase in the cost of litigation.

Source: Laws 2014, LB749, § 81.
Operative date January 1, 2016.

21-282 Applicability to foreign corporations.

(MBCA 7.47) In any derivative proceeding in the right of a foreign corporation, the matters covered by sections 21-275 to 21-282 shall be governed by the

laws of the jurisdiction of incorporation of the foreign corporation except for sections 21-278, 21-280, and 21-281.

Source: Laws 2014, LB749, § 82.

Operative date January 1, 2016.

SUBPART 5—PROCEEDING TO APPOINT CUSTODIAN OR RECEIVER

21-283 Shareholder action to appoint custodian or receiver.

(MBCA 7.48) (a) The court may appoint one or more persons to be custodians, or, if the corporation is insolvent, to be receivers, of and for a corporation in a proceeding by a shareholder when it is established that:

(1) The directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and irreparable injury to the corporation is threatened or being suffered; or

(2) The directors or those in control of the corporation are acting fraudulently and irreparable injury to the corporation is threatened or being suffered.

(b) The court:

(1) May issue injunctions, appoint a temporary custodian or temporary receiver with all the powers and duties the court directs, take other action to preserve the corporate assets wherever located, and carry on the business of the corporation until a full hearing is held;

(2) Shall hold a full hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a custodian or receiver; and

(3) Has jurisdiction over the corporation and all of its property, wherever located.

(c) The court may appoint an individual or domestic or foreign corporation, authorized to transact business in this state, as a custodian or receiver and may require the custodian or receiver to post bond, with or without sureties, in an amount the court directs.

(d) The court shall describe the powers and duties of the custodian or receiver in its appointing order, which may be amended from time to time. Among other powers:

(1) A custodian may exercise all of the powers of the corporation, through or in place of its board of directors, to the extent necessary to manage the business and affairs of the corporation; and

(2) A receiver (i) may dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court and (ii) may sue and defend in the receiver's own name as receiver in all courts of this state.

(e) The court during a custodianship may redesignate the custodian a receiver, and during a receivership may redesignate the receiver a custodian, if doing so is in the best interests of the corporation.

(f) The court from time to time during the custodianship or receivership may order compensation paid and expense disbursements or reimbursements made

to the custodian or receiver from the assets of the corporation or proceeds from the sale of its assets.

Source: Laws 2014, LB749, § 83.

Operative date January 1, 2016.

PART 8—DIRECTORS AND OFFICERS

SUBPART 1—BOARD OF DIRECTORS

21-284 Requirement for and functions of board of directors.

(MBCA 8.01) (a) Except as provided in section 21-274, each corporation must have a board of directors.

(b) All corporate powers shall be exercised by or under the authority of the board of directors of the corporation, and the business and affairs of the corporation shall be managed by or under the direction and subject to the oversight of its board of directors, subject to any limitation set forth in the articles of incorporation or in an agreement authorized under section 21-274.

(c) In the case of a public corporation, the board's oversight responsibilities include attention to:

- (1) Business performance and plans;
- (2) Major risks to which the corporation is or may be exposed;
- (3) The performance and compensation of senior officers;
- (4) Policies and practices to foster the corporation's compliance with law and ethical conduct;
- (5) Preparation of the corporation's financial statements;
- (6) The effectiveness of the corporation's internal controls;
- (7) Arrangements for providing adequate and timely information to directors; and
- (8) The composition of the board and its committees, taking into account the important role of independent directors.

Source: Laws 2014, LB749, § 84.

Operative date January 1, 2016.

21-285 Qualifications of directors.

(MBCA 8.02) The articles of incorporation or bylaws may prescribe qualifications for directors. A director need not be a resident of this state or a shareholder of the corporation unless the articles of incorporation or bylaws so prescribe.

Source: Laws 2014, LB749, § 85.

Operative date January 1, 2016.

21-286 Number and election of directors.

(MBCA 8.03) (a) A board of directors must consist of one or more individuals, with the number specified in or fixed in accordance with the articles of incorporation or bylaws.

(b) The number of directors may be increased or decreased from time to time by amendment to, or in the manner provided in, the articles of incorporation or the bylaws.

(c) Directors are elected at the first annual shareholders' meeting and at each annual meeting thereafter unless their terms are staggered under section 21-289.

(d) If a corporation is registered as an investment company under the federal Investment Company Act of 1940, as amended, 15 U.S.C. 80a-1 et seq., and, pursuant to section 21-220, has included in its articles of incorporation a provision limiting or eliminating the requirement to hold an annual meeting of the shareholders, the initial directors shall be elected at the first meeting of the shareholders after such provision limiting or eliminating such meeting is included in the articles of incorporation, and thereafter the election of directors by shareholders is not required unless required by such federal act or the rules and regulations under such act or otherwise required by the Nebraska Model Business Corporation Act.

Source: Laws 2014, LB749, § 86.

Operative date January 1, 2016.

21-287 Election of directors by certain classes of shareholders.

(MBCA 8.04) If the articles of incorporation authorize dividing the shares into classes, the articles may also authorize the election of all or a specified number of directors by the holders of one or more authorized classes of shares. A class, or classes, of shares entitled to elect one or more directors is a separate voting group for purposes of the election of directors.

Source: Laws 2014, LB749, § 87.

Operative date January 1, 2016.

21-288 Terms of directors generally.

(MBCA 8.05) (a) The terms of the initial directors of a corporation expire at the first shareholders' meeting at which directors are elected.

(b) The terms of all other directors expire at the next or, if their terms are staggered in accordance with section 21-289, at the applicable second or third annual shareholders' meeting following their election, except to the extent a shorter term is specified in the articles of incorporation in the event of a director nominee failing to receive a specified vote for election.

(c) A decrease in the number of directors does not shorten an incumbent director's term.

(d) The term of a director elected to fill a vacancy expires at the next shareholders' meeting at which directors are elected.

(e) Except to the extent otherwise provided in the articles of incorporation, despite the expiration of a director's term, the director continues to serve until the director's successor is elected and qualifies or there is a decrease in the number of directors.

Source: Laws 2014, LB749, § 88.

Operative date January 1, 2016.

21-289 Staggered terms for directors.

(MBCA 8.06) The articles of incorporation may provide for staggering the terms of directors by dividing the total number of directors into two or three groups, with each group containing one-half or one-third of the total, as near as may be practicable. In that event, the terms of directors in the first group

expire at the first annual shareholders' meeting after their election, the terms of the second group expire at the second annual shareholders' meeting after their election, and the terms of the third group, if any, expire at the third annual shareholders' meeting after their election. At each annual shareholders' meeting held thereafter, directors shall be chosen for a term of two years or three years, as the case may be, to succeed those whose terms expire.

Source: Laws 2014, LB749, § 89.

Operative date January 1, 2016.

21-290 Resignation of directors.

(MBCA 8.07) (a) A director may resign at any time by delivering a written resignation to the board of directors or its chairperson or to the secretary of the corporation.

(b) A resignation is effective when the resignation is delivered unless the resignation specifies a later effective date or an effective date determined upon the happening of an event or events. A resignation that is conditioned upon failing to receive a specified vote for election as a director may provide that it is irrevocable.

Source: Laws 2014, LB749, § 90.

Operative date January 1, 2016.

21-291 Removal of directors by shareholders.

(MBCA 8.08) (a) The shareholders may remove one or more directors with or without cause unless the articles of incorporation provide that directors may be removed only for cause.

(b) If a director is elected by a voting group of shareholders, only the shareholders of that voting group may participate in the vote to remove that director.

(c) A director may not be removed if the number of votes sufficient to elect the director under cumulative voting is voted against removal.

(d) A director may be removed by the shareholders only at a meeting called for the purpose of removing the director and the meeting notice must state that the purpose, or one of the purposes, of the meeting is removal of the director.

Source: Laws 2014, LB749, § 91.

Operative date January 1, 2016.

21-292 Removal of directors by judicial proceeding.

(MBCA 8.09) (a) The district court of the county where a corporation's principal office, or, if none in this state, its registered office, is located may remove a director of the corporation from office in a proceeding commenced by or in the right of the corporation if the court finds that (1) the director engaged in fraudulent conduct with respect to the corporation or its shareholders, grossly abused the position of director, or intentionally inflicted harm on the corporation and (2) considering the director's course of conduct and the inadequacy of other available remedies, removal would be in the best interest of the corporation.

(b) A shareholder proceeding on behalf of the corporation under subsection (a) of this section shall comply with all of the requirements of sections 21-275 to 21-282, except subdivision (1) of section 21-276.

(c) The court, in addition to removing the director, may bar the director from reelection for a period prescribed by the court.

(d) Nothing in this section limits the equitable powers of the court to order other relief.

Source: Laws 2014, LB749, § 92.
Operative date January 1, 2016.

21-293 Vacancy on board.

(MBCA 8.10) (a) Unless the articles of incorporation provide otherwise, if a vacancy occurs on a board of directors, including a vacancy resulting from an increase in the number of directors:

(1) The shareholders may fill the vacancy;

(2) The board of directors may fill the vacancy; or

(3) If the directors remaining in office constitute fewer than a quorum of the board, they may fill the vacancy by the affirmative vote of a majority of all the directors remaining in office.

(b) If the vacant office was held by a director elected by a voting group of shareholders, only the holders of shares of that voting group are entitled to vote to fill the vacancy if it is filled by the shareholders, and only the directors elected by that voting group are entitled to fill the vacancy if it is filled by the directors.

(c) A vacancy that will occur at a specific later date, by reason of a resignation effective at a later date under subsection (b) of section 21-290 or otherwise, may be filled before the vacancy occurs but the new director may not take office until the vacancy occurs.

Source: Laws 2014, LB749, § 93.
Operative date January 1, 2016.

21-294 Compensation of directors.

(MBCA 8.11) Unless the articles of incorporation or bylaws provide otherwise, the board of directors may fix the compensation of directors.

Source: Laws 2014, LB749, § 94.
Operative date January 1, 2016.

SUBPART 2—MEETINGS AND ACTION OF THE BOARD

21-295 Meetings.

(MBCA 8.20) (a) The board of directors may hold regular or special meetings in or out of this state.

(b) Unless the articles of incorporation or bylaws provide otherwise, the board of directors may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.

Source: Laws 2014, LB749, § 95.
Operative date January 1, 2016.

21-296 Action without meeting.

(MBCA 8.21) (a) Except to the extent that the articles of incorporation or bylaws require that action by the board of directors be taken at a meeting, action required or permitted by the Nebraska Model Business Corporation Act to be taken by the board of directors may be taken without a meeting if each director signs a consent describing the action to be taken and delivers it to the corporation.

(b) Action taken under this section is the act of the board of directors when one or more consents signed by all the directors are delivered to the corporation. The consent may specify the time at which the action taken thereunder is to be effective. A director's consent may be withdrawn by a revocation signed by the director and delivered to the corporation prior to delivery to the corporation of unrevoked written consents signed by all the directors.

(c) A consent signed under this section has the effect of action taken at a meeting of the board of directors and may be described as such in any document.

Source: Laws 2014, LB749, § 96.
Operative date January 1, 2016.

21-297 Notice of meeting.

(MBCA 8.22) (a) Unless the articles of incorporation or bylaws provide otherwise, regular meetings of the board of directors may be held without notice of the date, time, place, or purpose of the meeting.

(b) Unless the articles of incorporation or bylaws provide for a longer or shorter period, special meetings of the board of directors must be preceded by at least two days' notice of the date, time, and place of the meeting. The notice need not describe the purpose of the special meeting unless required by the articles of incorporation or bylaws.

Source: Laws 2014, LB749, § 97.
Operative date January 1, 2016.

21-298 Waiver of notice.

(MBCA 8.23) (a) A director may waive any notice required by the Nebraska Model Business Corporation Act, the articles of incorporation, or bylaws before or after the date and time stated in the notice. Except as provided by subsection (b) of this section, the waiver must be in writing, signed by the director entitled to the notice, and filed with the minutes or corporate records.

(b) A director's attendance at or participation in a meeting waives any required notice to the director of the meeting unless the director at the beginning of the meeting, or promptly upon arrival, objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

Source: Laws 2014, LB749, § 98.
Operative date January 1, 2016.

21-299 Quorum and voting.

(MBCA 8.24) (a) Unless the articles of incorporation or bylaws require a greater number or unless otherwise specifically provided in the Nebraska Model Business Corporation Act, a quorum of a board of directors consists of:

(1) A majority of the fixed number of directors if the corporation has a fixed board size; or

(2) A majority of the number of directors prescribed, or if no number is prescribed the number in office immediately before the meeting begins, if the corporation has a variable-range size board.

(b) The articles of incorporation or bylaws may authorize a quorum of a board of directors to consist of no fewer than one-third of the fixed or prescribed number of directors determined under subsection (a) of this section.

(c) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors unless the articles of incorporation or bylaws require the vote of a greater number of directors.

(d) A director who is present at a meeting of the board of directors or a committee of the board of directors when corporate action is taken is deemed to have assented to the action taken unless: (1) The director objects at the beginning of the meeting, or promptly upon arrival, to holding it or transacting business at the meeting; (2) the dissent or abstention from the action taken is entered in the minutes of the meeting; or (3) the director delivers written notice of the director's dissent or abstention to the presiding officer of the meeting before its adjournment or to the corporation immediately after adjournment of the meeting. The right of dissent or abstention is not available to a director who votes in favor of the action taken.

Source: Laws 2014, LB749, § 99.

Operative date January 1, 2016.

21-2,100 Committees.

(MBCA 8.25) (a) Unless the Nebraska Model Business Corporation Act or the articles of incorporation or bylaws provide otherwise, a board of directors may create one or more committees and appoint one or more members of the board of directors to serve on any such committee.

(b) Unless the Nebraska Model Business Corporation Act otherwise provides, the creation of a committee and appointment of members to it must be approved by the greater of (1) a majority of all the directors in office when the action is taken or (2) the number of directors required by the articles of incorporation or bylaws to take action under section 21-299.

(c) Sections 21-295 to 21-299 apply both to committees of the board and to their members.

(d) To the extent specified by the board of directors or in the articles of incorporation or bylaws, each committee may exercise the powers of the board of directors under section 21-284.

(e) A committee may not, however:

(1) Authorize or approve distributions, except according to a formula or method, or within limits, prescribed by the board of directors;

(2) Approve or propose to shareholders action that the Nebraska Model Business Corporation Act requires be approved by shareholders;

(3) Fill vacancies on the board of directors or, subject to subsection (g) of this section, on any of its committees; or

(4) Adopt, amend, or repeal bylaws.

(f) The creation of, delegation of authority to, or action by a committee does not alone constitute compliance by a director with the standards of conduct described in section 21-2,102.

(g) The board of directors may appoint one or more directors as alternate members of any committee to replace any absent or disqualified member during the member's absence or disqualification. Unless the articles of incorporation or the bylaws or the resolution creating the committee provide otherwise, in the event of the absence or disqualification of a member of a committee, the member or members present at any meeting and not disqualified from voting, unanimously, may appoint another director to act in place of the absent or disqualified member.

Source: Laws 2014, LB749, § 100.

Operative date January 1, 2016.

21-2,101 Submission of matters for shareholder vote.

(MBCA 8.26) A corporation may agree to submit a matter to a vote of its shareholders even if, after approving the matter, the board of directors determines it no longer recommends the matter.

Source: Laws 2014, LB749, § 101.

Operative date January 1, 2016.

SUBPART 3—DIRECTORS

21-2,102 Standards of conduct for directors.

(MBCA 8.30) (a)(1) Each member of the board of directors, when discharging the duties of a director, shall act (i) in good faith and (ii) in a manner the director reasonably believes to be in the best interests of the corporation.

(2) A director may, but need not, in considering the best interests of the corporation, consider, among other things, the effects of any action on employees, suppliers, creditors, and customers of the corporation and communities in which offices or other facilities of the corporation are located.

(b) The members of the board of directors or a committee of the board, when becoming informed in connection with their decisionmaking function or devoting attention to their oversight function, shall discharge their duties with the care that a person in a like position would reasonably believe appropriate under similar circumstances.

(c) In discharging board or committee duties, a director shall disclose, or cause to be disclosed, to the other board or committee members information not already known by them but known by the director to be material to the discharge of their decisionmaking or oversight functions, except that disclosure is not required to the extent that the director reasonably believes that doing so would violate a duty imposed under law, a legally enforceable obligation of confidentiality, or a professional ethics rule.

(d) In discharging board or committee duties, a director who does not have knowledge that makes reliance unwarranted is entitled to rely on the performance by any of the persons specified in subdivision (f)(1) or (f)(3) of this section

to whom the board may have delegated, formally or informally by course of conduct, the authority or duty to perform one or more of the board's functions that are delegable under applicable law.

(e) In discharging board or committee duties a director who does not have knowledge that makes reliance unwarranted is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, prepared or presented by any of the persons specified in subsection (f) of this section.

(f) A director is entitled to rely, in accordance with subsection (d) or (e) of this section, on:

(1) One or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the functions performed or the information, opinions, reports, or statements provided;

(2) Legal counsel, public accountants, or other persons retained by the corporation as to matters involving skills or expertise the director reasonably believes are matters (i) within the particular person's professional or expert competence or (ii) as to which the particular person merits confidence; or

(3) A committee of the board of directors of which the director is not a member if the director reasonably believes the committee merits confidence.

Source: Laws 2014, LB749, § 102.

Operative date January 1, 2016.

21-2,103 Standards of liability for directors.

(MBCA 8.31) (a) A director shall not be liable to the corporation or its shareholders for any decision to take or not to take action, or any failure to take any action, as a director unless the party asserting liability in a proceeding establishes that:

(1) No defense interposed by the director based on (i) any provision in the articles of incorporation authorized by subdivision (b)(4) of section 21-220, (ii) the protection afforded by section 21-2,121 for action taken in compliance with section 21-2,122 or 21-2,123, or (iii) the protection afforded by section 21-2,124, precludes liability; and

(2) The challenged conduct consisted or was the result of:

(i) Action not in good faith;

(ii) A decision:

(A) Which the director did not reasonably believe to be in the best interests of the corporation; or

(B) As to which the director was not informed to an extent the director reasonably believed appropriate in the circumstances;

(iii) A lack of objectivity due to the director's familial, financial, or business relationship with, or a lack of independence due to the director's domination or control by, another person having a material interest in the challenged conduct:

(A) Which relationship or which domination or control could reasonably be expected to have affected the director's judgment respecting the challenged conduct in a manner adverse to the corporation; and

(B) After a reasonable expectation to such effect has been established, the director shall not have established that the challenged conduct was reasonably believed by the director to be in the best interests of the corporation;

(iv) A sustained failure of the director to devote attention to ongoing oversight of the business and affairs of the corporation or a failure to devote timely attention by making, or causing to be made, appropriate inquiry when particular facts and circumstances of significant concern materialize that would alert a reasonably attentive director to the need therefor; or

(v) Receipt of a financial benefit to which the director was not entitled or any other breach of the director's duties to deal fairly with the corporation and its shareholders that is actionable under applicable law.

(b) The party seeking to hold the director liable:

(1) For money damages shall also have the burden of establishing that:

(i) Harm to the corporation or its shareholders has been suffered; and

(ii) The harm suffered was proximately caused by the director's challenged conduct;

(2) For other money payment under a legal remedy, such as compensation for the unauthorized use of corporate assets, shall also have whatever persuasion burden may be called for to establish that the payment sought is appropriate in the circumstances; or

(3) For other money payment under an equitable remedy, such as profit recovery by or disgorgement to the corporation, shall also have whatever persuasion burden may be called for to establish that the equitable remedy sought is appropriate in the circumstances.

(c) Nothing contained in this section shall (1) in any instance where fairness is at issue, such as consideration of the fairness of a transaction to the corporation under subdivision (b)(3) of section 21-2,121, alter the burden of proving the fact or lack of fairness otherwise applicable, (2) alter the fact or lack of liability of a director under another section of the Nebraska Model Business Corporation Act, such as the provisions governing the consequences of an unlawful distribution under section 21-2,104 or a transactional interest under section 21-2,121, or (3) affect any rights to which the corporation or a shareholder may be entitled under another statute of this state or the United States.

Source: Laws 2014, LB749, § 103.

Operative date January 1, 2016.

21-2,104 Directors' liability for unlawful distributions.

(MBCA 8.33) (a) A director who votes for or assents to a distribution in excess of what may be authorized and made pursuant to subsection (a) of section 21-252 or subsection (a) of section 21-2,192 is personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating subsection (a) of section 21-252 or subsection (a) of section 21-2,192 if the party asserting liability establishes that when taking the action the director did not comply with section 21-2,102.

(b) A director held liable under subsection (a) of this section for an unlawful distribution is entitled to:

(1) Contribution from every other director who could be held liable under subsection (a) of this section for the unlawful distribution; and

(2) Recoupment from each shareholder of the pro rata portion of the amount of the unlawful distribution the shareholder accepted, knowing the distribution was made in violation of subsection (a) of section 21-252 or subsection (a) of section 21-2,192.

(c) A proceeding to enforce:

(1) The liability of a director under subsection (a) of this section is barred unless it is commenced within two years after the date (i) on which the effect of the distribution was measured under subsection (e) or (g) of section 21-252, (ii) as of which the violation of subsection (a) of section 21-252 occurred as the consequence of disregard of a restriction in the articles of incorporation, or (iii) on which the distribution of assets to shareholders under subsection (a) of section 21-2,192 was made; or

(2) Contribution or recoupment under subsection (b) of this section is barred unless it is commenced within one year after the liability of the claimant has been finally adjudicated under subsection (a) of this section.

Source: Laws 2014, LB749, § 104.

Operative date January 1, 2016.

SUBPART 4—OFFICERS

21-2,105 Officers.

(MBCA 8.40) (a) A corporation has the officers described in its bylaws or appointed by the board of directors in accordance with the bylaws.

(b) The board of directors may elect individuals to fill one or more offices of the corporation. An officer may appoint one or more officers if authorized by the bylaws or the board of directors.

(c) The bylaws or the board of directors shall assign to one of the officers responsibility for preparing the minutes of the directors' and shareholders' meetings and for maintaining and authenticating the records of the corporation required to be kept under subsections (a) and (e) of section 21-2,221.

(d) The same individual may simultaneously hold more than one office in a corporation.

Source: Laws 2014, LB749, § 105.

Operative date January 1, 2016.

21-2,106 Functions of officers.

(MBCA 8.41) Each officer has the authority and shall perform the functions set forth in the bylaws or, to the extent consistent with the bylaws, the functions prescribed by the board of directors or by direction of an officer authorized by the board of directors to prescribe the functions of other officers.

Source: Laws 2014, LB749, § 106.

Operative date January 1, 2016.

21-2,107 Standards of conduct for officers.

(MBCA 8.42) (a) An officer, when performing in such capacity, has the duty to act:

- (1) In good faith;
- (2) With the care that a person in a like position would reasonably exercise under similar circumstances; and
- (3) In a manner the officer reasonably believes to be in the best interests of the corporation.

(b) The duty of an officer includes the obligation:

(1) To inform the superior officer to whom, or the board of directors or the committee thereof to which, the officer reports of information about the affairs of the corporation known to the officer, within the scope of the officer's functions, and known to the officer to be material to such superior officer, board, or committee; and

(2) To inform his or her superior officer, or another appropriate person within the corporation, or the board of directors, or a committee thereof, of any actual or probable material violation of law involving the corporation or material breach of duty to the corporation by an officer, employee, or agent of the corporation, that the officer believes has occurred or is likely to occur.

(c) In discharging his or her duties, an officer who does not have knowledge that makes reliance unwarranted is entitled to rely on:

(1) The performance of properly delegated responsibilities by one or more employees of the corporation whom the officer reasonably believes to be reliable and competent in performing the responsibilities delegated; or

(2) Information, opinions, reports, or statements, including financial statements and other financial data, prepared or presented by one or more employees of the corporation whom the officer reasonably believes to be reliable and competent in the matters presented or by legal counsel, public accountants, or other persons retained by the corporation as to matters involving skills or expertise the officer reasonably believes are matters (i) within the particular person's professional or expert competence or (ii) as to which the particular person merits confidence.

(d) An officer shall not be liable to the corporation or its shareholders for any decision to take or not to take action or any failure to take any action as an officer if the duties of the office are performed in compliance with this section. Whether an officer who does not comply with this section shall have liability will depend in such instance on applicable law, including those principles of section 21-2,103 that have relevance.

Source: Laws 2014, LB749, § 107.

Operative date January 1, 2016.

21-2,108 Resignation and removal of officers.

(MBCA 8.43) (a) An officer may resign at any time by delivering notice to the corporation. A resignation is effective when the notice is delivered unless the notice specifies a later effective time. If a resignation is made effective at a later time and the board or the appointing officer accepts the future effective time, the board or the appointing officer may fill the pending vacancy before the effective time if the board or the appointing officer provides that the successor does not take office until the effective time.

(b) An officer may be removed at any time with or without cause by (1) the board of directors, (2) the officer who appointed such officer, unless the bylaws

or the board of directors provide otherwise, or (3) any other officer if authorized by the bylaws or the board of directors.

(c) In this section, appointing officer means the officer, including any successor to that officer, who appointed the officer resigning or being removed.

Source: Laws 2014, LB749, § 108.

Operative date January 1, 2016.

21-2,109 Contract rights of officers.

(MBCA 8.44) (a) The appointment of an officer does not itself create contract rights.

(b) An officer's removal does not affect the officer's contract rights, if any, with the corporation. An officer's resignation does not affect the corporation's contract rights, if any, with the officer.

Source: Laws 2014, LB749, § 109.

Operative date January 1, 2016.

SUBPART 5—INDEMNIFICATION AND ADVANCE FOR EXPENSES

21-2,110 Subpart definitions.

(MBCA 8.50) In sections 21-2,110 to 21-2,119:

(1) Corporation includes any domestic or foreign predecessor entity of a corporation in a merger.

(2) Director or officer means an individual who is or was a director or officer, respectively, of a corporation or who, while a director or officer of the corporation, is or was serving at the corporation's request as a director, officer, manager, partner, trustee, employee, or agent of another entity or employee benefit plan. A director or officer is considered to be serving an employee benefit plan at the corporation's request if the individual's duties to the corporation also impose duties on, or otherwise involve services by, the individual to the plan or to participants in or beneficiaries of the plan. Director or officer includes, unless the context requires otherwise, the estate or personal representative of a director or officer.

(3) Liability means the obligation to pay a judgment, settlement, penalty, fine, including an excise tax assessed with respect to an employee benefit plan, or reasonable expenses incurred with respect to a proceeding.

(4) Official capacity means (i) when used with respect to a director, the office of director in a corporation and (ii) when used with respect to an officer, as contemplated in section 21-2,116, the office in a corporation held by the officer. Official capacity does not include service for any other domestic or foreign corporation or any partnership, joint venture, trust, employee benefit plan, or other entity.

(5) Party means an individual who was, is, or is threatened to be made, a defendant or respondent in a proceeding.

(6) Proceeding means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, arbitral, or investigative and whether formal or informal.

Source: Laws 2014, LB749, § 110.

Operative date January 1, 2016.

21-2,111 Permissible indemnification.

(MBCA 8.51) (a) Except as otherwise provided in this section, a corporation may indemnify an individual who is a party to a proceeding because the individual is a director against liability incurred in the proceeding if:

(1)(i) The director conducted himself or herself in good faith; and

(ii) Reasonably believed:

(A) In the case of conduct in an official capacity, that his or her conduct was in the best interests of the corporation; and

(B) In all other cases, that the director's conduct was at least not opposed to the best interests of the corporation; and

(iii) In the case of any criminal proceeding, the director had no reasonable cause to believe his or her conduct was unlawful; or

(2) The director engaged in conduct for which broader indemnification has been made permissible or obligatory under a provision of the articles of incorporation, as authorized by subdivision (b)(5) of section 21-220.

(b) A director's conduct with respect to an employee benefit plan for a purpose the director reasonably believed to be in the interests of the participants in, and the beneficiaries of, the plan is conduct that satisfies the requirement of subdivision (a)(1)(ii)(B) of this section.

(c) The termination of a proceeding by judgment, order, settlement, or conviction, or upon a plea of nolo contendere or its equivalent, is not, of itself, determinative that the director did not meet the relevant standard of conduct described in this section.

(d) Unless ordered by a court under subdivision (a)(3) of section 21-2,114, a corporation may not indemnify a director:

(1) In connection with a proceeding by or in the right of the corporation, except for expenses incurred in connection with the proceeding if it is determined that the director has met the relevant standard of conduct under subsection (a) of this section; or

(2) In connection with any proceeding with respect to conduct for which the director was adjudged liable on the basis of receiving a financial benefit to which he or she was not entitled, whether or not involving action in the director's official capacity.

Source: Laws 2014, LB749, § 111.

Operative date January 1, 2016.

21-2,112 Mandatory indemnification.

(MBCA 8.52) A corporation shall indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which the director was a party because he or she was a director of the corporation against expenses incurred by the director in connection with the proceeding.

Source: Laws 2014, LB749, § 112.

Operative date January 1, 2016.

21-2,113 Advance for expenses.

(MBCA 8.53) (a) A corporation may, before final disposition of a proceeding, advance funds to pay for or reimburse expenses incurred in connection with the proceeding by an individual who is a party to the proceeding because that individual is a member of the board of directors if the director delivers to the corporation:

(1) A signed written affirmation of the director's good faith belief that the relevant standard of conduct described in section 21-2,111 has been met by the director or that the proceeding involves conduct for which liability has been eliminated under a provision of the articles of incorporation as authorized by subdivision (b)(4) of section 21-220; and

(2) A signed written undertaking of the director to repay any funds advanced if the director is not entitled to mandatory indemnification under section 21-2,112 and it is ultimately determined under section 21-2,114 or 21-2,115 that the director has not met the relevant standard of conduct described in section 21-2,111.

(b) The undertaking required by subdivision (a)(2) of this section must be an unlimited general obligation of the director but need not be secured and may be accepted without reference to the financial ability of the director to make repayment.

(c) Authorizations under this section shall be made:

(1) By the board of directors:

(i) If there are two or more qualified directors, by a majority vote of all the qualified directors, a majority of whom shall for such purpose constitute a quorum, or by a majority of the members of a committee of two or more qualified directors appointed by such a vote; or

(ii) If there are fewer than two qualified directors, by the vote necessary for action by the board in accordance with subsection (c) of section 21-299, in which authorization directors who are not qualified directors may participate; or

(2) By the shareholders, but shares owned by or voted under the control of a director who at the time is not a qualified director may not be voted on the authorization.

Source: Laws 2014, LB749, § 113.

Operative date January 1, 2016.

21-2,114 Court-ordered indemnification and advance for expenses.

(MBCA 8.54) (a) A director who is a party to a proceeding because he or she is a director may apply for indemnification or an advance for expenses to the court conducting the proceeding or to another court of competent jurisdiction. After receipt of an application and after giving any notice it considers necessary, the court shall:

(1) Order indemnification if the court determines that the director is entitled to mandatory indemnification under section 21-2,112;

(2) Order indemnification or advance for expenses if the court determines that the director is entitled to indemnification or advance for expenses pursuant to a provision authorized by subsection (a) of section 21-2,118; or

(3) Order indemnification or advance for expenses if the court determines, in view of all the relevant circumstances, that it is fair and reasonable:

(i) To indemnify the director; or

(ii) To advance expenses to the director, even if he or she has not met the relevant standard of conduct set forth in subsection (a) of section 21-2,111, failed to comply with section 21-2,113, or was adjudged liable in a proceeding referred to in subdivision (d)(1) or (2) of section 21-2,111, but if the director was adjudged so liable indemnification shall be limited to expenses incurred in connection with the proceeding.

(b) If the court determines that the director is entitled to indemnification under subdivision (a)(1) of this section or to indemnification or advance for expenses under subdivision (a)(2) of this section, it shall also order the corporation to pay the director's expenses incurred in connection with obtaining court-ordered indemnification or advance for expenses. If the court determines that the director is entitled to indemnification or advance for expenses under subdivision (a)(3) of this section, it may also order the corporation to pay the director's expenses to obtain court-ordered indemnification or advance for expenses.

Source: Laws 2014, LB749, § 114.

Operative date January 1, 2016.

21-2,115 Determination and authorization of indemnification.

(MBCA 8.55) (a) A corporation may not indemnify a director under section 21-2,111 unless authorized for a specific proceeding after a determination has been made that indemnification is permissible because the director has met the relevant standard of conduct set forth in section 21-2,111.

(b) The determination shall be made:

(1) If there are two or more qualified directors, by the board of directors by a majority vote of all the qualified directors, a majority of whom shall for such purpose constitute a quorum, or by a majority of the members of a committee of two or more qualified directors appointed by such a vote;

(2) By special legal counsel:

(i) Selected in the manner prescribed in subdivision (1) of this subsection; or

(ii) If there are fewer than two qualified directors, selected by the board of directors, in which selection directors who are not qualified directors may participate; or

(3) By the shareholders, but shares owned by or voted under the control of a director who at the time is not a qualified director may not be voted on the determination.

(c) Authorization of indemnification shall be made in the same manner as the determination that indemnification is permissible, except that if there are fewer than two qualified directors, or if the determination is made by special legal counsel, authorization of indemnification shall be made by those entitled to select special legal counsel under subdivision (b)(2)(ii) of this section.

Source: Laws 2014, LB749, § 115.

Operative date January 1, 2016.

21-2,116 Indemnification of officers.

(MBCA 8.56) (a) A corporation may indemnify and advance expenses under sections 21-2,110 to 21-2,119 to an officer of the corporation who is a party to a proceeding because he or she is an officer of the corporation:

(1) To the same extent as a director; and

(2) If he or she is an officer but not a director, to such further extent as may be provided by the articles of incorporation, the bylaws, a resolution of the board of directors, or contract except for:

(i) Liability in connection with a proceeding by or in the right of the corporation other than for expenses incurred in connection with the proceeding; or

(ii) Liability arising out of conduct that constitutes:

(A) Receipt by the officer of a financial benefit to which he or she is not entitled;

(B) An intentional infliction of harm on the corporation or the shareholders; or

(C) An intentional violation of criminal law.

(b) The provisions of subdivision (a)(2) of this section shall apply to an officer who is also a director if the basis on which he or she is made a party to the proceeding is an act or omission solely as an officer.

(c) An officer of a corporation who is not a director is entitled to mandatory indemnification under section 21-2,112 and may apply to a court under section 21-2,114 for indemnification or an advance for expenses, in each case to the same extent to which a director may be entitled to indemnification or advance for expenses under such provisions.

Source: Laws 2014, LB749, § 116.

Operative date January 1, 2016.

21-2,117 Insurance.

(MBCA 8.57) A corporation may purchase and maintain insurance on behalf of an individual who is a director or officer of the corporation, or who, while a director or officer of the corporation, serves at the corporation's request as a director, officer, partner, trustee, employee, or agent of another domestic or foreign corporation, partnership, joint venture, trust, employee benefit plan, or other entity, against liability asserted against or incurred by the individual in that capacity or arising from his or her status as a director or officer, whether or not the corporation would have power to indemnify or advance expenses to the individual against the same liability under sections 21-2,110 to 21-2,119.

Source: Laws 2014, LB749, § 117.

Operative date January 1, 2016.

21-2,118 Variation by corporate action; application of subchapter.

(MBCA 8.58) (a) A corporation may, by a provision in its articles of incorporation or bylaws or in a resolution adopted or a contract approved by its board of directors or shareholders, obligate itself in advance of the act or omission giving rise to a proceeding to provide indemnification in accordance with section 21-2,111 or advance funds to pay for or reimburse expenses in accordance with section 21-2,113. Any such obligatory provision shall be deemed to satisfy the requirements for authorization referred to in subsection (c) of section

21-2,113 and in subsection (c) of section 21-2,115. Any such provision that obligates the corporation to provide indemnification to the fullest extent permitted by law shall be deemed to obligate the corporation to advance funds to pay for or reimburse expenses in accordance with section 21-2,113 to the fullest extent permitted by law, unless the provision specifically provides otherwise.

(b) A right of indemnification or to advances for expenses created by sections 21-2,110 to 21-2,119 or under subsection (a) of this section and in effect at the time of an act or omission shall not be eliminated or impaired with respect to such act or omission by an amendment of the articles of incorporation or bylaws or a resolution of the directors or shareholders, adopted after the occurrence of such act or omission, unless, in the case of a right created under subsection (a) of this section, the provision creating such right and in effect at the time of such act or omission explicitly authorizes such elimination or impairment after such act or omission has occurred.

(c) Any provision pursuant to subsection (a) of this section shall not obligate the corporation to indemnify or advance expenses to a director of a predecessor of the corporation, pertaining to conduct with respect to the predecessor, unless otherwise specifically provided. Any provision for indemnification or advance for expenses in the articles of incorporation, bylaws, or a resolution of the board of directors or shareholders of a predecessor of the corporation in a merger or in a contract to which the predecessor is a party existing at the time the merger takes effect shall be governed by subdivision (a)(4) of section 21-2,167.

(d) Subject to subsection (b) of this section, a corporation may, by a provision in its articles of incorporation, limit any of the rights to indemnification or advance for expenses created by or pursuant to sections 21-2,110 to 21-2,119.

(e) Sections 21-2,110 to 21-2,119 do not limit a corporation's power to pay or reimburse expenses incurred by a director or an officer in connection with appearing as a witness in a proceeding at a time when he or she is not a party.

(f) Sections 21-2,110 to 21-2,119 do not limit a corporation's power to indemnify, advance expenses to, or provide or maintain insurance on behalf of an employee or agent.

Source: Laws 2014, LB749, § 118.

Operative date January 1, 2016.

21-2,119 Exclusivity of subpart.

(MBCA 8.59) A corporation may provide indemnification or advance expenses to a director or an officer only as permitted by sections 21-2,110 to 21-2,119.

Source: Laws 2014, LB749, § 119.

Operative date January 1, 2016.

SUBPART 6—DIRECTORS' CONFLICTING INTEREST TRANSACTIONS

21-2,120 Subpart definitions.

(MBCA 8.60) In sections 21-2,120 to 21-2,123:

(1) Director's conflicting interest transaction means a transaction effected or proposed to be effected by the corporation or by an entity controlled by the corporation:

(i) To which, at the relevant time, the director is a party;

(ii) Respecting which, at the relevant time, the director had knowledge and a material financial interest known to the director; or

(iii) Respecting which, at the relevant time, the director knew that a related person was a party or had a material financial interest.

(2) Control, including the term controlled by, means (i) having the power, directly or indirectly, to elect or remove a majority of the members of the board of directors or other governing body of an entity, whether through the ownership of voting shares or interests, by contract, or otherwise, or (ii) being subject to a majority of the risk of loss from the entity's activities or entitled to receive a majority of the entity's residual returns.

(3) Relevant time means (i) the time at which directors' action respecting the transaction is taken in compliance with section 21-2,122, or (ii) if the transaction is not brought before the board of directors of the corporation, or its committee, for action under section 21-2,122, at the time the corporation, or an entity controlled by the corporation, becomes legally obligated to consummate the transaction.

(4) Material financial interest means a financial interest in a transaction that would reasonably be expected to impair the objectivity of the director's judgment when participating in action on the authorization of the transaction.

(5) Related person means:

(i) The director's spouse;

(ii) A child, stepchild, grandchild, parent, stepparent, grandparent, sibling, stepsibling, half-sibling, aunt, uncle, niece, or nephew, or spouse of any thereof, of the director or of the director's spouse;

(iii) An individual living in the same home as the director;

(iv) An entity, other than the corporation or an entity controlled by the corporation, controlled by the director or any person specified in subdivisions (5)(i) through (iii) of this section;

(v) A domestic or foreign (A) business or nonprofit corporation, other than the corporation or an entity controlled by the corporation, of which the director is a director, (B) unincorporated entity of which the director is a general partner or a member of the governing body, or (C) individual, trust, or estate for whom or of which the director is a trustee, guardian, personal representative, or like fiduciary; or

(vi) A person that is, or an entity that is controlled by, an employer of the director.

(6) Fair to the corporation means, for purposes of subdivision (b)(3) of section 21-2,121, that the transaction as a whole was beneficial to the corporation, taking into appropriate account whether it was (i) fair in terms of the director's dealings with the corporation and (ii) comparable to what might have been obtainable in an arm's length transaction, given the consideration paid or received by the corporation.

(7) Required disclosure means disclosure of (i) the existence and nature of the director's conflicting interest and (ii) all facts known to the director respecting the subject matter of the transaction that a director free of such conflicting

interest would reasonably believe to be material in deciding whether to proceed with the transaction.

Source: Laws 2014, LB749, § 120.
Operative date January 1, 2016.

21-2,121 Judicial action.

(MBCA 8.61) (a) A transaction effected or proposed to be effected by the corporation, or by an entity controlled by the corporation, may not be the subject of equitable relief, or give rise to an award of damages or other sanctions against a director of the corporation, in a proceeding by a shareholder or by or in the right of the corporation on the ground that the director has an interest respecting the transaction if it is not a director's conflicting interest transaction.

(b) A director's conflicting interest transaction may not be the subject of equitable relief, or give rise to an award of damages or other sanctions against a director of the corporation, in a proceeding by a shareholder or by or in the right of the corporation on the ground that the director has an interest respecting the transaction if:

- (1) Directors' action respecting the transaction was taken in compliance with section 21-2,122 at any time;
- (2) Shareholders' action respecting the transaction was taken in compliance with section 21-2,123 at any time; or
- (3) The transaction, judged according to the circumstances at the relevant time, is established to have been fair to the corporation.

Source: Laws 2014, LB749, § 121.
Operative date January 1, 2016.

21-2,122 Directors' action.

(MBCA 8.62) (a) Directors' action respecting a director's conflicting interest transaction is effective for purposes of subdivision (b)(1) of section 21-2,121 if the transaction has been authorized by the affirmative vote of a majority, but no fewer than two, of the qualified directors who voted on the transaction after required disclosure by the conflicted director of information not already known by such qualified directors or after modified disclosure in compliance with subsection (b) of this section if:

- (1) The qualified directors have deliberated and voted outside the presence of and without the participation by any other director; and
- (2) When the action has been taken by a committee, all members of the committee were qualified directors and either (i) the committee was composed of all the qualified directors on the board of directors or (ii) the members of the committee were appointed by the affirmative vote of a majority of the qualified directors on the board.

(b) Notwithstanding subsection (a) of this section, when a transaction is a director's conflicting interest transaction only because a related person described in subdivision (5)(v) or (vi) of section 21-2,120 is a party to or has a material financial interest in the transaction, the conflicted director is not obligated to make required disclosure to the extent that the director reasonably believes that doing so would violate a duty imposed under law, a legally

enforceable obligation of confidentiality, or a professional ethics rule if the conflicted director discloses to the qualified directors voting on the transaction:

- (1) All information required to be disclosed that is not so violative;
- (2) The existence and nature of the director's conflicting interest; and
- (3) The nature of the conflicted director's duty not to disclose the confidential information.

(c) A majority, but no fewer than two, of all the qualified directors on the board of directors, or on the committee, constitutes a quorum for purposes of action that complies with this section.

(d) Where directors' action under this section does not satisfy a quorum or voting requirement applicable to the authorization of the transaction by reason of the articles of incorporation, the bylaws, or a provision of law, independent action to satisfy those authorization requirements must be taken by the board of directors or a committee in which action directors who are not qualified directors may participate.

Source: Laws 2014, LB749, § 122.

Operative date January 1, 2016.

21-2,123 Shareholders' action.

(MBCA 8.63) (a) Shareholders' action respecting a director's conflicting interest transaction is effective for purposes of subdivision (b)(2) of section 21-2,121 if a majority of the votes cast by the holders of all qualified shares are in favor of the transaction after (1) notice to shareholders describing the action to be taken respecting the transaction, (2) provision to the corporation of the information referred to in subsection (b) of this section, and (3) communication to the shareholders entitled to vote on the transaction of the information that is the subject of required disclosure to the extent the information is not known by them. In the case of shareholders' action at a meeting, the shareholders entitled to vote shall be determined as of the record date for notice of the meeting.

(b) A director who has a conflicting interest respecting the transaction shall, before the shareholders' vote, inform the secretary or other officer or agent of the corporation authorized to tabulate votes, in writing, of the number of shares that the director knows are not qualified shares under subsection (c) of this section and the identity of the holders of those shares.

(c) For purposes of this section: (1) Holder means and held by refers to shares held by both a record shareholder, as defined in subdivision (8) of section 21-2,171, and a beneficial shareholder, as defined in subdivision (2) of section 21-2,171; and (2) qualified shares means all shares entitled to be voted with respect to the transaction except for shares that the secretary or other officer or agent of the corporation authorized to tabulate votes either knows, or under subsection (b) of this section is notified, are held by (i) a director who has a conflicting interest respecting the transaction or (ii) a related person of the director, excluding a person described in subdivision (5)(vi) of section 21-2,120.

(d) A majority of the votes entitled to be cast by the holders of all qualified shares constitutes a quorum for purposes of compliance with this section. Subject to subsection (e) of this section, shareholders' action that otherwise complies with this section is not affected by the presence of holders, or by the voting, of shares that are not qualified shares.

(e) If a shareholders' vote does not comply with subsection (a) of this section solely because of a director's failure to comply with subsection (b) of this section and if the director establishes that the failure was not intended to influence and did not in fact determine the outcome of the vote, the court may take such action respecting the transaction and the director and may give such effect, if any, to the shareholders' vote as the court considers appropriate in the circumstances.

(f) When shareholders' action under this section does not satisfy a quorum or voting requirement applicable to the authorization of the transaction by reason of the articles of incorporation or the bylaws or a provision of law, independent action to satisfy those authorization requirements must be taken by the shareholders in which action shares that are not qualified shares may participate.

Source: Laws 2014, LB749, § 123.

Operative date January 1, 2016.

SUBPART 7—BUSINESS OPPORTUNITIES

21-2,124 Business opportunities.

(MBCA 8.70) (a) A director's taking advantage, directly or indirectly, of a business opportunity may not be the subject of equitable relief or give rise to an award of damages or other sanctions against the director in a proceeding by or in the right of the corporation on the ground that such opportunity should have first been offered to the corporation if before becoming legally obligated respecting the opportunity the director brings it to the attention of the corporation and:

(1) Action by qualified directors disclaiming the corporation's interest in the opportunity is taken in compliance with the procedures set forth in section 21-2,122, as if the decision being made concerned a director's conflicting interest transaction; or

(2) Shareholders' action disclaiming the corporation's interest in the opportunity is taken in compliance with the procedures set forth in section 21-2,123, as if the decision being made concerned a director's conflicting interest transaction, except that rather than making required disclosure as defined in section 21-2,120, in each case the director shall have made prior disclosure to those acting on behalf of the corporation of all material facts concerning the business opportunity that are then known to the director.

(b) In any proceeding seeking equitable relief or other remedies based upon an alleged improper taking advantage of a business opportunity by a director, the fact that the director did not employ the procedure described in subsection (a) of this section before taking advantage of the opportunity shall not create an inference that the opportunity should have been first presented to the corporation or alter the burden of proof otherwise applicable to establish that the director breached a duty to the corporation in the circumstances.

Source: Laws 2014, LB749, § 124.

Operative date January 1, 2016.

PART 9—DOMESTICATION AND CONVERSION

SUBPART 1—PRELIMINARY PROVISIONS

21-2,125 Excluded transactions.

(MBCA 9.01) Sections 21-2,125 to 21-2,149 may not be used to effect a transaction that converts an insurance company organized on the mutual principle to one organized on a stock-share basis.

Source: Laws 2014, LB749, § 125.

Operative date January 1, 2016.

21-2,126 Required approvals.

(MBCA 9.02) (a) If a domestic or foreign business corporation or eligible entity may not be a party to a merger without the approval of the Attorney General, the Department of Banking and Finance, the Department of Insurance, or the Public Service Commission, the corporation or eligible entity shall not be a party to a transaction under sections 21-2,125 to 21-2,149 without the prior approval of that agency.

(b) Property held in trust or for charitable purposes under the laws of this state by a domestic or foreign eligible entity shall not, by any transaction under sections 21-2,125 to 21-2,149, be diverted from the objects for which it was donated, granted, or devised unless and until the eligible entity obtains an order of the court specifying the disposition of the property to the extent required by and pursuant to cy pres or other nondiversion law of this state.

Source: Laws 2014, LB749, § 126.

Operative date January 1, 2016.

SUBPART 2—DOMESTICATION

21-2,127 Domestication.

(MBCA 9.20) (a) A foreign business corporation may become a domestic business corporation only if the domestication is permitted by the organic law of the foreign corporation.

(b) A domestic business corporation may become a foreign business corporation if the domestication is permitted by the laws of the foreign jurisdiction. Regardless of whether the laws of the foreign jurisdiction require the adoption of a plan of domestication, the domestication shall be approved by the adoption by the corporation of a plan of domestication in the manner provided in sections 21-2,127 to 21-2,132.

(c) The plan of domestication must include:

(1) A statement of the jurisdiction in which the corporation is to be domesticated;

(2) The terms and conditions of the domestication;

(3) The manner and basis of reclassifying the shares of the corporation following its domestication into shares or other securities, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the foregoing; and

(4) Any desired amendments to the articles of incorporation of the corporation following its domestication.

(d) The plan of domestication may also include a provision that the plan may be amended prior to filing the document required by the laws of this state or the other jurisdiction to consummate the domestication, except that subsequent to approval of the plan by the shareholders the plan may not be amended to change:

(1) The amount or kind of shares or other securities, obligations, rights to acquire shares or other securities, cash, or other property to be received by the shareholders under the plan;

(2) The articles of incorporation as they will be in effect immediately following the domestication, except for changes permitted by section 21-2,154 or by comparable provisions of the laws of the other jurisdiction; or

(3) Any of the other terms or conditions of the plan if the change would adversely affect any of the shareholders in any material respect.

(e) Terms of a plan of domestication may be made dependent upon facts objectively ascertainable outside the plan in accordance with subsection (k) of section 21-203.

(f) If any debt security, note, or similar evidence of indebtedness for money borrowed, whether secured or unsecured, or a contract of any kind, issued, incurred, or signed by a domestic business corporation before January 1, 2016, contains a provision applying to a merger of the corporation and the document does not refer to a domestication of the corporation, the provision shall be deemed to apply to a domestication of the corporation until such time as the provision is amended subsequent to that date.

Source: Laws 2014, LB749, § 127.

Operative date January 1, 2016.

21-2,128 Action on a plan of domestication.

(MBCA 9.21) In the case of a domestication of a domestic business corporation in a foreign jurisdiction:

(1) The plan of domestication must be adopted by the board of directors.

(2) After adopting the plan of domestication, the board of directors must submit the plan to the shareholders for their approval. The board of directors must also transmit to the shareholders a recommendation that the shareholders approve the plan unless (i) the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation or (ii) section 21-2,101 applies. If subdivision (2)(i) or (ii) of this section applies, the board must transmit to the shareholders the basis for so proceeding.

(3) The board of directors may condition its submission of the plan of domestication to the shareholders on any basis.

(4) If the approval of the shareholders is to be given at a meeting, the corporation must notify each shareholder, whether or not entitled to vote, of the meeting of shareholders at which the plan of domestication is to be submitted for approval. The notice must state that the purpose, or one of the purposes, of the meeting is to consider the plan and must contain or be accompanied by a copy or summary of the plan. The notice shall include or be accompanied by a copy of the articles of incorporation as they will be in effect immediately after the domestication.

(5) Unless the articles of incorporation, or the board of directors acting pursuant to subdivision (3) of this section, requires a greater vote or a greater number of votes to be present, approval of the plan of domestication requires the approval of the shareholders at a meeting at which a quorum consisting of at least a majority of the votes entitled to be cast on the plan exists, and if any class or series of shares is entitled to vote as a separate group on the plan, the

approval of each such separate voting group at a meeting at which a quorum of the voting group consisting of at least a majority of the votes entitled to be cast on the domestication by that voting group exists.

(6) Subject to subdivision (7) of this section, separate voting by voting groups is required by each class or series of shares that:

(i) Are to be reclassified under the plan of domestication into other securities, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the foregoing;

(ii) Are entitled to vote as a separate group on a provision of the plan that constitutes a proposed amendment to articles of incorporation of the corporation following its domestication that requires action by separate voting groups under section 21-2,153; or

(iii) Is entitled under the articles of incorporation to vote as a voting group to approve an amendment of the articles.

(7) The articles of incorporation may expressly limit or eliminate the separate voting rights provided in subdivision (6)(i) of this section.

(8) If any provision of the articles of incorporation, bylaws, or an agreement to which any of the directors or shareholders are parties, adopted or entered into before January 1, 2016, applies to a merger of the corporation and that document does not refer to a domestication of the corporation, the provision shall be deemed to apply to a domestication of the corporation until such time as the provision is amended subsequent to that date.

Source: Laws 2014, LB749, § 128.
Operative date January 1, 2016.

21-2,129 Articles of domestication.

(MBCA 9.22) (a) After the domestication of a foreign business corporation has been authorized as required by the laws of the foreign jurisdiction, articles of domestication shall be signed by any officer or other duly authorized representative. The articles shall set forth:

(1) The name of the corporation immediately before the filing of the articles of domestication and, if that name is unavailable for use in this state or the corporation desires to change its name in connection with the domestication, a name that satisfies the requirements of section 21-230;

(2) The jurisdiction of incorporation of the corporation immediately before the filing of the articles of domestication and the date the corporation was incorporated in that jurisdiction; and

(3) A statement that the domestication of the corporation in this state was duly authorized as required by the laws of the jurisdiction in which the corporation was incorporated immediately before its domestication in this state.

(b) The articles of domestication shall either contain all of the provisions that subsection (a) of section 21-220 requires to be set forth in articles of incorporation and any other desired provisions that subsection (b) of section 21-220 permits to be included in articles of incorporation or shall have attached articles of incorporation. In either case, provisions that would not be required to be included in restated articles of incorporation may be omitted.

(c) The articles of domestication shall be delivered to the Secretary of State for filing, and shall take effect at the effective time provided in section 21-206.

(d) If the foreign corporation is authorized to transact business in this state under sections 21-2,203 to 21-2,220, its certificate of authority shall be canceled automatically on the effective date of its domestication.

Source: Laws 2014, LB749, § 129.

Operative date January 1, 2016.

21-2,130 Surrender of charter upon domestication.

(MBCA 9.23) (a) Whenever a domestic business corporation has adopted and approved, in the manner required by sections 21-2,127 to 21-2,132, a plan of domestication providing for the corporation to be domesticated in a foreign jurisdiction, articles of charter surrender shall be signed on behalf of the corporation by any officer or other duly authorized representative. The articles of charter surrender shall set forth:

(1) The name of the corporation;

(2) A statement that the articles of charter surrender are being filed in connection with the domestication of the corporation in a foreign jurisdiction;

(3) A statement that the domestication was duly approved by the shareholders and, if voting by any separate voting group was required, by each such separate voting group, in the manner required by the Nebraska Model Business Corporation Act and the articles of incorporation; and

(4) The corporation's new jurisdiction of incorporation.

(b) The articles of charter surrender shall be delivered by the corporation to the Secretary of State for filing. The articles of charter surrender shall take effect at the effective time provided in section 21-206.

Source: Laws 2014, LB749, § 130.

Operative date January 1, 2016.

21-2,131 Effect of domestication.

(MBCA 9.24) (a) When a domestication becomes effective:

(1) The title to all real and personal property, both tangible and intangible, of the corporation remains in the corporation without reversion or impairment;

(2) The liabilities of the corporation remain the liabilities of the corporation;

(3) An action or proceeding pending against the corporation continues against the corporation as if the domestication had not occurred;

(4) The articles of domestication, or the articles of incorporation attached to the articles of domestication, constitute the articles of incorporation of a foreign corporation domesticating in this state;

(5) The shares of the corporation are reclassified into shares, other securities, obligations, rights to acquire shares or other securities, or into cash or other property in accordance with the terms of the domestication, and the shareholders are entitled only to the rights provided by those terms and to any appraisal rights they may have under the organic law of the domesticating corporation; and

(6) The corporation is deemed to:

(i) Be incorporated under and subject to the organic law of the domesticated corporation for all purposes;

(ii) Be the same corporation without interruption as the domesticating corporation; and

(iii) Have been incorporated on the date the domesticating corporation was originally incorporated.

(b) When a domestication of a domestic business corporation in a foreign jurisdiction becomes effective, the foreign business corporation is deemed to agree that it will promptly pay the amount, if any, to which such shareholders are entitled under sections 21-2,171 to 21-2,183.

(c) The owner liability of a shareholder in a foreign corporation that is domesticated in this state shall be as follows:

(1) The domestication does not discharge any owner liability under the laws of the foreign jurisdiction to the extent any such owner liability arose before the effective time of the articles of domestication;

(2) The shareholder shall not have owner liability under the laws of the foreign jurisdiction for any debt, obligation, or liability of the corporation that arises after the effective time of the articles of domestication;

(3) The provisions of the laws of the foreign jurisdiction shall continue to apply to the collection or discharge of any owner liability preserved by subdivision (1) of this subsection, as if the domestication had not occurred; and

(4) The shareholder shall have whatever rights of contribution from other shareholders are provided by the laws of the foreign jurisdiction with respect to any owner liability preserved by subdivision (1) of this subsection, if the domestication had not occurred.

(d) A shareholder who becomes subject to owner liability for some or all of the debts, obligations, or liabilities of the corporation as a result of its domestication in this state shall have owner liability only for those debts, obligations, or liabilities of the corporation that arise after the effective time of the articles of domestication.

Source: Laws 2014, LB749, § 131.

Operative date January 1, 2016.

21-2,132 Abandonment of a domestication.

(MBCA 9.25) (a) Unless otherwise provided in a plan of domestication of a domestic business corporation, after the plan has been adopted and approved as required by sections 21-2,127 to 21-2,132, and at any time before the domestication has become effective, it may be abandoned by the board of directors without action by the shareholders.

(b) If a domestication is abandoned under subsection (a) of this section after articles of charter surrender have been filed with the Secretary of State but before the domestication has become effective, a statement that the domestication has been abandoned in accordance with this section, signed by an officer or other duly authorized representative, shall be delivered to the Secretary of State for filing prior to the effective date of the domestication. The statement shall take effect upon filing and the domestication shall be deemed abandoned and shall not become effective.

(c) If the domestication of a foreign business corporation in this state is abandoned in accordance with the laws of the foreign jurisdiction after articles of domestication have been filed with the Secretary of State, a statement that the domestication has been abandoned, signed by an officer or other duly authorized representative, shall be delivered to the Secretary of State for filing. The statement shall take effect upon filing and the domestication shall be deemed abandoned and shall not become effective.

Source: Laws 2014, LB749, § 132.

Operative date January 1, 2016.

SUBPART 3—NONPROFIT CONVERSION

21-2,133 Nonprofit conversion.

(MBCA 9.30) (a) A domestic business corporation may become a domestic nonprofit corporation pursuant to a plan of nonprofit conversion.

(b) A domestic business corporation may become a foreign nonprofit corporation if the nonprofit conversion is permitted by the laws of the foreign jurisdiction. Regardless of whether the laws of the foreign jurisdiction require the adoption of a plan of nonprofit conversion, the foreign nonprofit conversion shall be approved by the adoption by the domestic business corporation of a plan of nonprofit conversion in the manner provided in sections 21-2,133 to 21-2,138.

(c) The plan of nonprofit conversion must include:

(1) The terms and conditions of the conversion;

(2) The manner and basis of reclassifying the shares of the corporation following its conversion into memberships, if any, or securities, obligations, rights to acquire memberships or securities, cash, other property, or any combination of the foregoing;

(3) Any desired amendments to the articles of incorporation of the corporation following its conversion; and

(4) If the domestic business corporation is to be converted to a foreign nonprofit corporation, a statement of the jurisdiction in which the corporation will be incorporated after the conversion.

(d) The plan of nonprofit conversion may also include a provision that the plan may be amended prior to filing articles of nonprofit conversion, except that subsequent to approval of the plan by the shareholders the plan may not be amended to change:

(1) The amount or kind of memberships or securities, obligations, rights to acquire memberships or securities, cash, or other property to be received by the shareholders under the plan;

(2) The articles of incorporation as they will be in effect immediately following the conversion, except for changes permitted by section 21-2,154; or

(3) Any of the other terms or conditions of the plan if the change would adversely affect any of the shareholders in any material respect.

(e) Terms of a plan of nonprofit conversion may be made dependent upon facts objectively ascertainable outside the plan in accordance with subsection (k) of section 21-203.

(f) If any debt security, note, or similar evidence of indebtedness for money borrowed, whether secured or unsecured, or a contract of any kind, issued,

incurred, or signed by a domestic business corporation before January 1, 2016, contains a provision applying to a merger of the corporation and the document does not refer to a nonprofit conversion of the corporation, the provision shall be deemed to apply to a nonprofit conversion of the corporation until such time as the provision is amended subsequent to that date.

Source: Laws 2014, LB749, § 133.

Operative date January 1, 2016.

21-2,134 Action on a plan of nonprofit conversion.

(MBCA 9.31) In the case of a conversion of a domestic business corporation to a domestic or foreign nonprofit corporation:

(1) The plan of nonprofit conversion must be adopted by the board of directors.

(2) After adopting the plan of nonprofit conversion, the board of directors must submit the plan to the shareholders for their approval. The board of directors must also transmit to the shareholders a recommendation that the shareholders approve the plan, unless (i) the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation or (ii) section 21-2,101 applies. If subdivision (2)(i) or (ii) of this section applies, the board must transmit to the shareholders the basis for so proceeding.

(3) The board of directors may condition its submission of the plan of nonprofit conversion to the shareholders on any basis.

(4) If the approval of the shareholders is to be given at a meeting, the corporation must notify each shareholder of the meeting of shareholders at which the plan of nonprofit conversion is to be submitted for approval. The notice must state that the purpose, or one of the purposes, of the meeting is to consider the plan and must contain or be accompanied by a copy or summary of the plan. The notice shall include or be accompanied by a copy of the articles of incorporation as they will be in effect immediately after the nonprofit conversion.

(5) Unless the articles of incorporation, or the board of directors acting pursuant to subdivision (3) of this section, requires a greater vote or a greater number of votes to be present, approval of the plan of nonprofit conversion requires the approval of each class or series of shares of the corporation voting as a separate voting group at a meeting at which a quorum of the voting group consisting of at least a majority of the votes entitled to be cast on the nonprofit conversion by that voting group exists.

(6) If any provision of the articles of incorporation, bylaws, or an agreement to which any of the directors or shareholders are parties, adopted or entered into before January 1, 2016, applies to a merger, other than a provision that eliminates or limits voting or appraisal rights, and the document does not refer to a nonprofit conversion of the corporation, the provision shall be deemed to apply to a nonprofit conversion of the corporation until such time as the provision is amended subsequent to that date.

Source: Laws 2014, LB749, § 134.

Operative date January 1, 2016.

21-2,135 Articles of nonprofit conversion.

(MBCA 9.32) (a) After a plan of nonprofit conversion providing for the conversion of a domestic business corporation to a domestic nonprofit corporation has been adopted and approved as required by the Nebraska Model Business Corporation Act, articles of nonprofit conversion shall be signed on behalf of the corporation by any officer or other duly authorized representative. The articles shall set forth:

(1) The name of the corporation immediately before the filing of the articles of nonprofit conversion and if that name does not satisfy the requirements of the Nebraska Nonprofit Corporation Act, or the corporation desires to change its name in connection with the conversion, a name that satisfies the requirements of the Nebraska Nonprofit Corporation Act; and

(2) A statement that the plan of nonprofit conversion was duly approved by the shareholders in the manner required by the Nebraska Model Business Corporation Act and the articles of incorporation.

(b) The articles of nonprofit conversion shall either contain all of the provisions that the Nebraska Nonprofit Corporation Act requires to be set forth in articles of incorporation of a domestic nonprofit corporation and any other desired provisions permitted by the Nebraska Nonprofit Corporation Act or shall have attached articles of incorporation that satisfy the requirements of the Nebraska Nonprofit Corporation Act. In either case, provisions that would not be required to be included in restated articles of incorporation of a domestic nonprofit corporation may be omitted.

(c) The articles of nonprofit conversion shall be delivered to the Secretary of State for filing and shall take effect at the effective time provided in section 21-206.

Source: Laws 2014, LB749, § 135.

Operative date January 1, 2016.

Cross References

Nebraska Nonprofit Corporation Act, see section 21-1901.

21-2,136 Surrender of charter upon foreign nonprofit conversion.

(MBCA 9.33) (a) Whenever a domestic business corporation has adopted and approved, in the manner required by sections 21-2,133 to 21-2,138, a plan of nonprofit conversion providing for the corporation to be converted to a foreign nonprofit corporation, articles of charter surrender shall be signed on behalf of the corporation by any officer or other duly authorized representative. The articles of charter surrender shall set forth:

(1) The name of the corporation;

(2) A statement that the articles of charter surrender are being filed in connection with the conversion of the corporation to a foreign nonprofit corporation;

(3) A statement that the foreign nonprofit conversion was duly approved by the shareholders in the manner required by the Nebraska Model Business Corporation Act and the articles of incorporation; and

(4) The corporation's new jurisdiction of incorporation.

(b) The articles of charter surrender shall be delivered by the corporation to the Secretary of State for filing. The articles of charter surrender shall take effect on the effective time provided in section 21-206.

Source: Laws 2014, LB749, § 136.

Operative date January 1, 2016.

21-2,137 Effect of nonprofit conversion.

(MBCA 9.34) (a) When a conversion of a domestic business corporation to a domestic nonprofit corporation becomes effective:

(1) The title to all real and personal property, both tangible and intangible, of the corporation remains in the corporation without reversion or impairment;

(2) The liabilities of the corporation remain the liabilities of the corporation;

(3) An action or proceeding pending against the corporation continues against the corporation as if the conversion had not occurred;

(4) The articles of incorporation of the domestic or foreign nonprofit corporation become effective;

(5) The shares of the corporation are reclassified into memberships, securities, obligations, rights to acquire memberships or securities, or into cash or other property in accordance with the plan of conversion, and the shareholders are entitled only to the rights provided in the plan of nonprofit conversion or to any rights they may have under sections 21-2,171 to 21-2,183; and

(6) The corporation is deemed to:

(i) Be a domestic nonprofit corporation for all purposes;

(ii) Be the same corporation without interruption as the corporation that existed prior to the conversion; and

(iii) Have been incorporated on the date that it was originally incorporated as a domestic business corporation.

(b) When a conversion of a domestic business corporation to a foreign nonprofit corporation becomes effective, the foreign nonprofit corporation is deemed to agree that it will promptly pay the amount, if any, to which such shareholders are entitled under sections 21-2,171 to 21-2,183.

(c) The owner liability of a shareholder in a domestic business corporation that converts to a domestic nonprofit corporation shall be as follows:

(1) The conversion does not discharge any owner liability of the shareholder as a shareholder of the business corporation to the extent any such owner liability arose before the effective time of the articles of nonprofit conversion;

(2) The shareholder shall not have owner liability for any debt, obligation, or liability of the nonprofit corporation that arises after the effective time of the articles of nonprofit conversion;

(3) The laws of this state shall continue to apply to the collection or discharge of any owner liability preserved by subdivision (1) of this subsection as if the conversion had not occurred and the nonprofit corporation was still a business corporation; and

(4) The shareholder shall have whatever rights of contribution from other shareholders that are provided by the laws of this state with respect to any owner liability preserved by subdivision (1) of this subsection as if the conver-

sion had not occurred and the nonprofit corporation were still a business corporation.

(d) A shareholder who becomes subject to owner liability for some or all of the debts, obligations, or liabilities of the nonprofit corporation shall have owner liability only for those debts, obligations, or liabilities of the nonprofit corporation that arise after the effective time of the articles of nonprofit conversion.

Source: Laws 2014, LB749, § 137.

Operative date January 1, 2016.

21-2,138 Abandonment of a nonprofit conversion.

(MBCA 9.35) (a) Unless otherwise provided in a plan of nonprofit conversion of a domestic business corporation, after the plan has been adopted and approved as required by sections 21-2,133 to 21-2,138, and at any time before the nonprofit conversion has become effective, it may be abandoned by the board of directors without action by the shareholders.

(b) If a nonprofit conversion is abandoned under subsection (a) of this section after articles of nonprofit conversion or articles of charter surrender have been filed with the Secretary of State but before the nonprofit conversion has become effective, a statement that the nonprofit conversion has been abandoned in accordance with this section, signed by an officer or other duly authorized representative, shall be delivered to the Secretary of State for filing prior to the effective date of the nonprofit conversion. The statement shall take effect upon filing and the nonprofit conversion shall be deemed abandoned and shall not become effective.

Source: Laws 2014, LB749, § 138.

Operative date January 1, 2016.

SUBPART 4—FOREIGN NONPROFIT DOMESTICATION AND CONVERSION

21-2,139 Foreign nonprofit domestication and conversion.

(MBCA 9.40) A foreign nonprofit corporation may become a domestic business corporation if the domestication and conversion is permitted by the organic law of the foreign nonprofit corporation.

Source: Laws 2014, LB749, § 139.

Operative date January 1, 2016.

21-2,140 Articles of domestication and conversion.

(MBCA 9.41) (a) After the conversion of a foreign nonprofit corporation to a domestic business corporation has been authorized as required by the laws of the foreign jurisdiction, articles of domestication and conversion shall be signed by any officer or other duly authorized representative. The articles shall set forth:

(1) The name of the corporation immediately before the filing of the articles of domestication and conversion and, if that name is unavailable for use in this state or the corporation desires to change its name in connection with the domestication and conversion, a name that satisfies the requirements of section 21-230;

(2) The jurisdiction of incorporation of the corporation immediately before the filing of the articles of domestication and conversion and the date the corporation was incorporated in that jurisdiction; and

(3) A statement that the domestication and conversion of the corporation in this state was duly authorized as required by the laws of the jurisdiction in which the corporation was incorporated immediately before its domestication and conversion in this state.

(b) The articles of domestication and conversion shall either contain all of the provisions that subsection (a) of section 21-220 requires to be set forth in articles of incorporation and any other desired provisions that subsection (b) of section 21-220 permits to be included in articles of incorporation or shall have attached articles of incorporation. In either case, provisions that would not be required to be included in restated articles of incorporation may be omitted.

(c) The articles of domestication and conversion shall be delivered to the Secretary of State for filing and shall take effect at the effective time provided in section 21-206.

(d) If the foreign nonprofit corporation is authorized to transact business in this state under the foreign qualification provision of the Nebraska Nonprofit Corporation Act, its certificate of authority shall be canceled automatically on the effective date of its domestication and conversion.

Source: Laws 2014, LB749, § 140.
Operative date January 1, 2016.

Cross References

Nebraska Nonprofit Corporation Act, see section 21-1901.

21-2,141 Effect of foreign nonprofit domestication and conversion.

(MBCA 9.42) (a) When a domestication and conversion of a foreign nonprofit corporation to a domestic business corporation becomes effective:

(1) The title to all real and personal property, both tangible and intangible, of the corporation remains in the corporation without reversion or impairment;

(2) The liabilities of the corporation remain the liabilities of the corporation;

(3) An action or proceeding pending against the corporation continues against the corporation as if the domestication and conversion had not occurred;

(4) The articles of domestication and conversion, or the articles of incorporation attached to the articles of domestication and conversion, constitute the articles of incorporation of the corporation;

(5) Shares, other securities, obligations, rights to acquire shares or other securities of the corporation, or cash or other property shall be issued or paid as provided pursuant to the laws of the foreign jurisdiction so long as at least one share is outstanding immediately after the effective time; and

(6) The corporation is deemed to:

(i) Be a domestic corporation for all purposes;

(ii) Be the same corporation without interruption as the foreign nonprofit corporation; and

(iii) Have been incorporated on the date the foreign nonprofit corporation was originally incorporated.

(b) The owner liability of a member of a foreign nonprofit corporation that domesticates and converts to a domestic business corporation shall be as follows:

(1) The domestication and conversion does not discharge any owner liability under the laws of the foreign jurisdiction to the extent any such owner liability arose before the effective time of the articles of domestication and conversion;

(2) The member shall not have owner liability under the laws of the foreign jurisdiction for any debt, obligation, or liability of the corporation that arises after the effective time of the articles of domestication and conversion;

(3) The provisions of the laws of the foreign jurisdiction shall continue to apply to the collection or discharge of any owner liability preserved by subdivision (1) of this subsection as if the domestication and conversion had not occurred; and

(4) The member shall have whatever rights of contribution from other members are provided by the laws of the foreign jurisdiction with respect to any owner liability preserved by subdivision (1) of this subsection as if the domestication and conversion had not occurred.

(c) A member of a foreign nonprofit corporation who becomes subject to owner liability for some or all of the debts, obligations, or liabilities of the corporation as a result of its domestication and conversion in this state shall have owner liability only for those debts, obligations, or liabilities of the corporation that arise after the effective time of the articles of domestication and conversion.

Source: Laws 2014, LB749, § 141.

Operative date January 1, 2016.

21-2,142 Abandonment of a foreign nonprofit domestication and conversion.

(MBCA 9.43) If the domestication and conversion of a foreign nonprofit corporation to a domestic business corporation is abandoned in accordance with the laws of the foreign jurisdiction after articles of domestication and conversion have been filed with the Secretary of State, a statement that the domestication and conversion has been abandoned, signed by an officer or other duly authorized representative, shall be delivered to the Secretary of State for filing. The statement shall take effect upon filing and the domestication and conversion shall be deemed abandoned and shall not become effective.

Source: Laws 2014, LB749, § 142.

Operative date January 1, 2016.

SUBPART 5—ENTITY CONVERSION

21-2,143 Entity conversion authorized; definitions.

(MBCA 9.50) (a) A domestic business corporation may become a domestic unincorporated entity pursuant to a plan of entity conversion.

(b) A domestic business corporation may become a foreign unincorporated entity if the entity conversion is permitted by the laws of the foreign jurisdiction.

(c) A domestic unincorporated entity may become a domestic business corporation. If the organic law of a domestic unincorporated entity does not provide procedures for the approval of an entity conversion, the conversion

shall be adopted and approved, and the entity conversion effectuated, in the same manner as a merger of the unincorporated entity. If the organic law of a domestic unincorporated entity does not provide procedures for the approval of either an entity conversion or a merger, a plan of entity conversion shall be adopted and approved, the entity conversion effectuated, and appraisal rights exercised in accordance with the procedures in sections 21-2,143 to 21-2,149 and sections 21-2,171 to 21-2,183. Without limiting the provisions of this subsection, a domestic unincorporated entity whose organic law does not provide procedures for the approval of an entity conversion shall be subject to subsection (e) of this section and subdivision (7) of section 21-2,145. For purposes of applying sections 21-2,143 to 21-2,149 and 21-2,171 to 21-2,183:

(1) The unincorporated entity, its interest holders, interests, and organic documents taken together, shall be deemed to be a domestic business corporation, shareholders, shares, and articles of incorporation, respectively and vice versa, as the context may require; and

(2) If the business and affairs of the unincorporated entity are managed by a group of persons that is not identical to the interest holders, that group shall be deemed to be the board of directors.

(d) A foreign unincorporated entity may become a domestic business corporation if the organic law of the foreign unincorporated entity authorizes it to become a corporation in another jurisdiction.

(e) If any debt security, note, or similar evidence of indebtedness for money borrowed, whether secured or unsecured, or a contract of any kind, issued, incurred, or signed by a domestic business corporation before January 1, 2016, applies to a merger of the corporation and the document does not refer to an entity conversion of the corporation, the provision shall be deemed to apply to an entity conversion of the corporation until such time as the provision is amended subsequent to that date.

(f) As used in sections 21-2,143 to 21-2,149:

(1) Converting entity means the domestic business corporation or domestic unincorporated entity that adopts a plan of entity conversion or the foreign unincorporated entity converting to a domestic business corporation; and

(2) Surviving entity means the corporation or unincorporated entity that is in existence immediately after consummation of an entity conversion pursuant to sections 21-2,143 to 21-2,149.

Source: Laws 2014, LB749, § 143.

Operative date January 1, 2016.

21-2,144 Plan of entity conversion.

(MBCA 9.51) (a) A plan of entity conversion must include:

(1) A statement of the type of other entity the surviving entity will be and, if it will be a foreign other entity, its jurisdiction of organization;

(2) The terms and conditions of the conversion;

(3) The manner and basis of converting the shares of the domestic business corporation following its conversion into interests or other securities, obligations, rights to acquire interests or other securities, cash, other property, or any combination of the foregoing; and

(4) The full text, as they will be in effect immediately after consummation of the conversion, of the organic documents of the surviving entity.

(b) The plan of entity conversion may also include a provision that the plan may be amended prior to filing articles of entity conversion, except that subsequent to approval of the plan by the shareholders the plan may not be amended to change:

(1) The amount or kind of shares or other securities, interests, obligations, rights to acquire shares, other securities, or interests, cash, or other property to be received under the plan by the shareholders;

(2) The organic documents that will be in effect immediately following the conversion, except for changes permitted by a provision of the organic law of the surviving entity comparable to section 21-2,154; or

(3) Any of the other terms or conditions of the plan if the change would adversely affect any of the shareholders in any material respect.

(c) Terms of a plan of entity conversion may be made dependent upon facts objectively ascertainable outside the plan in accordance with subsection (k) of section 21-203.

Source: Laws 2014, LB749, § 144.

Operative date January 1, 2016.

21-2,145 Action on a plan of entity conversion.

(MBCA 9.52) In the case of an entity conversion of a domestic business corporation to a domestic or foreign unincorporated entity:

(1) The plan of entity conversion must be adopted by the board of directors.

(2) After adopting the plan of entity conversion, the board of directors must submit the plan to the shareholders for their approval. The board of directors must also transmit to the shareholders a recommendation that the shareholders approve the plan unless (i) the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation or (ii) section 21-2,101 applies. If subdivision (2)(i) or (ii) of this section applies, the board must transmit to the shareholders the basis for so proceeding.

(3) The board of directors may condition its submission of the plan of entity conversion to the shareholders on any basis.

(4) If the approval of the shareholders is to be given at a meeting, the corporation must notify each shareholder, whether or not entitled to vote, of the meeting of shareholders at which the plan of entity conversion is to be submitted for approval. The notice must state that the purpose, or one of the purposes, of the meeting is to consider the plan and must contain or be accompanied by a copy or summary of the plan. The notice shall include or be accompanied by a copy of the organic documents as they will be in effect immediately after the entity conversion.

(5) Unless the articles of incorporation, or the board of directors acting pursuant to subdivision (3) of this section, requires a greater vote or a greater number of votes to be present, approval of the plan of entity conversion requires the approval of each class or series of shares of the corporation voting as a separate voting group at a meeting at which a quorum of the voting group

consisting of at least a majority of the votes entitled to be cast on the conversion by that voting group exists.

(6) If any provision of the articles of incorporation, bylaws, or an agreement to which any of the directors or shareholders are parties, adopted or entered into before January 1, 2016, applies to a merger of the corporation, other than a provision that limits or eliminates voting or appraisal rights, and the document does not refer to an entity conversion of the corporation, the provision shall be deemed to apply to an entity conversion of the corporation until such time as the provision is subsequently amended.

(7) If as a result of the conversion one or more shareholders of the corporation would become subject to owner liability for the debts, obligations, or liabilities of any other person or entity, approval of the plan of conversion shall require the signing, by each such shareholder, of a separate written consent to become subject to such owner liability.

Source: Laws 2014, LB749, § 145.

Operative date January 1, 2016.

21-2,146 Articles of entity conversion.

(MBCA 9.53) (a) After the conversion of a domestic business corporation to a domestic unincorporated entity has been adopted and approved as required by the Nebraska Model Business Corporation Act, articles of entity conversion shall be signed on behalf of the corporation by any officer or other duly authorized representative. The articles shall:

(1) Set forth the name of the corporation immediately before the filing of the articles of entity conversion and the name to which the name of the corporation is to be changed, which shall be a name that satisfies the organic law of the surviving entity;

(2) State the type of unincorporated entity that the surviving entity will be;

(3) Set forth a statement that the plan of entity conversion was duly approved by the shareholders in the manner required by the act and the articles of incorporation; and

(4) If the surviving entity is a filing entity, either contain all of the provisions required to be set forth in its public organic document and any other desired provisions that are permitted or have attached a public organic document; except that, in either case, provisions that would not be required to be included in a restated public organic document may be omitted.

(b) After the conversion of a domestic unincorporated entity to a domestic business corporation has been adopted and approved as required by the organic law of the unincorporated entity, articles of entity conversion shall be signed on behalf of the unincorporated entity by any officer or other duly authorized representative. The articles shall:

(1) Set forth the name of the unincorporated entity immediately before the filing of the articles of entity conversion and the name to which the name of the unincorporated entity is to be changed which shall be a name that satisfies the requirements of section 21-230;

(2) Set forth a statement that the plan of entity conversion was duly approved in accordance with the organic law of the unincorporated entity; and

(3) Either contain all of the provisions that subsection (a) of section 21-220 requires to be set forth in articles of incorporation and any other desired provisions that subsection (b) of section 21-220 permits to be included in articles of incorporation or have attached articles of incorporation; except that, in either case, provisions that would not be required to be included in restated articles of incorporation of a domestic business corporation may be omitted.

(c) After the conversion of a foreign unincorporated entity to a domestic business corporation has been authorized as required by the laws of the foreign jurisdiction, articles of entity conversion shall be signed on behalf of the foreign unincorporated entity by any officer or other duly authorized representative. The articles shall:

(1) Set forth the name of the unincorporated entity immediately before the filing of the articles of entity conversion and the name to which the name of the unincorporated entity is to be changed which shall be a name that satisfies the requirements of section 21-230;

(2) Set forth the jurisdiction under the laws of which the unincorporated entity was organized immediately before the filing of the articles of entity conversion and the date on which the unincorporated entity was organized in that jurisdiction;

(3) Set forth a statement that the conversion of the unincorporated entity was duly approved in the manner required by its organic law; and

(4) Either contain all of the provisions that subsection (a) of section 21-220 requires to be set forth in articles of incorporation and any other desired provisions that subsection (b) of section 21-220 permits to be included in articles of incorporation or have attached articles of incorporation; except that, in either case, provisions that would not be required to be included in restated articles of incorporation of a domestic business corporation may be omitted.

(d) The articles of entity conversion shall be delivered to the Secretary of State for filing and shall take effect at the effective time provided in section 21-206. Articles of entity conversion under subsection (a) or (b) of this section may be combined with any required conversion filing under the organic law of the domestic unincorporated entity if the combined filing satisfies the requirements of both this section and the other organic law.

(e) If the converting entity is a foreign unincorporated entity that is authorized to transact business in this state under a provision of law similar to sections 21-2,203 to 21-2,220, its certificate of authority or other type of foreign qualification shall be canceled automatically on the effective date of its conversion.

Source: Laws 2014, LB749, § 146.

Operative date January 1, 2016.

21-2,147 Surrender of charter upon conversion.

(MBCA 9.54) (a) Whenever a domestic business corporation has adopted and approved, in the manner required by sections 21-2,143 to 21-2,149, a plan of entity conversion providing for the corporation to be converted to a foreign unincorporated entity, articles of charter surrender shall be signed on behalf of the corporation by any officer or other duly authorized representative. The articles of charter surrender shall set forth:

(1) The name of the corporation;

(2) A statement that the articles of charter surrender are being filed in connection with the conversion of the corporation to a foreign unincorporated entity;

(3) A statement that the conversion was duly approved by the shareholders in the manner required by the Nebraska Model Business Corporation Act and the articles of incorporation;

(4) The jurisdiction under the laws of which the surviving entity will be organized; and

(5) If the surviving entity will be a nonfiling entity, the address of its executive office immediately after the conversion.

(b) The articles of charter surrender shall be delivered by the corporation to the Secretary of State for filing. The articles of charter surrender shall take effect on the effective time provided in section 21-206.

Source: Laws 2014, LB749, § 147.

Operative date January 1, 2016.

21-2,148 Effect of entity conversion.

(MBCA 9.55) (a) When a conversion under sections 21-2,143 to 21-2,149 becomes effective:

(1) The title to all real and personal property, both tangible and intangible, of the converting entity remains in the surviving entity without reversion or impairment;

(2) The liabilities of the converting entity remain the liabilities of the surviving entity;

(3) An action or proceeding pending against the converting entity continues against the surviving entity as if the conversion had not occurred;

(4) In the case of a surviving entity that is a filing entity, its articles of incorporation or public organic document and its private organic document become effective;

(5) In the case of a surviving entity that is a nonfiling entity, its private organic document becomes effective;

(6) The shares or interests of the converting entity are reclassified into shares, interests, other securities, obligations, rights to acquire shares, interests, or other securities, or into cash or other property in accordance with the plan of conversion, and the shareholders or interest holders of the converting entity are entitled only to the rights provided to them under the terms of the conversion and to any appraisal rights they may have under the organic law of the converting entity; and

(7) The surviving entity is deemed to:

(i) Be incorporated or organized under and subject to the organic law of the converting entity for all purposes;

(ii) Be the same corporation or unincorporated entity without interruption as the converting entity; and

(iii) Have been incorporated or otherwise organized on the date that the converting entity was originally incorporated or organized.

(b) When a conversion of a domestic business corporation to a foreign other entity becomes effective, the surviving entity is deemed to agree that it will

promptly pay the amount, if any, to which such shareholders are entitled under sections 21-2,171 to 21-2,183.

(c) A shareholder who becomes subject to owner liability for some or all of the debts, obligations, or liabilities of the surviving entity shall be personally liable only for those debts, obligations, or liabilities of the surviving entity that arise after the effective time of the articles of entity conversion.

(d) The owner liability of an interest holder in an unincorporated entity that converts to a domestic business corporation shall be as follows:

(1) The conversion does not discharge any owner liability under the organic law of the unincorporated entity to the extent any such owner liability arose before the effective time of the articles of entity conversion;

(2) The interest holder shall not have owner liability under the organic law of the unincorporated entity for any debt, obligation, or liability of the corporation that arises after the effective time of the articles of entity conversion;

(3) The provisions of the organic law of the unincorporated entity shall continue to apply to the collection or discharge of any owner liability preserved by subdivision (1) of this subsection as if the conversion had not occurred; and

(4) The interest holder shall have whatever rights of contribution from other interest holders that are provided by the organic law of the unincorporated entity with respect to any owner liability preserved by subdivision (1) of this subsection as if the conversion had not occurred.

Source: Laws 2014, LB749, § 148.

Operative date January 1, 2016.

21-2,149 Abandonment of an entity conversion.

(MBCA 9.56) (a) Unless otherwise provided in a plan of entity conversion of a domestic business corporation, after the plan has been adopted and approved as required by sections 21-2,143 to 21-2,149 and at any time before the entity conversion has become effective, it may be abandoned by the board of directors without action by the shareholders.

(b) If an entity conversion is abandoned after articles of entity conversion or articles of charter surrender have been filed with the Secretary of State but before the entity conversion has become effective, a statement that the entity conversion has been abandoned in accordance with this section, signed by an officer or other duly authorized representative, shall be delivered to the Secretary of State for filing prior to the effective date of the entity conversion. Upon filing, the statement shall take effect and the entity conversion shall be deemed abandoned and shall not become effective.

Source: Laws 2014, LB749, § 149.

Operative date January 1, 2016.

PART 10—AMENDMENT OF ARTICLES OF INCORPORATION AND BYLAWS

SUBPART 1—AMENDMENT OF ARTICLES OF INCORPORATION

21-2,150 Authority to amend.

(MBCA 10.01) (a) A corporation may amend its articles of incorporation at any time to add or change a provision that is required or permitted in the

articles of incorporation as of the effective date of the amendment or to delete a provision that is not required to be contained in the articles of incorporation.

(b) A shareholder of the corporation does not have a vested property right resulting from any provision in the articles of incorporation, including provisions relating to management, control, capital structure, dividend entitlement, or purpose or duration of the corporation.

Source: Laws 2014, LB749, § 150.

Operative date January 1, 2016.

21-2,151 Amendment before issuance of shares.

(MBCA 10.02) If a corporation has not yet issued shares, its board of directors or its incorporators if it has no board of directors may adopt one or more amendments to the corporation's articles of incorporation.

Source: Laws 2014, LB749, § 151.

Operative date January 1, 2016.

21-2,152 Amendment by board of directors and shareholders.

(MBCA 10.03) If a corporation has issued shares, an amendment to the articles of incorporation shall be adopted in the following manner:

(1) The proposed amendment must be adopted by the board of directors.

(2) Except as provided in sections 21-2,154, 21-2,156, and 21-2,157, after adopting the proposed amendment the board of directors must submit the amendment to the shareholders for their approval. The board of directors must also transmit to the shareholders a recommendation that the shareholders approve the amendment unless (i) the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation or (ii) section 21-2,101 applies. If subdivision (2)(i) or (ii) of this section applies, the board must transmit to the shareholders the basis for so proceeding.

(3) The board of directors may condition its submission of the amendment to the shareholders on any basis.

(4) If the amendment is required to be approved by the shareholders and the approval is to be given at a meeting, the corporation must notify each shareholder, whether or not entitled to vote, of the meeting of shareholders at which the amendment is to be submitted for approval. The notice must state that the purpose, or one of the purposes, of the meeting is to consider the amendment and must contain or be accompanied by a copy of the amendment.

(5) Unless the articles of incorporation, or the board of directors acting pursuant to subdivision (3) of this section, requires a greater vote or a greater number of shares to be present, approval of the amendment requires the approval of the shareholders at a meeting at which a quorum consisting of at least a majority of the votes entitled to be cast on the amendment exists, and, if any class or series of shares is entitled to vote as a separate group on the amendment, except as provided in subsection (c) of section 21-2,153, the approval of each such separate voting group at a meeting at which a quorum of the voting group consisting of at least a majority of the votes entitled to be cast on the amendment by that voting group exists.

Source: Laws 2014, LB749, § 152.

Operative date January 1, 2016.

21-2,153 Voting on amendments by voting groups.

(MBCA 10.04) (a) If a corporation has more than one class of shares outstanding, the holders of the outstanding shares of a class are entitled to vote as a separate voting group, if shareholder voting is otherwise required by the Nebraska Model Business Corporation Act, on a proposed amendment to the articles of incorporation if the amendment would:

- (1) Effect an exchange or reclassification of all or part of the shares of the class into shares of another class;
- (2) Effect an exchange or reclassification or create the right of exchange of all or part of the shares of another class into shares of the class;
- (3) Change the rights, preferences, or limitations of all or part of the shares of the class;
- (4) Change the shares of all or part of the class into a different number of shares of the same class;
- (5) Create a new class of shares having rights or preferences with respect to distributions that are prior or superior to the shares of the class;
- (6) Increase the rights, preferences, or number of authorized shares of any class that, after giving effect to the amendment, have rights or preferences with respect to distributions that are prior or superior to the shares of the class;
- (7) Limit or deny an existing preemptive right of all or part of the shares of the class; or
- (8) Cancel or otherwise affect rights to distributions that have accumulated but not yet been authorized on all or part of the shares of the class.

(b) If a proposed amendment would affect a series of a class of shares in one or more of the ways described in subsection (a) of this section, the holders of shares of that series are entitled to vote as a separate voting group on the proposed amendment.

(c) If a proposed amendment that entitles the holders of two or more classes or series of shares to vote as separate voting groups under this section would affect those two or more classes or series in the same or a substantially similar way, the holders of shares of all the classes or series so affected must vote together as a single voting group on the proposed amendment unless otherwise provided in the articles of incorporation or required by the board of directors.

(d) A class or series of shares is entitled to the voting rights granted by this section although the articles of incorporation provide that the shares are nonvoting shares.

Source: Laws 2014, LB749, § 153.

Operative date January 1, 2016.

21-2,154 Amendment by board of directors.

(MBCA 10.05) Unless the articles of incorporation provide otherwise, a corporation's board of directors may adopt amendments to the corporation's articles of incorporation without shareholder approval:

- (1) To extend the duration of the corporation if it was incorporated at a time when limited duration was required by law;
- (2) To delete the names and addresses of the initial directors;

(3) To delete the name and address of the initial registered agent or registered office, if a statement of change is on file with the Secretary of State;

(4) If the corporation has only one class of shares outstanding:

(i) To change each issued and unissued authorized share of the class into a greater number of whole shares of that class; or

(ii) To increase the number of authorized shares of the class to the extent necessary to permit the issuance of shares as a share dividend;

(5) To change the corporate name by substituting the word corporation, incorporated, company, limited, or the abbreviation corp., inc., co., or ltd., for a similar word or abbreviation in the name or by adding, deleting, or changing a geographical attribution for the name;

(6) To reflect a reduction in authorized shares, as a result of the operation of subsection (b) of section 21-251, when the corporation has acquired its own shares and the articles of incorporation prohibit the reissue of the acquired shares;

(7) To delete a class of shares from the articles of incorporation, as a result of the operation of subsection (b) of section 21-251, when there are no remaining shares of the class because the corporation has acquired all shares of the class and the articles of incorporation prohibit the reissue of the acquired shares; or

(8) To make any change expressly permitted by subsection (a) or (b) of section 21-238 to be made without shareholder approval.

Source: Laws 2014, LB749, § 154.

Operative date January 1, 2016.

21-2,155 Articles of amendment.

(MBCA 10.06) After an amendment to the articles of incorporation has been adopted and approved in the manner required by the Nebraska Model Business Corporation Act and by the articles of incorporation, the corporation shall deliver to the Secretary of State, for filing, articles of amendment, which shall set forth:

(1) The name of the corporation;

(2) The text of each amendment adopted, or the information required by subdivision (k)(5) of section 21-203;

(3) If an amendment provides for an exchange, reclassification, or cancellation of issued shares, provisions for implementing the amendment if not contained in the amendment itself, which may be made dependent upon facts objectively ascertainable outside the articles of amendment in accordance with subdivision (k)(5) of section 21-203;

(4) The date of each amendment's adoption; and

(5) If an amendment:

(i) Was adopted by the incorporators or board of directors without shareholder approval, a statement that the amendment was duly approved by the incorporators or by the board of directors, as the case may be, and that shareholder approval was not required;

(ii) Required approval by the shareholders, a statement that the amendment was duly approved by the shareholders in the manner required by the act and by the articles of incorporation; or

(iii) Is being filed pursuant to subdivision (k)(5) of section 21-203, a statement to that effect.

Source: Laws 2014, LB749, § 155.
Operative date January 1, 2016.

21-2,156 Restated articles of incorporation.

(MBCA 10.07) (a) A corporation's board of directors may restate its articles of incorporation at any time, with or without shareholder approval, to consolidate all amendments into a single document.

(b) If the restated articles include one or more new amendments that require shareholder approval, the amendments must be adopted and approved as provided in section 21-2,152.

(c) A corporation that restates its articles of incorporation shall deliver to the Secretary of State for filing articles of restatement setting forth the name of the corporation and the text of the restated articles of incorporation together with a certificate which states that the restated articles consolidate all amendments into a single document and, if a new amendment is included in the restated articles, also includes the statements required under section 21-2,155.

(d) Duly adopted restated articles of incorporation supersede the original articles of incorporation and all amendments thereto.

(e) The Secretary of State may certify restated articles of incorporation as the articles of incorporation currently in effect without including the certificate information required by subsection (c) of this section.

Source: Laws 2014, LB749, § 156.
Operative date January 1, 2016.

21-2,157 Amendment pursuant to reorganization.

(MBCA 10.08) (a) A corporation's articles of incorporation may be amended without action by the board of directors or shareholders to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under the authority of a law of the United States.

(b) The individual or individuals designated by the court shall deliver to the Secretary of State for filing articles of amendment setting forth:

- (1) The name of the corporation;
- (2) The text of each amendment approved by the court;
- (3) The date of the court's order or decree approving the articles of amendment;
- (4) The title of the reorganization proceeding in which the order or decree was entered; and
- (5) A statement that the court had jurisdiction of the proceeding under federal statute.

(c) This section does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

Source: Laws 2014, LB749, § 157.
Operative date January 1, 2016.

21-2,158 Effect of amendment.

(MBCA 10.09) An amendment to the articles of incorporation does not affect a cause of action existing against or in favor of the corporation, a proceeding to which the corporation is a party, or the existing rights of persons other than shareholders of the corporation. An amendment changing a corporation's name does not abate a proceeding brought by or against the corporation in its former name.

Source: Laws 2014, LB749, § 158.

Operative date January 1, 2016.

SUBPART 2—AMENDMENT OF BYLAWS**21-2,159 Amendment by board of directors or shareholders.**

(MBCA 10.20) (a) A corporation's shareholders may amend or repeal the corporation's bylaws.

(b) A corporation's board of directors may amend or repeal the corporation's bylaws, unless:

(1) The articles of incorporation or section 21-2,160 reserves that power exclusively to the shareholders in whole or part; or

(2) Except as provided in subsection (d) of section 21-224, the shareholders in amending, repealing, or adopting a bylaw expressly provide that the board of directors may not amend, repeal, or reinstate that bylaw.

Source: Laws 2014, LB749, § 159.

Operative date January 1, 2016.

21-2,160 Bylaw increasing quorum or voting requirement for directors.

(MBCA 10.21) (a) A bylaw that increases a quorum or voting requirement for the board of directors may be amended or repealed:

(1) If originally adopted by the shareholders, only by the shareholders unless the bylaw otherwise provides; or

(2) If adopted by the board of directors, either by the shareholders or by the board of directors.

(b) A bylaw adopted or amended by the shareholders that increases a quorum or voting requirement for the board of directors may provide that it can be amended or repealed only by a specified vote of either the shareholders or the board of directors.

(c) Action by the board of directors under subsection (a) of this section to amend or repeal a bylaw that changes the quorum or voting requirement for the board of directors must meet the same quorum requirement and be adopted by the same vote required to take action under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater.

Source: Laws 2014, LB749, § 160.

Operative date January 1, 2016.

PART 11—MERGERS AND SHARE EXCHANGES**21-2,161 Definitions.**

(MBCA 11.01) As used in sections 21-2,161 to 21-2,168:

(1) Merger means a business combination pursuant to section 21-2,162.

(2) Party to a merger or party to a share exchange means any domestic or foreign corporation or eligible entity that will:

(i) Merge under a plan of merger;

(ii) Acquire shares or eligible interests of another corporation or an eligible entity in a share exchange; or

(iii) Have all of its shares or eligible interests or all of one or more classes or series of its shares or eligible interests acquired in a share exchange.

(3) Share exchange means a business combination pursuant to section 21-2,163.

(4) Survivor in a merger means the corporation or eligible entity into which one or more other corporations or eligible entities are merged. A survivor of a merger may preexist the merger or be created by the merger.

Source: Laws 2014, LB749, § 161.

Operative date January 1, 2016.

21-2,162 Merger.

(MBCA 11.02) (a) One or more domestic business corporations may merge with one or more domestic or foreign business corporations or eligible entities pursuant to a plan of merger or two or more foreign business corporations or domestic or foreign eligible entities may merge into a new domestic business corporation to be created in the merger in the manner provided in sections 21-2,161 to 21-2,168.

(b) A foreign business corporation, or a foreign eligible entity, may be a party to a merger with a domestic business corporation or may be created by the terms of the plan of merger only if the merger is permitted by the organic law of the foreign business corporation or eligible entity.

(c) If the organic law of a domestic eligible entity does not provide procedures for the approval of a merger, a plan of merger may be adopted and approved, the merger effectuated, and appraisal rights exercised in accordance with the procedures in sections 21-2,161 to 21-2,168 and 21-2,171 to 21-2,183. For the purposes of applying sections 21-2,161 to 21-2,168 and 21-2,171 to 21-2,183:

(1) The eligible entity, its members or interest holders, eligible interests, and organic documents taken together shall be deemed to be a domestic business corporation, shareholders, shares, and articles of incorporation, respectively and vice versa as the context may require; and

(2) If the business and affairs of the eligible entity are managed by a group of persons that is not identical to the members or interest holders, that group shall be deemed to be the board of directors.

(d) The plan of merger must include:

(1) The name of each domestic or foreign business corporation or eligible entity that will merge and the name of the domestic or foreign business corporation or eligible entity that will be the survivor of the merger;

(2) The terms and conditions of the merger;

(3) The manner and basis of converting the shares of each merging domestic or foreign business corporation and eligible interests of each merging domestic or foreign eligible entity into shares or other securities, eligible interests,

obligations, rights to acquire shares, other securities, or eligible interests, cash, other property, or any combination of the foregoing;

(4) The articles of incorporation of any domestic or foreign business or nonprofit corporation or the organic documents of any domestic or foreign unincorporated entity to be created by the merger or, if a new domestic or foreign business or nonprofit corporation or unincorporated entity is not to be created by the merger, any amendments to the survivor's articles of incorporation or organic documents; and

(5) Any other provisions required by the laws under which any party to the merger is organized or by which it is governed or by the articles of incorporation or organic document of any such party.

(e) Terms of a plan of merger may be made dependent on facts objectively ascertainable outside the plan in accordance with subsection (k) of section 21-203.

(f) The plan of merger may also include a provision that the plan may be amended prior to filing articles of merger, but if the shareholders of a domestic corporation that is a party to the merger are required or permitted to vote on the plan, the plan must provide that subsequent to approval of the plan by such shareholders the plan may not be amended to change:

(1) The amount or kind of shares or other securities, eligible interests, obligations, rights to acquire shares, other securities, or eligible interests, cash, or other property to be received under the plan by the shareholders of or owners of eligible interests in any party to the merger;

(2) The articles of incorporation of any corporation or the organic documents of any unincorporated entity that will survive or be created as a result of the merger, except for changes permitted by section 21-2,154 or by comparable provisions of the organic laws of any such foreign corporation or domestic or foreign unincorporated entity; or

(3) Any of the other terms or conditions of the plan if the change would adversely affect such shareholders in any material respect.

(g) Property held in trust or for charitable purposes under the laws of this state by a domestic or foreign eligible entity shall not be diverted by a merger from the objects for which it was donated, granted, or devised unless and until the eligible entity obtains an order of the court specifying the disposition of the property to the extent required by and pursuant to cy pres or other nondiversion law of this state.

Source: Laws 2014, LB749, § 162.

Operative date January 1, 2016.

21-2,163 Share exchange.

(MBCA 11.03) (a) Through a share exchange:

(1) A domestic corporation may acquire all of the shares of one or more classes or series of shares of another domestic or foreign corporation, or all of the interests of one or more classes or series of interests of a domestic or foreign other entity, in exchange for shares or other securities, interests, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the foregoing pursuant to a plan of share exchange; or

(2) All of the shares of one or more classes or series of shares of a domestic corporation may be acquired by another domestic or foreign corporation or other entity in exchange for shares or other securities, interests, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the foregoing pursuant to a plan of share exchange.

(b) A foreign corporation or eligible entity may be a party to a share exchange only if the share exchange is permitted by the organic law of the corporation or other entity.

(c) If the organic law of a domestic other entity does not provide procedures for the approval of a share exchange, a plan of share exchange may be adopted and approved and the share exchange effectuated in accordance with the procedures, if any, for a merger. If the organic law of a domestic other entity does not provide procedures for the approval of either a share exchange or a merger, a plan of share exchange may be adopted and approved, the share exchange effectuated, and appraisal rights exercised, in accordance with the procedures in sections 21-2,161 to 21-2,168 and 21-2,171 to 21-2,183. For the purposes of applying sections 21-2,161 to 21-2,168 and 21-2,171 to 21-2,183:

(1) The other entity, its interest holders, interests, and organic documents taken together shall be deemed to be a domestic business corporation, shareholders, shares, and articles of incorporation, respectively and vice versa as the context may require; and

(2) If the business and affairs of the other entity are managed by a group of persons that is not identical to the interest holders, that group shall be deemed to be the board of directors.

(d) The plan of share exchange must include:

(1) The name of each corporation or other entity whose shares or interests will be acquired and the name of the corporation or other entity that will acquire those shares or interests;

(2) The terms and conditions of the share exchange;

(3) The manner and basis of exchanging shares of a corporation or interests in an other entity whose shares or interests will be acquired under the share exchange into shares or other securities, interests, obligations, rights to acquire shares, other securities, or interests, cash, other property, or any combination of the foregoing; and

(4) Any other provisions required by the laws under which any party to the share exchange is organized or by the articles of incorporation or organic document of any such party.

(e) Terms of a plan of share exchange may be made dependent on facts objectively ascertainable outside the plan in accordance with subsection (k) of section 21-203.

(f) The plan of share exchange may also include a provision that the plan may be amended prior to filing articles of share exchange, but if the shareholders of a domestic corporation that is a party to the share exchange are required or permitted to vote on the plan, the plan must provide that subsequent to approval of the plan by such shareholders the plan may not be amended to change:

(1) The amount or kind of shares or other securities, interests, obligations, rights to acquire shares, other securities, or interests, cash, or other property to

be issued by the corporation or to be received under the plan by the shareholders of or owners of interests in any party to the share exchange; or

(2) Any of the other terms or conditions of the plan if the change would adversely affect such shareholders in any material respect.

(g) This section does not limit the power of a domestic corporation to acquire shares of another corporation or interests in another entity in a transaction other than a share exchange.

Source: Laws 2014, LB749, § 163.

Operative date January 1, 2016.

21-2,164 Action on a plan of merger or share exchange.

(MBCA 11.04) In the case of a domestic corporation that is a party to a merger or share exchange:

(1) The plan of merger or share exchange must be adopted by the board of directors.

(2) Except as provided in subdivision (8) of this section and in section 21-2,165, after adopting the plan of merger or share exchange the board of directors must submit the plan to the shareholders for their approval. The board of directors must also transmit to the shareholders a recommendation that the shareholders approve the plan unless (i) the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation or (ii) section 21-2,101 applies. If either subdivision (2)(i) or (ii) of this section applies, the board must transmit to the shareholders the basis for so proceeding.

(3) The board of directors may condition its submission of the plan of merger or share exchange to the shareholders on any basis.

(4) If the plan of merger or share exchange is required to be approved by the shareholders and if the approval is to be given at a meeting, the corporation must notify each shareholder, whether or not entitled to vote, of the meeting of shareholders at which the plan is to be submitted for approval. The notice must state that the purpose, or one of the purposes, of the meeting is to consider the plan and must contain or be accompanied by a copy or summary of the plan. If the corporation is to be merged into an existing corporation or other entity, the notice shall also include or be accompanied by a copy or summary of the articles of incorporation or organizational documents of that corporation or other entity. If the corporation is to be merged into a corporation or other entity that is to be created pursuant to the merger, the notice shall include or be accompanied by a copy or a summary of the articles of incorporation or organizational documents of the new corporation or other entity.

(5) Unless the articles of incorporation or the board of directors acting pursuant to subdivision (3) of this section requires a greater vote or a greater number of votes to be present, approval of the plan of merger or share exchange requires the approval of the shareholders at a meeting at which a quorum consisting of at least a majority of the votes entitled to be cast on the plan exists, and if any class or series of shares is entitled to vote as a separate group on the plan of merger or share exchange, the approval of each such separate voting group at a meeting at which a quorum of the voting group consisting of at least a majority of the votes entitled to be cast on the merger or share exchange by that voting group is present.

(6) Subject to subdivision (7) of this section, separate voting by voting groups is required:

(i) On a plan of merger, by each class or series of shares that:

(A) Are to be converted under the plan of merger into other securities, interests, obligations, rights to acquire shares, other securities, or interests, cash, other property, or any combination of the foregoing; or

(B) Are entitled to vote as a separate group on a provision in the plan that constitutes a proposed amendment to articles of incorporation of a surviving corporation, that requires action by separate voting groups under section 21-2,153;

(ii) On a plan of share exchange, by each class or series of shares included in the exchange with each class or series constituting a separate voting group; and

(iii) On a plan of merger or share exchange, if the voting group is entitled under the articles of incorporation to vote as a voting group to approve a plan of merger or share exchange.

(7) The articles of incorporation may expressly limit or eliminate the separate voting rights provided in subdivisions (6)(i)(A) and (6)(ii) of this section as to any class or series of shares, except for a transaction that (i) includes what is or would be, if the corporation were the surviving corporation, an amendment subject to subdivision (6)(i)(B) of this section and (ii) will effect no significant change in the assets of the resulting entity, including all parents and subsidiaries on a consolidated basis.

(8) Unless the articles of incorporation otherwise provide, approval by the corporation's shareholders of a plan of merger or share exchange is not required if:

(i) The corporation will survive the merger or is the acquiring corporation in a share exchange;

(ii) Except for amendments permitted by section 21-2,154, its articles of incorporation will not be changed;

(iii) Each shareholder of the corporation whose shares were outstanding immediately before the effective date of the merger or share exchange will hold the same number of shares, with identical preferences, limitations, and relative rights, immediately after the effective date of change; and

(iv) The issuance in the merger or share exchange of shares or other securities convertible into or rights exercisable for shares does not require a vote under subsection (f) of section 21-242.

(9) If as a result of a merger or share exchange one or more shareholders of a domestic corporation would become subject to owner liability for the debts, obligations, or liabilities of any other person or entity, approval of the plan of merger or share exchange shall require the execution by each such shareholder of a separate written consent to become subject to such owner liability.

Source: Laws 2014, LB749, § 164.

Operative date January 1, 2016.

21-2,165 Merger between parent and subsidiary or between subsidiaries.

(MBCA 11.05) (a) A domestic parent corporation that owns shares of a domestic or foreign subsidiary corporation that carry at least ninety percent of the voting power of each class and series of the outstanding shares of the

subsidiary that have voting power may merge the subsidiary into itself or into another such subsidiary, or merge itself into the subsidiary, without the approval of the board of directors or shareholders of the subsidiary unless the articles of incorporation of any of the corporations otherwise provide, and unless, in the case of a foreign subsidiary, approval by the subsidiary's board of directors or shareholders is required by the laws under which the subsidiary is organized.

(b) If under subsection (a) of this section approval of a merger by the subsidiary's shareholders is not required, the parent corporation shall within ten days after the effective date of the merger notify each of the subsidiary's shareholders that the merger has become effective.

(c) Except as provided in subsections (a) and (b) of this section, a merger between a parent and a subsidiary shall be governed by the provisions of sections 21-2,161 to 21-2,168 applicable to mergers generally.

Source: Laws 2014, LB749, § 165.

Operative date January 1, 2016.

21-2,166 Articles of merger or share exchange.

(MBCA 11.06) (a) After a plan of merger or share exchange has been adopted and approved as required by the Nebraska Model Business Corporation Act, articles of merger or share exchange shall be signed on behalf of each party to the merger or share exchange by any officer or other duly authorized representative. The articles shall set forth:

(1) The names of the parties to the merger or share exchange;

(2) If the articles of incorporation of the survivor of a merger are amended, or if a new corporation is created as a result of a merger, the amendments to the survivor's articles of incorporation or the articles of incorporation of the new corporation;

(3) If the plan of merger or share exchange required approval by the shareholders of a domestic corporation that was a party to the merger or share exchange, a statement that the plan was duly approved by the shareholders and, if voting by any separate voting group was required, by each such separate voting group, in the manner required by the act and the articles of incorporation;

(4) If the plan of merger or share exchange did not require approval by the shareholders of a domestic corporation that was a party to the merger or share exchange, a statement to that effect; and

(5) As to each foreign corporation or eligible entity that was a party to the merger or share exchange, a statement that the participation of the foreign corporation or eligible entity was duly authorized as required by the organic law of the corporation or eligible entity.

(b) Articles of merger or share exchange shall be delivered to the Secretary of State for filing by the survivor of the merger or the acquiring corporation in a share exchange and shall take effect at the effective time provided in section 21-206. Articles of merger or share exchange filed under this section may be combined with any filing required under the organic law of any domestic

eligible entity involved in the transaction if the combined filing satisfies the requirements of both this section and the other organic law.

Source: Laws 2014, LB749, § 166.

Operative date January 1, 2016.

21-2,167 Effect of merger or share exchange.

(MBCA 11.07) (a) When a merger becomes effective:

(1) The corporation or eligible entity that is designated in the plan of merger as the survivor continues or comes into existence, as the case may be;

(2) The separate existence of every corporation or eligible entity that is merged into the survivor ceases;

(3) All property owned by and every contract right possessed by each corporation or eligible entity that merges into the survivor is vested in the survivor without reversion or impairment;

(4) All liabilities of each corporation or eligible entity that is merged into the survivor are vested in the survivor;

(5) The name of the survivor may, but need not be, substituted in any pending proceeding for the name of any party to the merger whose separate existence ceased in the merger;

(6) The articles of incorporation or organic documents of the survivor are amended to the extent provided in the plan of merger;

(7) The articles of incorporation or organic documents of a survivor that is created by the merger become effective; and

(8) The shares of each corporation that is a party to the merger and the interests in an eligible entity that is a party to a merger that are to be converted under the plan of merger into shares, eligible interests, obligations, rights to acquire securities, other securities, or eligible interests, cash, other property, or any combination of the foregoing, are converted, and the former holders of such shares or eligible interests are entitled only to the rights provided to them in the plan of merger or to any rights they may have under sections 21-2,171 to 21-2,183 or the organic law of the eligible entity.

(b) When a share exchange becomes effective, the shares of each domestic corporation that are to be exchanged for shares or other securities, interests, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the foregoing are entitled only to the rights provided to them in the plan of share exchange or to any rights they may have under sections 21-2,171 to 21-2,183.

(c) A person who becomes subject to owner liability for some or all of the debts, obligations, or liabilities of any entity as a result of a merger or share exchange shall have owner liability only to the extent provided in the organic law of the entity and only for those debts, obligations, and liabilities that arise after the effective time of the articles of merger or share exchange.

(d) Upon a merger becoming effective, a foreign corporation or a foreign eligible entity that is the survivor of the merger is deemed to agree that it will promptly pay the amount, if any, to which such shareholders are entitled under sections 21-2,171 to 21-2,183.

(e) The effect of a merger or share exchange on the owner liability of a person who had owner liability for some or all of the debts, obligations, or liabilities of a party to the merger or share exchange shall be as follows:

(1) The merger or share exchange does not discharge any owner liability under the organic law of the entity in which the person was a shareholder or interest holder to the extent any such owner liability arose before the effective time of the articles of merger or share exchange;

(2) The person shall not have owner liability under the organic law of the entity in which the person was a shareholder or interest holder prior to the merger or share exchange for any debt, obligation, or liability that arises after the effective time of the articles of merger or share exchange;

(3) The provisions of the organic law of any entity for which the person had owner liability before the merger or share exchange shall continue to apply to the collection or discharge of any owner liability preserved by subdivision (1) of this subsection as if the merger or share exchange had not occurred; and

(4) The person shall have whatever rights of contribution from other persons provided by the organic law of the entity for which the person had owner liability with respect to any owner liability preserved by subdivision (1) of this subsection as if the merger or share exchange had not occurred.

Source: Laws 2014, LB749, § 167.

Operative date January 1, 2016.

21-2,168 Abandonment of a merger or share exchange.

(MBCA 11.08) (a) Unless otherwise provided in a plan of merger or share exchange or in the laws under which a foreign business corporation or a domestic or foreign eligible entity that is a party to a merger or a share exchange is organized or by which it is governed, after the plan has been adopted and approved as required by sections 21-2,161 to 21-2,168, and at any time before the merger or share exchange has become effective, it may be abandoned by a domestic business corporation that is a party thereto without action by its shareholders in accordance with any procedures set forth in the plan of merger or share exchange or, if no such procedures are set forth in the plan, in the manner determined by the board of directors, subject to any contractual rights of other parties to the merger or share exchange.

(b) If a merger or share exchange is abandoned under subsection (a) of this section after articles of merger or share exchange have been filed with the Secretary of State but before the merger or share exchange has become effective, a statement that the merger or share exchange has been abandoned in accordance with this section, signed on behalf of a party to the merger or share exchange by an officer or other duly authorized representative, shall be delivered to the Secretary of State for filing prior to the effective date of the merger or share exchange. Upon filing, the statement shall take effect and the merger or share exchange shall be deemed abandoned and shall not become effective.

Source: Laws 2014, LB749, § 168.

Operative date January 1, 2016.

PART 12—DISPOSITION OF ASSETS

21-2,169 Disposition of assets not requiring shareholder approval.

(MBCA 12.01) No approval of the shareholders of a corporation is required, unless the articles of incorporation otherwise provide:

(1) To sell, lease, exchange, or otherwise dispose of any or all of the corporation's assets in the usual and regular course of business;

(2) To mortgage, pledge, dedicate to the repayment of indebtedness, whether with or without recourse, or otherwise encumber any or all of the corporation's assets, whether or not in the usual and regular course of business;

(3) To transfer any or all of the corporation's assets to one or more corporations or other entities all of the shares or interests of which are owned by the corporation; or

(4) To distribute assets pro rata to the holders of one or more classes or series of the corporation's shares.

Source: Laws 2014, LB749, § 169.

Operative date January 1, 2016.

21-2,170 Shareholder approval of certain dispositions.

(MBCA 12.02) (a) A sale, lease, exchange, or other disposition of assets, other than a disposition described in section 21-2,169, requires approval of the corporation's shareholders if the disposition would leave the corporation without a significant continuing business activity. If a corporation retains a business activity that represented at least twenty-five percent of total assets at the end of the most recently completed fiscal year, and twenty-five percent of either income from continuing operations before taxes or revenue from continuing operations for that fiscal year, in each case of the corporation and its subsidiaries on a consolidated basis, the corporation will conclusively be deemed to have retained a significant continuing business activity.

(b) A disposition that requires approval of the shareholders under subsection (a) of this section shall be initiated by a resolution by the board of directors authorizing the disposition. After adoption of such a resolution, the board of directors shall submit the proposed disposition to the shareholders for their approval. The board of directors shall also transmit to the shareholders a recommendation that the shareholders approve the proposed disposition, unless (1) the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation or (2) section 21-2,101 applies. If either subdivision (b)(1) or (2) of this section applies, the board of directors shall transmit to the shareholders the basis for so proceeding.

(c) The board of directors may condition its submission of a disposition to the shareholders under subsection (b) of this section on any basis.

(d) If a disposition is required to be approved by the shareholders under subsection (a) of this section and if the approval is to be given at a meeting, the corporation shall notify each shareholder, whether or not entitled to vote, of the meeting of shareholders at which the disposition is to be submitted for approval. The notice shall state that the purpose, or one of the purposes, of the meeting is to consider the disposition and shall contain a description of the disposition, including the terms and conditions thereof and the consideration to be received by the corporation.

(e) Unless the articles of incorporation or the board of directors acting pursuant to subsection (c) of this section requires a greater vote or a greater

number of votes to be present, the approval of a disposition by the shareholders shall require the approval of the shareholders at a meeting at which a quorum consisting of at least a majority of the votes entitled to be cast on the disposition exists.

(f) After a disposition has been approved by the shareholders under subsection (b) of this section and at any time before the disposition has been consummated, it may be abandoned by the corporation without action by the shareholders, subject to any contractual rights of other parties to the disposition.

(g) A disposition of assets in the course of dissolution under sections 21-2,184 to 21-2,202 is not governed by this section.

(h) The assets of a direct or indirect consolidated subsidiary shall be deemed the assets of the parent corporation for the purposes of this section.

Source: Laws 2014, LB749, § 170.

Operative date January 1, 2016.

PART 13—APPRAISAL RIGHTS

SUBPART 1—RIGHT TO APPRAISAL AND PAYMENT FOR SHARES

21-2,171 Definitions.

(MBCA 13.01) In sections 21-2,171 to 21-2,183:

(1) Affiliate means a person that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with another person or is a senior executive thereof. For purposes of subdivision (6) of this section, a person is deemed to be an affiliate of its senior executives.

(2) Beneficial shareholder means a person who is the beneficial owner of shares held in a voting trust or by a nominee on the beneficial owner's behalf.

(3) Corporation means the issuer of the shares held by a shareholder demanding appraisal and, for matters covered in sections 21-2,176 to 21-2,182, includes the surviving entity in a merger.

(4) Fair value means the value of the corporation's shares determined:

(i) Immediately before the effectuation of the corporate action to which the shareholder objects;

(ii) Using customary and current valuation concepts and techniques generally employed for similar businesses in the context of the transaction requiring appraisal; and

(iii) Without discounting for lack of marketability or minority status except, if appropriate, for amendments to the articles pursuant to subdivision (a)(5) of section 21-2,172.

(5) Interest means interest from the effective date of the corporate action until the date of payment at the rate of interest specified in section 45-104, as such rate may from time to time be adjusted by the Legislature.

(6) Interested transaction means a corporate action described in subsection (a) of section 21-2,172, other than a merger pursuant to section 21-2,165, involving an interested person in which any of the shares or assets of the corporation are being acquired or converted. As used in this definition:

(i) Interested person means a person or an affiliate of a person who at any time during the one-year period immediately preceding approval by the board of directors of the corporate action:

(A) Was the beneficial owner of twenty percent or more of the voting power of the corporation, other than as owner of excluded shares;

(B) Had the power, contractually or otherwise, other than as owner of excluded shares, to cause the appointment or election of twenty-five percent or more of the directors to the board of directors of the corporation; or

(C) Was a senior executive or director of the corporation or a senior executive of any affiliate thereof and that senior executive or director will receive, as a result of the corporate action, a financial benefit not generally available to other shareholders as such, other than:

(I) Employment, consulting, retirement, or similar benefits established separately and not as part of or in contemplation of the corporate action;

(II) Employment, consulting, retirement, or similar benefits established in contemplation of or as part of the corporate action that are not more favorable than those existing before the corporate action or, if more favorable, that have been approved on behalf of the corporation in the same manner as is provided in section 21-2,122; or

(III) In the case of a director of the corporation who will, in the corporate action, become a director of the acquiring entity in the corporate action or one of its affiliates, rights and benefits as a director that are provided on the same basis as those afforded by the acquiring entity generally to other directors of such entity or such affiliate;

(ii) Beneficial owner means any person who, directly or indirectly, through any contract, arrangement, or understanding, other than a revocable proxy, has or shares the power to vote or to direct the voting of shares; except that a member of a national securities exchange is not deemed to be a beneficial owner of securities held directly or indirectly by it on behalf of another person solely because the member is the record holder of the securities if the member is precluded by the rules of the exchange from voting without instruction on contested matters or matters that may affect substantially the rights or privileges of the holders of the securities to be voted. When two or more persons agree to act together for the purpose of voting their shares of the corporation, each member of the group formed thereby is deemed to have acquired beneficial ownership, as of the date of the agreement, of all voting shares of the corporation beneficially owned by any member of the group; and

(iii) Excluded shares means shares acquired pursuant to an offer for all shares having voting power if the offer was made within one year prior to the corporate action for consideration of the same kind and of a value equal to or less than that paid in connection with the corporate action.

(7) Preferred shares means a class or series of shares whose holders have preference over any other class or series with respect to distributions.

(8) Record shareholder means the person in whose name shares are registered in the records of the corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with the corporation.

(9) Senior executive means the chief executive officer, chief operating officer, chief financial officer, and anyone in charge of a principal business unit or function.

(10) Shareholder means both a record shareholder and a beneficial shareholder.

Source: Laws 2014, LB749, § 171.
Operative date January 1, 2016.

21-2,172 Right to appraisal.

(MBCA 13.02) (a) A shareholder is entitled to appraisal rights and to obtain payment of the fair value of that shareholder's shares in the event of any of the following corporate actions:

(1) Consummation of a merger to which the corporation is a party (i) if shareholder approval is required for the merger by section 21-2,164, except that appraisal rights shall not be available to any shareholder of the corporation with respect to shares of any class or series that remain outstanding after consummation of the merger or (ii) if the corporation is a subsidiary and the merger is governed by section 21-2,165;

(2) Consummation of a share exchange to which the corporation is a party as the corporation whose shares will be acquired, except that appraisal rights shall not be available to any shareholder of the corporation with respect to any class or series of shares of the corporation that is not exchanged;

(3) Consummation of a disposition of assets pursuant to section 21-2,170 if the shareholder is entitled to vote on the disposition, except that appraisal rights shall not be available to any shareholder of the corporation with respect to shares of any class or series if (i) under the terms of the corporate action approved by the shareholders there is to be distributed to shareholders in cash its net assets, in excess of a reasonable amount reserved to meet claims of the type described in sections 21-2,189 and 21-2,190, (A) within one year after the shareholders' approval of the action and (B) in accordance with their respective interests determined at the time of distribution and (ii) the disposition of assets is not an interested transaction;

(4) An amendment of the articles of incorporation with respect to a class or series of shares that reduces the number of shares of a class or series owned by the shareholder to a fraction of a share if the corporation has the obligation or right to repurchase the fractional share so created;

(5) Any other amendment to the articles of incorporation, merger, share exchange, or disposition of assets to the extent provided by the articles of incorporation, bylaws, or a resolution of the board of directors;

(6) Consummation of a domestication if the shareholder does not receive shares in the foreign corporation resulting from the domestication that have terms as favorable to the shareholder in all material respects and represent at least the same percentage interest of the total voting rights of the outstanding shares of the corporation as the shares held by the shareholder before the domestication;

(7) Consummation of a conversion of the corporation to nonprofit status pursuant to sections 21-2,133 to 21-2,138; or

(8) Consummation of a conversion of the corporation to an unincorporated entity pursuant to sections 21-2,143 to 21-2,149.

(b) Notwithstanding subsection (a) of this section, the availability of appraisal rights under subdivisions (a)(1), (2), (3), (4), (6), and (8) of this section shall be limited in accordance with the following provisions:

(1) Appraisal rights shall not be available for the holders of shares of any class or series of shares which is:

(i) A covered security under section 18(b)(1)(A) or (B) of the federal Securities Act of 1933, as amended, 15 U.S.C. 77r(b)(1)(A) or (B);

(ii) Traded in an organized market and has at least two thousand shareholders and a market value of at least twenty million dollars, exclusive of the value of such shares held by the corporation's subsidiaries, senior executives, directors, and beneficial shareholders owning more than ten percent of such shares; or

(iii) Issued by an open-end management investment company registered with the Securities and Exchange Commission under the federal Investment Company Act of 1940, as amended, 15 U.S.C. 80a-1 et seq., and may be redeemed at the option of the holder at net asset value;

(2) The applicability of subdivision (b)(1) of this section shall be determined as of:

(i) The record date fixed to determine the shareholders entitled to receive notice of the meeting of shareholders to act upon the corporate action requiring appraisal rights; or

(ii) The day before the effective date of such corporate action if there is no meeting of shareholders;

(3) Subdivision (b)(1) of this section shall not be applicable and appraisal rights shall be available pursuant to subsection (a) of this section for the holders of any class or series of shares (i) who are required by the terms of the corporate action requiring appraisal rights to accept for such shares anything other than cash or shares of any class or any series of shares of any corporation or any other proprietary interest of any other entity that satisfies the standards set forth in subdivision (b)(1) of this section at the time the corporate action becomes effective or (ii) in the case of the consummation of a disposition of assets pursuant to section 21-2,170, unless such cash, shares, or proprietary interests are, under the terms of the corporate action approved by the shareholders as part of a distribution to shareholders of the net assets of the corporation in excess of a reasonable amount to meet claims of the type described in sections 21-2,189 and 21-2,190, (A) within one year after the shareholders' approval of the action and (B) in accordance with their respective interests determined at the time of the distribution; and

(4) Subdivision (b)(1) of this section shall not be applicable and appraisal rights shall be available pursuant to subsection (a) of this section for the holders of any class or series of shares where the corporate action is an interested transaction.

(c) Notwithstanding any other provision of this section, the articles of incorporation as originally filed or any amendment thereto may limit or eliminate appraisal rights for any class or series of preferred shares, except that (1) no such limitation or elimination shall be effective if the class or series does not have the right to vote separately as a voting group, alone or as part of a group, on the action or if the action is a nonprofit conversion under sections 21-2,133 to 21-2,138, or a conversion to an unincorporated entity under

sections 21-2,143 to 21-2,149, or a merger having a similar effect and (2) any such limitation or elimination contained in an amendment to the articles of incorporation that limits or eliminates appraisal rights for any of such shares that are outstanding immediately prior to the effective date of such amendment or that the corporation is or may be required to issue or sell thereafter pursuant to any conversion, exchange, or other right existing immediately before the effective date of such amendment shall not apply to any corporate action that becomes effective within one year after that date if such action would otherwise afford appraisal rights.

Source: Laws 2014, LB749, § 172.

Operative date January 1, 2016.

21-2,173 Assertion of rights by nominees and beneficial owners.

(MBCA 13.03) (a) A record shareholder may assert appraisal rights as to fewer than all the shares registered in the record shareholder's name but owned by a beneficial shareholder only if the record shareholder objects with respect to all shares of the class or series owned by the beneficial shareholder and notifies the corporation in writing of the name and address of each beneficial shareholder on whose behalf appraisal rights are being asserted. The rights of a record shareholder who asserts appraisal rights for only part of the shares held of record in the record shareholder's name under this subsection shall be determined as if the shares as to which the record shareholder objects and the record shareholder's other shares were registered in the names of different record shareholders.

(b) A beneficial shareholder may assert appraisal rights as to shares of any class or series held on behalf of the shareholder only if such shareholder:

(1) Submits to the corporation the record shareholder's written consent to the assertion of such rights no later than the date referred to in subdivision (b)(2)(ii) of section 21-2,176; and

(2) Does so with respect to all shares of the class or series that are beneficially owned by the beneficial shareholder.

Source: Laws 2014, LB749, § 173.

Operative date January 1, 2016.

SUBPART 2—PROCEDURE FOR EXERCISE OF APPRAISAL RIGHTS

21-2,174 Notice of appraisal rights.

(MBCA 13.20) (a) When any corporate action specified in subsection (a) of section 21-2,172 is to be submitted to a vote at a shareholders' meeting, the meeting notice must state that the corporation has concluded that the shareholders are, are not, or may be entitled to assert appraisal rights under sections 21-2,171 to 21-2,183. If the corporation concludes that appraisal rights are or may be available, a copy of sections 21-2,171 to 21-2,183 must accompany the meeting notice sent to those record shareholders entitled to exercise appraisal rights.

(b) In a merger pursuant to section 21-2,165, the parent corporation must notify in writing all record shareholders of the subsidiary who are entitled to assert appraisal rights that the corporate action became effective. Such notice must be sent within ten days after the corporate action became effective and include the materials described in section 21-2,176.

(c) When any corporate action specified in subsection (a) of section 21-2,172 is to be approved by written consent of the shareholders pursuant to section 21-256:

(1) Written notice that appraisal rights are, are not, or may be available must be sent to each record shareholder from whom a consent is solicited at the time consent of such shareholder is first solicited and, if the corporation has concluded that appraisal rights are or may be available, must be accompanied by a copy of sections 21-2,171 to 21-2,183; and

(2) Written notice that appraisal rights are, are not, or may be available must be delivered together with the notice to nonconsenting and nonvoting shareholders required by subsections (e) and (f) of section 21-256, may include the materials described in section 21-2,176, and, if the corporation has concluded that appraisal rights are or may be available, must be accompanied by a copy of sections 21-2,171 to 21-2,183.

(d) When corporate action described in subsection (a) of section 21-2,172 is proposed or a merger pursuant to section 21-2,165 is effected, the notice referred to in subsection (a) or (c) of this section, if the corporation concludes that appraisal rights are or may be available, and in subsection (b) of this section shall be accompanied by:

(1) The annual financial statements specified in subsection (a) of section 21-2,227 of the corporation that issued the shares that may be subject to appraisal, which shall be as of a date ending not more than sixteen months before the date of the notice and shall comply with subsection (b) of section 21-2,227, except that if such annual financial statements are not reasonably available, the corporation shall provide reasonably equivalent financial information; and

(2) The latest available quarterly financial statements of such corporation, if any.

(e) The right to receive the information described in subsection (d) of this section may be waived in writing by a shareholder before or after the corporate action.

Source: Laws 2014, LB749, § 174.

Operative date January 1, 2016.

21-2,175 Notice of intent to demand payment and consequences of voting or consenting.

(MBCA 13.21) (a) If a corporate action specified in subsection (a) of section 21-2,172 is submitted to a vote at a shareholders' meeting, a shareholder who wishes to assert appraisal rights with respect to any class or series of shares:

(1) Must deliver to the corporation, before the vote is taken, written notice of the shareholder's intent to demand payment if the proposed action is effectuated; and

(2) Must not vote, or cause or permit to be voted, any shares of such class or series in favor of the proposed action.

(b) If a corporate action specified in subsection (a) of section 21-2,172 is to be approved by less than unanimous written consent, a shareholder who wishes to assert appraisal rights with respect to any class or series of shares must not sign a consent in favor of the proposed action with respect to that class or series of shares.

(c) A shareholder who fails to satisfy the requirements of subsection (a) or (b) of this section is not entitled to payment under sections 21-2,171 to 21-2,183.

Source: Laws 2014, LB749, § 175.

Operative date January 1, 2016.

21-2,176 Appraisal notice and form.

(MBCA 13.22) (a) If a corporate action requiring appraisal rights under subsection (a) of section 21-2,172 becomes effective, the corporation must send a written appraisal notice and form required by subdivision (b)(1) of this section to all shareholders who satisfy the requirements of subsection (a) or (b) of section 21-2,175. In the case of a merger under section 21-2,165, the parent must deliver an appraisal notice and form to all record shareholders who may be entitled to assert appraisal rights.

(b) The appraisal notice must be delivered no earlier than the date the corporate action specified in subsection (a) of section 21-2,172 became effective, and no later than ten days after such date, and must:

(1) Supply a form that (i) specifies the first date of any announcement to shareholders made prior to the date the corporate action became effective of the principal terms of the proposed corporate action, (ii) if such announcement was made, requires the shareholder asserting appraisal rights to certify whether beneficial ownership of those shares for which appraisal rights are asserted was acquired before that date, and (iii) requires the shareholder asserting appraisal rights to certify that such shareholder did not vote for or consent to the transaction;

(2) State:

(i) Where the form must be sent and where certificates for certificated shares must be deposited and the date by which those certificates must be deposited, which date may not be earlier than the date for receiving the required form under subdivision (2)(ii) of this subsection;

(ii) A date by which the corporation must receive the form, which date may not be fewer than forty nor more than sixty days after the date the appraisal notice under subsection (a) of this section is sent, and state that the shareholder shall have waived the right to demand appraisal with respect to the shares unless the form is received by the corporation by such specified date;

(iii) The corporation's estimate of the fair value of the shares;

(iv) That, if requested in writing, the corporation will provide, to the shareholder so requesting within ten days after the date specified in subdivision (2)(ii) of this subsection, the number of shareholders who return the forms by the specified date and the total number of shares owned by them; and

(v) The date by which the notice to withdraw under section 21-2,177 must be received, which date must be within twenty days after the date specified in subdivision (2)(ii) of this subsection; and

(3) Be accompanied by a copy of sections 21-2,171 to 21-2,183.

Source: Laws 2014, LB749, § 176.

Operative date January 1, 2016.

21-2,177 Perfection of rights; right to withdraw.

(MBCA 13.23) (a) A shareholder who receives notice pursuant to section 21-2,176 and who wishes to exercise appraisal rights must sign and return the form sent by the corporation and, in the case of certificated shares, deposit the shareholder's certificates in accordance with the terms of the notice by the date referred to in the notice pursuant to subdivision (b)(2)(ii) of section 21-2,176. In addition, if applicable, the shareholder must certify on the form whether the beneficial owner of such shares acquired beneficial ownership of the shares before the date required to be set forth in the notice pursuant to subdivision (b)(1) of section 21-2,176. If a shareholder fails to make this certification, the corporation may elect to treat the shareholder's shares as after-acquired shares under section 21-2,179. Once a shareholder deposits that shareholder's certificates or, in the case of uncertificated shares, returns the signed forms, that shareholder loses all rights as a shareholder unless the shareholder withdraws pursuant to subsection (b) of this section.

(b) A shareholder who has complied with subsection (a) of this section may nevertheless decline to exercise appraisal rights and withdraw from the appraisal process by so notifying the corporation in writing by the date set forth in the appraisal notice pursuant to subdivision (b)(2)(v) of section 21-2,176. A shareholder who fails to so withdraw from the appraisal process may not thereafter withdraw without the corporation's written consent.

(c) A shareholder who does not sign and return the form and, in the case of certificated shares, deposit that shareholder's share certificates where required, each by the date set forth in the notice described in subsection (b) of section 21-2,176, shall not be entitled to payment under sections 21-2,171 to 21-2,183.

Source: Laws 2014, LB749, § 177.

Operative date January 1, 2016.

21-2,178 Payment.

(MBCA 13.24) (a) Except as provided in section 21-2,179, within thirty days after the form required by subdivision (b)(2)(ii) of section 21-2,176 is due, the corporation shall pay in cash to those shareholders who complied with subsection (a) of section 21-2,177 the amount the corporation estimates to be the fair value of their shares, plus interest.

(b) The payment to each shareholder pursuant to subsection (a) of this section must be accompanied by:

(1)(i) The annual financial statements specified in subsection (a) of section 21-2,227 of the corporation that issued the shares to be appraised, which shall be of a date ending not more than sixteen months before the date of payment and shall comply with subsection (b) of section 21-2,227, except that if such annual financial statements are not reasonably available, the corporation shall provide reasonably equivalent financial information, and (ii) the latest available quarterly financial statements of such corporation, if any;

(2) A statement of the corporation's estimate of the fair value of the shares, which estimate must equal or exceed the corporation's estimate given pursuant to subdivision (b)(2)(iii) of section 21-2,176; and

(3) A statement that shareholders described in subsection (a) of this section have the right to demand further payment under section 21-2,180 and that if any such shareholder does not do so within the time period specified therein, such shareholder shall be deemed to have accepted such payment in full

satisfaction of the corporation's obligations under sections 21-2,171 to 21-2,183.

Source: Laws 2014, LB749, § 178.
Operative date January 1, 2016.

21-2,179 After-acquired shares.

(MBCA 13.25) (a) A corporation may elect to withhold payment required by section 21-2,178 from any shareholder who was required to, but did not, certify that beneficial ownership of all the shareholder's shares for which appraisal rights are asserted was acquired before the date set forth in the appraisal notice sent pursuant to subdivision (b)(1) of section 21-2,176.

(b) If the corporation elected to withhold payment under subsection (a) of this section, it must, within thirty days after the form required by subdivision (b)(2)(ii) of section 21-2,176 is due, notify all shareholders who are described in subsection (a) of this section:

(1) Of the information required by subdivision (b)(1) of section 21-2,178;

(2) Of the corporation's estimate of fair value pursuant to subdivision (b)(2) of section 21-2,178;

(3) That they may accept the corporation's estimate of fair value, plus interest, in full satisfaction of their demands or demand appraisal under section 21-2,180;

(4) That those shareholders who wish to accept such offer must so notify the corporation of their acceptance of the corporation's offer within thirty days after receiving the offer; and

(5) That those shareholders who do not satisfy the requirements for demanding appraisal under section 21-2,180 shall be deemed to have accepted the corporation's offer.

(c) Within ten days after receiving the shareholder's acceptance pursuant to subsection (b) of this section, the corporation must pay in cash the amount it offered under subdivision (b)(2) of this section to each shareholder who agreed to accept the corporation's offer in full satisfaction of the shareholder's demand.

(d) Within forty days after sending the notice described in subsection (b) of this section, the corporation must pay in cash the amount it offered to pay under subdivision (b)(2) of this section to each shareholder described in subdivision (b)(5) of this section.

Source: Laws 2014, LB749, § 179.
Operative date January 1, 2016.

21-2,180 Procedure if shareholder dissatisfied with payment or offer.

(MBCA 13.26) (a) A shareholder paid pursuant to section 21-2,178 who is dissatisfied with the amount of the payment must notify the corporation in writing of that shareholder's estimate of the fair value of the shares and demand payment of that estimate plus interest, less any payment under section 21-2,178. A shareholder offered payment under section 21-2,179 who is dissatisfied with that offer must reject the offer and demand payment of the shareholder's stated estimate of the fair value of the shares plus interest.

(b) A shareholder who fails to notify the corporation in writing of that shareholder's demand to be paid the shareholder's stated estimate of the fair value plus interest under subsection (a) of this section within thirty days after receiving the corporation's payment or offer of payment under section 21-2,178 or 21-2,179, respectively, waives the right to demand payment under this section and shall be entitled only to the payment made or offered pursuant to those respective sections.

Source: Laws 2014, LB749, § 180.

Operative date January 1, 2016.

SUBPART 3—JUDICIAL APPRAISAL OF SHARES

21-2,181 Court action.

(MBCA 13.30) (a) If a shareholder makes demand for payment under section 21-2,180 which remains unsettled, the corporation shall commence a proceeding within sixty days after receiving the payment demand and petition the court to determine the fair value of the shares and accrued interest. If the corporation does not commence the proceeding within the sixty-day period, it shall pay in cash to each shareholder the amount the shareholder demanded pursuant to section 21-2,180 plus interest.

(b) The corporation shall commence the proceeding in the district court of the county where the corporation's principal office, or, if none in this state, its registered office, is located. If the corporation is a foreign corporation without a registered office in this state, it shall commence the proceeding in the county in this state where the principal office or registered office of the domestic corporation merged with the foreign corporation was located at the time of the transaction.

(c) The corporation shall make all shareholders, whether or not residents of this state, whose demands remain unsettled parties to the proceeding as in an action against their shares, and all parties must be served with a copy of the petition. Nonresidents may be served by registered or certified mail or by publication as provided by law.

(d) The jurisdiction of the court in which the proceeding is commenced under subsection (b) of this section is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value. The appraisers shall have the powers described in the order appointing them or in any amendment to it. The shareholders demanding appraisal rights are entitled to the same discovery rights as parties in other civil proceedings. There shall be no right to a jury trial.

(e) Each shareholder made a party to the proceeding is entitled to judgment (1) for the amount, if any, by which the court finds the fair value of the shareholder's shares, plus interest, exceeds the amount paid by the corporation to the shareholder for such shares or (2) for the fair value, plus interest, of the shareholder's shares for which the corporation elected to withhold payment under section 21-2,179.

Source: Laws 2014, LB749, § 181.

Operative date January 1, 2016.

21-2,182 Court costs and expenses.

(MBCA 13.31) (a) The court in an appraisal proceeding commenced under section 21-2,181 shall determine all court costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court. The court shall assess the court costs against the corporation, except that the court may assess court costs against all or some of the shareholders demanding appraisal, in amounts which the court finds equitable, to the extent the court finds such shareholders acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by sections 21-2,171 to 21-2,183.

(b) The court in an appraisal proceeding may also assess the expenses of the respective parties in amounts the court finds equitable:

(1) Against the corporation and in favor of any or all shareholders demanding appraisal if the court finds the corporation did not substantially comply with the requirements of section 21-2,174, 21-2,176, 21-2,178, or 21-2,179; or

(2) Against either the corporation or a shareholder demanding appraisal, in favor of any other party, if the court finds the party against whom expenses are assessed acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by sections 21-2,171 to 21-2,183.

(c) If the court in an appraisal proceeding finds that the expenses incurred by any shareholder were of substantial benefit to other shareholders similarly situated and that such expenses should not be assessed against the corporation, the court may direct that such expenses be paid out of the amounts awarded the shareholders who were benefited.

(d) To the extent the corporation fails to make a required payment pursuant to section 21-2,178, 21-2,179, or 21-2,180, the shareholder may sue directly for the amount owed and, to the extent successful, shall be entitled to recover from the corporation all expenses of the suit.

Source: Laws 2014, LB749, § 182.

Operative date January 1, 2016.

SUBPART 4—OTHER REMEDIES

21-2,183 Other remedies limited.

(MBCA 13.40) (a) The legality of a proposed or completed corporate action described in subsection (a) of section 21-2,172 may not be contested, nor may the corporate action be enjoined, set aside, or rescinded, in a legal or equitable proceeding by a shareholder after the shareholders have approved the corporate action.

(b) Subsection (a) of this section does not apply to a corporate action that:

(1) Was not authorized and approved in accordance with the applicable provisions of:

(i) Sections 21-2,125 to 21-2,170;

(ii) The articles of incorporation or bylaws; or

(iii) The resolution of the board of directors authorizing the corporate action;

(2) Was procured as a result of fraud, a material misrepresentation, or an omission of a material fact necessary to make statements made, in light of the circumstances in which they were made, not misleading;

(3) Is an interested transaction, unless it has been recommended by the board of directors in the same manner as is provided in section 21-2,122 and has been approved by the shareholders in the same manner as is provided in section

21-2,123 as if the interested transaction were a director's conflicting interest transaction; or

(4) Is approved by less than unanimous consent of the voting shareholders pursuant to section 21-256 if:

(i) The challenge to the corporate action is brought by a shareholder who did not consent and as to whom notice of the approval of the corporate action was not effective at least ten days before the corporate action was effected; and

(ii) The proceeding challenging the corporate action is commenced within ten days after notice of the approval of the corporate action is effective as to the shareholder bringing the proceeding.

Source: Laws 2014, LB749, § 183.

Operative date January 1, 2016.

PART 14—DISSOLUTION

SUBPART 1—VOLUNTARY DISSOLUTION

21-2,184 Dissolution by incorporators or initial directors.

(MBCA 14.01) A majority of the incorporators or initial directors of a corporation that has not issued shares or has not commenced business may dissolve the corporation by delivering to the Secretary of State for filing articles of dissolution that set forth:

(1) The name of the corporation;

(2) The date of its incorporation;

(3) Either (i) that none of the corporation's shares has been issued or (ii) that the corporation has not commenced business;

(4) That no debt of the corporation remains unpaid;

(5) That the net assets of the corporation remaining after winding up have been distributed to the shareholders, if shares were issued; and

(6) That a majority of the incorporators or initial directors authorized the dissolution.

Source: Laws 2014, LB749, § 184.

Operative date January 1, 2016.

21-2,185 Dissolution by board of directors and shareholders.

(MBCA 14.02) (a) A corporation's board of directors may propose dissolution for submission to the shareholders.

(b) For a proposal to dissolve to be adopted:

(1) The board of directors must recommend dissolution to the shareholders unless (i) the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation or (ii) section 21-2,101 applies. If either subdivision (1)(i) or (ii) of this subsection applies, it must communicate the basis for so proceeding; and

(2) The shareholders entitled to vote must approve the proposal to dissolve as provided in subsection (e) of this section.

(c) The board of directors may condition its submission of the proposal for dissolution on any basis.

(d) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider dissolving the corporation.

(e) Unless the articles of incorporation or the board of directors acting pursuant to subsection (c) of this section require a greater vote, a greater number of shares to be present, or a vote by voting groups, adoption of the proposal to dissolve shall require the approval of the shareholders at a meeting at which a quorum consisting of at least a majority of the votes entitled to be cast exists.

Source: Laws 2014, LB749, § 185.

Operative date January 1, 2016.

21-2,186 Articles of dissolution.

(MBCA 14.03) (a) At any time after dissolution is authorized, the corporation may dissolve by delivering to the Secretary of State for filing articles of dissolution setting forth:

- (1) The name of the corporation;
- (2) The date dissolution was authorized; and

(3) If dissolution was approved by the shareholders, a statement that the proposal to dissolve was duly approved by the shareholders in the manner required by the Nebraska Model Business Corporation Act and by the articles of incorporation.

(b) A corporation is dissolved upon the effective date of its articles of dissolution.

(c) For purposes of sections 21-2,184 to 21-2,192, dissolved corporation means a corporation whose articles of dissolution have become effective and includes a successor entity to which the remaining assets of the corporation are transferred subject to its liabilities for purposes of liquidation.

Source: Laws 2014, LB749, § 186.

Operative date January 1, 2016.

21-2,187 Revocation of dissolution.

(MBCA 14.04) (a) A corporation may revoke its dissolution within one hundred twenty days of its effective date.

(b) Revocation of dissolution must be authorized in the same manner as the dissolution was authorized unless that authorization permitted revocation by action of the board of directors alone, in which event the board of directors may revoke the dissolution without shareholder action.

(c) After the revocation of dissolution is authorized, the corporation may revoke the dissolution by delivering to the Secretary of State for filing articles of revocation of dissolution, together with a copy of its articles of dissolution, that set forth:

- (1) The name of the corporation;
- (2) The effective date of the dissolution that was revoked;
- (3) The date that the revocation of dissolution was authorized;

(4) If the corporation's board of directors, or incorporators, revoked the dissolution, a statement to that effect;

(5) If the corporation's board of directors revoked a dissolution authorized by the shareholders, a statement that revocation was permitted by action by the board of directors alone pursuant to that authorization; and

(6) If shareholder action was required to revoke the dissolution, the information required by subdivision (a)(3) of section 21-2,186.

(d) Revocation of dissolution is effective upon the effective date of the articles of revocation of dissolution.

(e) When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution and the corporation resumes carrying on its business as if dissolution had never occurred.

Source: Laws 2014, LB749, § 187.

Operative date January 1, 2016.

21-2,188 Effect of dissolution.

(MBCA 14.05) (a) A dissolved corporation continues its corporate existence but may not carry on any business except that appropriate to wind up and liquidate its business and affairs, including:

(1) Collecting its assets;

(2) Disposing of its properties that will not be distributed in kind to its shareholders;

(3) Discharging or making provision for discharging its liabilities;

(4) Distributing its remaining property among its shareholders according to their interests; and

(5) Doing every other act necessary to wind up and liquidate its business and affairs.

(b) Dissolution of a corporation does not:

(1) Transfer title to the corporation's property;

(2) Prevent transfer of its shares or securities, although the authorization to dissolve may provide for closing the corporation's share transfer records;

(3) Subject its directors or officers to standards of conduct different from those prescribed in sections 21-284 to 21-2,124;

(4) Change quorum or voting requirements for its board of directors or shareholders; change provisions for selection, resignation, or removal of its directors or officers or both; or change provisions for amending its bylaws;

(5) Prevent commencement of a proceeding by or against the corporation in its corporate name;

(6) Abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution; or

(7) Terminate the authority of the registered agent of the corporation.

Source: Laws 2014, LB749, § 188.

Operative date January 1, 2016.

21-2,189 Known claims against dissolved corporation.

(MBCA 14.06) (a) A dissolved corporation may dispose of the known claims against it by notifying its known claimants in writing of the dissolution at any time after its effective date.

(b) The written notice must:

(1) Describe information that must be included in a claim;

(2) Provide a mailing address where a claim may be sent;

(3) State the deadline, which may not be fewer than one hundred twenty days after the effective date of the written notice, by which the dissolved corporation must receive the claim; and

(4) State that the claim will be barred if not received by the deadline.

(c) A claim against the dissolved corporation is barred:

(1) If a claimant who was given written notice under subsection (b) of this section does not deliver the claim to the dissolved corporation by the deadline; or

(2) If a claimant whose claim was rejected by the dissolved corporation does not commence a proceeding to enforce the claim within ninety days after the effective date of the rejection notice.

(d) For purposes of this section, claim does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

Source: Laws 2014, LB749, § 189.

Operative date January 1, 2016.

21-2,190 Other claims against dissolved corporation.

(MBCA 14.07) (a) A dissolved corporation may also publish notice of its dissolution and request that persons with claims against the dissolved corporation present them in accordance with the notice.

(b) The notice must:

(1) Be published one time in a newspaper of general circulation in the county where the dissolved corporation's principal office, or, if none in this state, its registered office, is or was last located;

(2) Describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and

(3) State that a claim against the dissolved corporation will be barred unless a proceeding to enforce the claim is commenced within three years after the publication of the notice.

(c) If the dissolved corporation publishes a newspaper notice in accordance with subsection (b) of this section, the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation within three years after the publication date of the newspaper notice:

(1) A claimant who was not given written notice under section 21-2,189;

(2) A claimant whose claim was timely sent to the dissolved corporation but not acted on; or

(3) A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(d) A claim that is not barred by subsection (b) of section 21-2,189 or subsection (c) of this section may be enforced:

(1) Against the dissolved corporation to the extent of its undistributed assets; or

(2) Except as provided in subsection (d) of section 21-2,191, if the assets have been distributed in liquidation, against a shareholder of the dissolved corporation to the extent of the shareholder's pro rata share of the claim or the corporate assets distributed to the shareholder in liquidation, whichever is less, but a shareholder's total liability for all claims under this section may not exceed the total amount of assets distributed to the shareholder.

Source: Laws 2014, LB749, § 190.

Operative date January 1, 2016.

21-2,191 Court proceedings.

(MBCA 14.08) (a) A dissolved corporation that has published a notice under section 21-2,190 may file an application with the district court of the county where the dissolved corporation's principal office, or, if none in this state, its registered office, is located for a determination of the amount and form of security to be provided for payment of claims that are contingent or have not been made known to the dissolved corporation or that are based on an event occurring after the effective date of dissolution but that, based on the facts known to the dissolved corporation, are reasonably estimated to arise after the effective date of dissolution. Provision need not be made for any claim that is or is reasonably anticipated to be barred under subsection (c) of section 21-2,190.

(b) Within ten days after the filing of the application, notice of the proceeding shall be given by the dissolved corporation to each claimant holding a contingent claim whose contingent claim is shown on the records of the dissolved corporation.

(c) The court may appoint a guardian ad litem to represent all claimants whose identities are unknown in any proceeding brought under this section. The reasonable fees and expenses of such guardian, including all reasonable expert witness fees, shall be paid by the dissolved corporation.

(d) Provision by the dissolved corporation for security in the amount and the form ordered by the court under subsection (a) of this section shall satisfy the dissolved corporation's obligations with respect to claims that are contingent, have not been made known to the dissolved corporation, or are based on an event occurring after the effective date of dissolution, and such claims may not be enforced against a shareholder who received assets in liquidation.

Source: Laws 2014, LB749, § 191.

Operative date January 1, 2016.

21-2,192 Director duties.

(MBCA 14.09) (a) Directors shall cause the dissolved corporation to discharge or make reasonable provision for the payment of claims and make distributions of assets to shareholders after payment or provision for claims.

(b) Directors of a dissolved corporation which has disposed of claims under section 21-2,189, 21-2,190, or 21-2,191 shall not be liable for breach of subsection (a) of this section with respect to claims against the dissolved

corporation that are barred or satisfied under section 21-2,189, 21-2,190, or 21-2,191.

Source: Laws 2014, LB749, § 192.

Operative date January 1, 2016.

SUBPART 2—ADMINISTRATIVE DISSOLUTION

21-2,193 Grounds for administrative dissolution.

(MBCA 14.20) The Secretary of State may commence a proceeding under section 21-2,194 to administratively dissolve a corporation if:

(1) The corporation is without a registered agent or registered office in this state for sixty days or more;

(2) The corporation does not notify the Secretary of State within sixty days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued; or

(3) The corporation's period of duration stated in its articles of incorporation expires.

Source: Laws 2014, LB749, § 193.

Operative date January 1, 2016.

21-2,194 Procedure for and effect of administrative dissolution.

(MBCA 14.21) (a) If the Secretary of State determines that one or more grounds exist under section 21-2,193 for dissolving a corporation, the Secretary of State shall serve the corporation with written notice of such determination under section 21-236.

(b) If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within sixty days after service of the notice is perfected under section 21-236, the Secretary of State shall administratively dissolve the corporation by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The Secretary of State shall file the original of the certificate and serve a copy on the corporation under section 21-236.

(c) A corporation administratively dissolved continues its corporate existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs under section 21-2,188 and notify claimants under sections 21-2,189 and 21-2,190.

(d) The administrative dissolution of a corporation does not terminate the authority of its registered agent.

Source: Laws 2014, LB749, § 194.

Operative date January 1, 2016.

21-2,195 Reinstatement following administrative dissolution.

(MBCA 14.22) (a) A corporation administratively dissolved under section 21-2,194 may apply to the Secretary of State for reinstatement within five years after the effective date of dissolution. The application must:

(1) Recite the name of the corporation and the effective date of its administrative dissolution;

(2) State that the ground or grounds for dissolution either did not exist or have been eliminated; and

(3) State that the corporation's name satisfies the requirements of section 21-230.

(b) If the Secretary of State determines (1) that the application contains the information required by subsection (a) of this section and that the information is correct and (2) that the corporation has paid to the Secretary of State all delinquent fees and has delivered to the Secretary of State a properly executed and signed biennial report, the Secretary of State shall cancel the certificate of dissolution and prepare a certificate of reinstatement that recites such determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation under section 21-236.

(c) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the corporation resumes carrying on its business as if the administrative dissolution had never occurred.

Source: Laws 2014, LB749, § 195.

Operative date January 1, 2016.

21-2,196 Appeal from denial of reinstatement.

(MBCA 14.23) (a) If the Secretary of State denies a corporation's application for reinstatement following administrative dissolution, the Secretary of State shall serve the corporation under section 21-236 with a written notice that explains the reason or reasons for denial.

(b) The corporation may appeal the denial of reinstatement to the district court of Lancaster County within thirty days after service of the notice of denial is perfected. The corporation appeals by petitioning the court to set aside the dissolution and attaching to the petition copies of the Secretary of State's certificate of dissolution, the corporation's application for reinstatement, and the Secretary of State's notice of denial.

(c) The court may summarily order the Secretary of State to reinstate the dissolved corporation or may take other action the court considers appropriate.

(d) The court's final decision may be appealed as in other civil proceedings.

Source: Laws 2014, LB749, § 196.

Operative date January 1, 2016.

SUBPART 3—JUDICIAL DISSOLUTION

21-2,197 Grounds for judicial dissolution.

(MBCA 14.30) (a) Except as provided in subdivision (2)(ii) of this subsection, the court may dissolve a corporation:

(1) In a proceeding by the Attorney General if it is established that:

(i) The corporation obtained its articles of incorporation through fraud; or

(ii) The corporation has continued to exceed or abuse the authority conferred upon it by law;

(2)(i) In a proceeding by a shareholder if it is established that:

(A) The directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and irreparable injury to the corporation is threatened or being suffered or the business and affairs of the

corporation can no longer be conducted to the advantage of the shareholders generally because of the deadlock;

(B) The directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent;

(C) The shareholders are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired; or

(D) The corporate assets are being misapplied or wasted; and

(ii) The right to bring a proceeding under this subdivision does not apply to shareholders of a bank, trust company, or stock-owned savings and loan associations;

(3) In a proceeding by a creditor if it is established that:

(i) The creditor's claim has been reduced to judgment, the execution on the judgment returned unsatisfied, and the corporation is insolvent; or

(ii) The corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent;

(4) In a proceeding by the corporation to have its voluntary dissolution continued under court supervision; or

(5) In a proceeding by a shareholder if the corporation has abandoned its business and has failed within a reasonable time to liquidate and distribute its assets and dissolve.

(b) Subdivision (a)(2) of this section shall not apply in the case of a corporation that, on the date of the filing of the proceeding, has shares which are:

(1) Listed on the New York Stock Exchange, the American Stock Exchange, or on any exchange owned or operated by the NASDAQ Stock Market LLC, or listed or quoted on a system owned or operated by the National Association of Securities Dealers, Inc.; or

(2) Not so listed or quoted, but are held by at least three hundred shareholders and the shares outstanding have a market value of at least twenty million dollars, exclusive of the value of such shares held by the corporation's subsidiaries, senior executives, directors, and beneficial shareholders owning more than ten percent of such shares.

(c) In this section, beneficial shareholder has the meaning specified in subdivision (2) of section 21-2,171.

Source: Laws 2014, LB749, § 197.

Operative date January 1, 2016.

21-2,198 Procedure for judicial dissolution.

(MBCA 14.31) (a) Venue for a proceeding by the Attorney General to dissolve a corporation lies in the district court of Lancaster County. Venue for a proceeding brought by any other party named in subsection (a) of section 21-2,197 lies in the district court of the county where a corporation's principal office, or, if none in this state, its registered office, is or was last located.

(b) It is not necessary to make shareholders parties to a proceeding to dissolve a corporation unless relief is sought against them individually.

(c) A court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver or custodian pendente lite with all powers and

duties the court directs, take other action required to preserve the corporate assets wherever located, and carry on the business of the corporation until a full hearing can be held.

(d) Within ten days of the commencement of a proceeding to dissolve a corporation under subdivision (a)(2) of section 21-2,197, the corporation must send to all shareholders, other than the petitioner, a notice stating that the shareholders are entitled to avoid the dissolution of the corporation by electing to purchase the petitioner's shares under section 21-2,201 and accompanied by a copy of section 21-2,201.

Source: Laws 2014, LB749, § 198.

Operative date January 1, 2016.

21-2,199 Receivership or custodianship.

(MBCA 14.32) (a) Unless an election to purchase has been filed under section 21-2,201, a court in a judicial proceeding brought to dissolve a corporation may appoint one or more receivers to wind up and liquidate, or one or more custodians to manage, the business and affairs of the corporation. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has jurisdiction over the corporation and all of its property wherever located.

(b) The court may appoint an individual or a domestic or foreign corporation, authorized to transact business in this state, as a receiver or custodian. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

(c) The court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended from time to time. Among other powers:

(1) The receiver (i) may dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court, and (ii) may sue and defend in his or her own name as receiver of the corporation in all courts of this state; and

(2) The custodian may exercise all of the powers of the corporation, through or in place of its board of directors, to the extent necessary to manage the affairs of the corporation in the best interests of its shareholders and creditors.

(d) The court during a receivership may redesignate the receiver a custodian, and during a custodianship may redesignate the custodian a receiver, if doing so is in the best interests of the corporation, its shareholders, and creditors.

(e) The court from time to time during the receivership or custodianship may order compensation paid and expenses paid or reimbursed to the receiver or custodian from the assets of the corporation or proceeds from the sale of the assets.

Source: Laws 2014, LB749, § 199.

Operative date January 1, 2016.

21-2,200 Decree of dissolution.

(MBCA 14.33) (a) If after a hearing the court determines that one or more grounds for judicial dissolution described in section 21-2,197 exist, it may enter a decree dissolving the corporation and specifying the effective date of the

dissolution, and the clerk of the court shall deliver a certified copy of the decree to the Secretary of State who shall file it.

(b) After entering the decree of dissolution, the court shall direct the winding-up and liquidation of the corporation's business and affairs in accordance with section 21-2,188 and the notification of claimants in accordance with sections 21-2,189 and 21-2,190.

Source: Laws 2014, LB749, § 200.

Operative date January 1, 2016.

21-2,201 Election to purchase in lieu of dissolution.

(MBCA 14.34) (a) In a proceeding under subdivision (a)(2) of section 21-2,197 to dissolve a corporation, the corporation may elect or, if it fails to elect, one or more shareholders may elect to purchase all shares owned by the petitioning shareholder at the fair value of the shares. An election pursuant to this section shall be irrevocable unless the court determines that it is equitable to set aside or modify the election.

(b) An election to purchase pursuant to this section may be filed with the court at any time within ninety days after the filing of the petition under subdivision (a)(2) of section 21-2,197 or at such later time as the court in its discretion may allow. If the election to purchase is filed by one or more shareholders, the corporation shall, within ten days thereafter, give written notice to all shareholders, other than the petitioner. The notice must state the name and number of shares owned by the petitioner and the name and number of shares owned by each electing shareholder and must advise the recipients of their right to join in the election to purchase shares in accordance with this section. Shareholders who wish to participate must file notice of their intention to join in the purchase no later than thirty days after the effective date of the notice to them. All shareholders who have filed an election or notice of their intention to participate in the election to purchase thereby become parties to the proceeding and shall participate in the purchase in proportion to their ownership of shares as of the date the first election was filed, unless they otherwise agree or the court otherwise directs. After an election has been filed by the corporation or one or more shareholders, the proceeding under subdivision (a)(2) of section 21-2,197 may not be discontinued or settled, nor may the petitioning shareholder sell or otherwise dispose of his or her shares, unless the court determines that it would be equitable to the corporation and the shareholders, other than the petitioner, to permit such discontinuance, settlement, sale, or other disposition.

(c) If, within sixty days of the filing of the first election, the parties reach agreement as to the fair value and terms of purchase of the petitioner's shares, the court shall enter an order directing the purchase of petitioner's shares upon the terms and conditions agreed to by the parties.

(d) If the parties are unable to reach an agreement as provided for in subsection (c) of this section, the court, upon application of any party, shall stay the proceedings under subdivision (a)(2) of section 21-2,197 and determine the fair value of the petitioner's shares as of the day before the date on which the petition under subdivision (a)(2) of section 21-2,197 was filed or as of such other date as the court deems appropriate under the circumstances.

(e) Upon determining the fair value of the shares, the court shall enter an order directing the purchase upon such terms and conditions as the court

deems appropriate, which may include payment of the purchase price in installments, where necessary in the interests of equity, provision for security to assure payment of the purchase price and any additional expenses as may have been awarded, and, if the shares are to be purchased by shareholders, the allocation of shares among them. In allocating petitioner's shares among holders of different classes of shares, the court should attempt to preserve the existing distribution of voting rights among holders of different classes insofar as practicable and may direct that holders of a specific class or classes shall not participate in the purchase. Interest may be allowed at the rate specified in section 45-104, as such rate may from time to time be adjusted by the Legislature, and from the date determined by the court to be equitable, but if the court finds that the refusal of the petitioning shareholder to accept an offer of payment was arbitrary or otherwise not in good faith, no interest shall be allowed. If the court finds that the petitioning shareholder had probable grounds for relief under subdivision (a)(2)(i)(B) or (D) of section 21-2,197, it may award expenses to the petitioning shareholder.

(f) Upon entry of an order under subsection (c) or (e) of this section, the court shall dismiss the petition to dissolve the corporation under subdivision (a)(2) of section 21-2,197, and the petitioning shareholder shall no longer have any rights or status as a shareholder of the corporation, except the right to receive the amounts awarded by the order of the court which shall be enforceable in the same manner as any other judgment.

(g) The purchase ordered pursuant to subsection (e) of this section shall be made within ten days after the date the order becomes final unless before that time the corporation files with the court a notice of its intention to adopt articles of dissolution pursuant to sections 21-2,185 and 21-2,186, which articles must then be adopted and filed within fifty days thereafter. Upon filing of such articles of dissolution, the corporation shall be dissolved in accordance with the provisions of sections 21-2,188 to 21-2,190, and the order entered pursuant to subsection (e) of this section shall no longer be of any force or effect, except that the court may award the petitioning shareholder expenses in accordance with the provisions of the last sentence of subsection (e) of this section and the petitioner may continue to pursue any claims previously asserted on behalf of the corporation.

(h) Any payment by the corporation pursuant to an order under subsection (c) or (e) of this section, other than an award of expenses pursuant to subsection (e) of this section, is subject to the provisions of section 21-252.

Source: Laws 2014, LB749, § 201.

Operative date January 1, 2016.

SUBPART 4—MISCELLANEOUS

21-2,202 Deposit with State Treasurer.

(MBCA 14.40) Assets of a dissolved corporation that should be transferred to a creditor, claimant, or shareholder of the corporation who cannot be found or who is not competent to receive them shall be reduced to cash and deposited with the State Treasurer in accordance with the Uniform Disposition of Unclaimed Property Act. When the creditor, claimant, or shareholder furnishes satisfactory proof of entitlement to the amount deposited, the State Treasurer

shall pay such person or his or her representative that amount in accordance with the act.

Source: Laws 2014, LB749, § 202.
Operative date January 1, 2016.

Cross References

Uniform Disposition of Unclaimed Property Act, see section 69-1329.

PART 15—FOREIGN CORPORATIONS

SUBPART 1—CERTIFICATE OF AUTHORITY

21-2,203 Authority to transact business required.

(MBCA 15.01) (a) A foreign corporation may not transact business in this state until it obtains a certificate of authority from the Secretary of State.

(b) The following activities, among others, do not constitute transacting business within the meaning of subsection (a) of this section:

- (1) Maintaining, defending, or settling any proceeding;
- (2) Holding meetings of the board of directors or shareholders or carrying on other activities concerning internal corporate affairs;
- (3) Maintaining bank accounts;
- (4) Maintaining offices or agencies for the transfer, exchange, and registration of the corporation's own securities or maintaining trustees or depositories with respect to those securities;
- (5) Selling through independent contractors;
- (6) Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;
- (7) Creating or acquiring indebtedness, mortgages, and security interests in real or personal property;
- (8) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts;
- (9) Owning, without more, real or personal property;
- (10) Conducting an isolated transaction that is completed within thirty days and that is not one in the course of repeated transactions of a like nature;
- (11) Transacting business in interstate commerce; or
- (12) Acting as a foreign corporate trustee to the extent authorized under section 30-3820.

(c) The list of activities in subsection (b) of this section is not exhaustive.

(d) The requirements of the Nebraska Model Business Corporation Act are not applicable to foreign or alien insurers which are subject to the requirements of Chapter 44.

Source: Laws 2014, LB749, § 203.
Operative date January 1, 2016.

21-2,204 Consequences of transacting business without authority.

(MBCA 15.02) (a) A foreign corporation transacting business in this state without a certificate of authority may not maintain a proceeding in any court in this state until it obtains a certificate of authority.

(b) The successor to a foreign corporation that transacted business in this state without a certificate of authority and the assignee of a cause of action arising out of that business may not maintain a proceeding based on that cause of action in any court in this state until the foreign corporation or its successor obtains a certificate of authority.

(c) A court may stay a proceeding commenced by a foreign corporation, its successor, or assignee until it determines whether the foreign corporation or its successor requires a certificate of authority. If it so determines, the court may further stay the proceeding until the foreign corporation or its successor obtains the certificate.

(d) A foreign corporation is liable for a civil penalty of five hundred dollars for each day, but not to exceed a total of ten thousand dollars for each year, it transacts business in this state without a certificate of authority. The Attorney General may collect all penalties due under this subsection and shall remit them to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

(e) Notwithstanding subsections (a) and (b) of this section, the failure of a foreign corporation to obtain a certificate of authority does not impair the validity of its corporate acts or prevent it from defending any proceeding in this state.

Source: Laws 2014, LB749, § 204.

Operative date January 1, 2016.

21-2,205 Application for certificate of authority.

(MBCA 15.03) (a) A foreign corporation may apply for a certificate of authority to transact business in this state by delivering an application to the Secretary of State for filing. The application must set forth:

(1) The name of the foreign corporation or, if its name is unavailable for use in this state, a corporate name that satisfies the requirements of section 21-2,208;

(2) The name of the state or country under whose law it is incorporated;

(3) Its date of incorporation and period of duration;

(4) The street address of its principal office;

(5) The street address of its registered office in this state and the name of its current registered agent at that office. A post office box number may be provided in addition to the street address; and

(6) The names and street addresses of its current directors and officers.

(b) The foreign corporation shall deliver with the completed application a certificate of existence, or a document of similar import, duly authenticated by the secretary of state or other official having custody of corporate records in the state or country under whose law it is incorporated. Such certificate or document shall not bear a date of more than sixty days prior to the date the application is delivered.

Source: Laws 2014, LB749, § 205.

Operative date January 1, 2016.

21-2,206 Amended certificate of authority.

(MBCA 15.04) (a) A foreign corporation authorized to transact business in this state must obtain an amended certificate of authority from the Secretary of State if it changes:

- (1) Its corporate name;
- (2) The period of its duration; or
- (3) The state or country of its incorporation.

(b) The requirements of section 21-2,205 for obtaining an original certificate of authority apply to obtaining an amended certificate under this section.

Source: Laws 2014, LB749, § 206.

Operative date January 1, 2016.

21-2,207 Effect of certificate of authority.

(MBCA 15.05) (a) A certificate of authority authorizes the foreign corporation to which it is issued to transact business in this state subject, however, to the right of the state to revoke the certificate as provided in the Nebraska Model Business Corporation Act.

(b) A foreign corporation with a valid certificate of authority has the same but no greater rights and has the same but no greater privileges as and, except as otherwise provided by the Nebraska Model Business Corporation Act, is subject to the same duties, restrictions, penalties, and liabilities now or later imposed on a domestic corporation of like character.

(c) The Nebraska Model Business Corporation Act does not authorize this state to regulate the organization or internal affairs of a foreign corporation authorized to transact business in this state.

Source: Laws 2014, LB749, § 207.

Operative date January 1, 2016.

21-2,208 Corporate name of foreign corporation.

(MBCA 15.06) (a) If the corporate name of a foreign corporation does not satisfy the requirements of section 21-230, the foreign corporation to obtain or maintain a certificate of authority to transact business in this state:

(1) May add to its corporate name for use in this state the word corporation, incorporated, company, or limited, or the abbreviation corp., inc., co., or ltd.; or

(2) May use a fictitious name to transact business in this state if its real name is unavailable and it delivers to the Secretary of State for filing a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious name.

(b) Except as authorized by subsections (c) and (d) of this section, the corporate name, including a fictitious name, of a foreign corporation must not be deceptively similar to, upon the records of the Secretary of State:

(1) The corporate name of a corporation incorporated or authorized to transact business in this state;

(2) A corporate name reserved or registered under section 21-231 or 21-232;

(3) The fictitious name of another foreign corporation authorized to transact business in this state;

(4) The corporate name of a not-for-profit corporation incorporated or authorized to transact business in this state;

(5) A trade name registered in this state pursuant to sections 87-208 to 87-219.01; and

(6) Any other business entity name registered or filed with the Secretary of State pursuant to the law of this state.

(c) A foreign corporation may apply to the Secretary of State for authorization to use in this state the name of another corporation or business entity, incorporated or authorized to transact business in this state, that is deceptively similar to, upon the records of the Secretary of State, the name applied for. The Secretary of State shall authorize use of the name applied for if:

(1) The other corporation or business entity consents to the use in writing; or

(2) The applicant delivers to the Secretary of State a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(d) A foreign corporation may use in this state the name, including the fictitious name, of another domestic or foreign corporation or business entity that is used in this state if the other corporation or business entity is incorporated or authorized to transact business in this state and the foreign corporation:

(1) Has merged with the other corporation or business entity;

(2) Has been formed by reorganization of the other corporation or business entity; or

(3) Has acquired all or substantially all of the assets, including the corporate name, of the other corporation or business entity.

(e) If a foreign corporation authorized to transact business in this state changes its corporate name to one that does not satisfy the requirements of section 21-230, it may not transact business in this state under the changed name until it adopts a name satisfying the requirements of section 21-230 and obtains an amended certificate of authority under section 21-2,206.

Source: Laws 2014, LB749, § 208.

Operative date January 1, 2016.

21-2,209 Registered office and registered agent of foreign corporation.

(MBCA 15.07) Each foreign corporation authorized to transact business in this state must continuously maintain in this state:

(1) A registered office that may be the same as any of its places of business; and

(2) A registered agent, who may be:

(i) An individual who resides in this state and whose business office is identical with the registered office;

(ii) A domestic corporation or not-for-profit domestic corporation whose business office is identical with the registered office; or

(iii) A foreign corporation or foreign not-for-profit corporation authorized to transact business in this state whose business office is identical with the registered office.

Source: Laws 2014, LB749, § 209.

Operative date January 1, 2016.

21-2,210 Change of registered office or registered agent of foreign corporation.

(MBCA 15.08) (a) A foreign corporation authorized to transact business in this state may change its registered office or registered agent by delivering to the Secretary of State for filing a statement of change that sets forth:

- (1) Its name;
- (2) The street address of its current registered office;
- (3) If the current registered office is to be changed, the street address of its new registered office;
- (4) The name and street address of its current registered agent. A post office box number may be provided in addition to the street address;
- (5) If the current registered agent is to be changed, the name of its new registered agent and the new agent's written consent, either on the statement or attached to it, to the appointment; and

(6) That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

(b) If the street address or post office box number of a registered agent's business office changes, the agent may change the street address or post office box number of the registered office of any foreign corporation for which the person is the registered agent by notifying the corporation in writing of the change, and signing and delivering to the Secretary of State for filing a statement of change that complies with the requirements of subsection (a) of this section and recites that the corporation has been notified of the change.

Source: Laws 2014, LB749, § 210.

Operative date January 1, 2016.

21-2,211 Resignation of registered agent of foreign corporation.

(MBCA 15.09) (a) The registered agent of a foreign corporation may resign the agency appointment by signing and delivering to the Secretary of State for filing the signed original and two exact or conformed copies of a statement of resignation. The statement of resignation may include a statement that the registered office is also discontinued.

(b) After filing the statement, the Secretary of State shall attach the filing receipt to one copy and mail the copy and receipt to the registered office if not discontinued. The Secretary of State shall mail the other copy to the foreign corporation at its principal office address shown in its most recent biennial report.

(c) The agency appointment is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.

Source: Laws 2014, LB749, § 211.

Operative date January 1, 2016.

21-2,212 Service on foreign corporation.

(MBCA 15.10) (a) The registered agent of a foreign corporation authorized to transact business in this state is the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the foreign corporation. By being authorized to transact business in this state, the foreign

corporation's agent for service of process also consents to service of process directed to the foreign corporation's agent in this state for a search warrant issued pursuant to sections 28-807 to 28-829, or for any other validly issued and properly served subpoena, including those authorized under section 86-2,112, for records or documents that are in the possession of the foreign corporation and are located inside or outside of this state. The consent to service of a subpoena or search warrant applies to a foreign corporation that is a party or nonparty to the matter for which the search warrant is sought.

(b) A foreign corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the foreign corporation or the designated custodian of records at its principal office shown in its application for a certificate of authority or in its most recent biennial report if the foreign corporation:

(1) Has no registered agent or its registered agent cannot with reasonable diligence be served;

(2) Has withdrawn from transacting business in this state under section 21-2,213; or

(3) Has had its certificate of authority revoked under section 21-2,218.

(c) Service is perfected under subsection (b) of this section at the earliest of:

(1) The date the foreign corporation receives the mail;

(2) The date shown on the return receipt, if signed on behalf of the foreign corporation; or

(3) Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.

(d) This section does not prescribe the only means, or necessarily the required means, of serving a foreign corporation.

Source: Laws 2014, LB749, § 212.

Operative date January 1, 2016.

SUBPART 2—WITHDRAWAL OR TRANSFER OF AUTHORITY

21-2,213 Withdrawal of foreign corporation.

(MBCA 15.20) (a) A foreign corporation authorized to transact business in this state may not withdraw from this state until it obtains a certificate of withdrawal from the Secretary of State.

(b) A foreign corporation authorized to transact business in this state may apply for a certificate of withdrawal by delivering an application to the Secretary of State for filing. The application must set forth:

(1) The name of the foreign corporation and the name of the state or country under whose law it is incorporated;

(2) That it is not transacting business in this state and that it surrenders its authority to transact business in this state;

(3) That it revokes the authority of its registered agent to accept service on its behalf and consents that service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in this state may thereafter be made on such corporation outside this state; and

(4) A mailing address at which process against the corporation may be served.

Source: Laws 2014, LB749, § 213.
Operative date January 1, 2016.

21-2,214 Automatic withdrawal upon certain conversions.

(MBCA 15.21) A foreign corporation authorized to transact business in this state that converts to a domestic nonprofit corporation or any form of domestic filing entity shall be deemed to have withdrawn on the effective date of the conversion.

Source: Laws 2014, LB749, § 214.
Operative date January 1, 2016.

21-2,215 Withdrawal upon conversion to a nonfiling entity.

(MBCA 15.22) (a) A foreign corporation authorized to transact business in this state that converts to a domestic or foreign nonfiling entity shall apply for a certificate of withdrawal by delivering an application to the Secretary of State for filing. The application must set forth:

(1) The name of the foreign corporation and the name of the state or country under whose law it was incorporated before the conversion;

(2) That it surrenders its authority to transact business in this state as a foreign corporation;

(3) The type of unincorporated entity to which it has been converted and the jurisdiction whose laws govern its internal affairs; and

(4) If it has been converted to a foreign unincorporated entity:

(i) That it revokes the authority of its registered agent to accept service on its behalf and consents that service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in this state may thereafter be made on such foreign unincorporated entity outside this state; and

(ii) A mailing address at which process against the foreign unincorporated entity may be served.

(b) After the withdrawal under this section of a corporation that has converted to a domestic unincorporated entity is effective, service of process shall be made on the unincorporated entity in accordance with the regular procedures for service of process on the form of unincorporated entity to which the corporation was converted.

Source: Laws 2014, LB749, § 215.
Operative date January 1, 2016.

21-2,216 Transfer of authority.

(MBCA 15.23) (a) A foreign business corporation authorized to transact business in this state that converts to a foreign nonprofit corporation or to any form of foreign unincorporated entity that is required to obtain a certificate of authority or make a similar type of filing with the Secretary of State if it transacts business in this state shall file with the Secretary of State an application for transfer of authority signed by any officer or other duly authorized representative. The application shall set forth:

- (1) The name of the corporation;
 - (2) The type of unincorporated entity to which it has been converted and the jurisdiction whose laws govern its internal affairs; and
 - (3) Any other information that would be required in a filing under the laws of this state by an unincorporated entity of the type the corporation has become seeking authority to transact business in this state.
- (b) The application for transfer of authority shall be delivered to the Secretary of State for filing and shall take effect at the effective time provided in section 21-206.
- (c) Upon the effectiveness of the application for transfer of authority, the authority of the corporation under sections 21-2,203 to 21-2,220 to transact business in this state shall be transferred without interruption to the converted entity which shall thereafter hold such authority subject to the provisions of the laws of this state applicable to that type of unincorporated entity.

Source: Laws 2014, LB749, § 216.

Operative date January 1, 2016.

SUBPART 3—REVOCATION OF CERTIFICATE OF AUTHORITY

21-2,217 Grounds for revocation.

(MBCA 15.30) The Secretary of State may commence a proceeding under section 21-2,218 to administratively revoke the certificate of authority of a foreign corporation authorized to transact business in this state if:

- (1) The foreign corporation is without a registered agent or registered office in this state for sixty days or more;
- (2) The foreign corporation does not inform the Secretary of State under section 21-2,210 or 21-2,211 that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued within sixty days of the change, resignation, or discontinuance;
- (3) An incorporator, director, officer, or agent of the foreign corporation signed a document knowing it was false in any material respect with intent that the document be delivered to the Secretary of State for filing;
- (4) The foreign corporation or its agent for service of process does not comply with section 21-2,212; or
- (5) The Secretary of State receives a duly authenticated certificate from the secretary of state or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated stating that it has been dissolved or disappeared as the result of a merger.

Source: Laws 2014, LB749, § 217.

Operative date January 1, 2016.

21-2,218 Procedure for and effect of revocation.

(MBCA 15.31) (a) If the Secretary of State determines that one or more grounds exist under section 21-2,217 for revocation of a certificate of authority, the Secretary of State shall serve the foreign corporation with written notice of such determination under section 21-2,212.

(b) If the foreign corporation does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the Secretary of State that each

ground determined by the Secretary of State does not exist within sixty days after service of the notice is perfected under section 21-2,212, the Secretary of State shall administratively revoke the foreign corporation's certificate of authority by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date. The Secretary of State shall file the original of the certificate and serve a copy on the foreign corporation under section 21-2,212.

(c) The authority of a foreign corporation to transact business in this state ceases on the date shown on the certificate revoking its certificate of authority.

(d) Revocation of a foreign corporation's certificate of authority does not terminate the authority of the registered agent of the corporation.

Source: Laws 2014, LB749, § 218.

Operative date January 1, 2016.

21-2,219 Foreign corporation; reinstatement.

(a) A foreign corporation, the certificate of authority of which has been administratively revoked under section 21-2,218, may apply to the Secretary of State for reinstatement within five years after the effective date of the revocation. The application must:

(1) Recite the name of the foreign corporation and the effective date of the revocation;

(2) State that the ground or grounds for revocation either did not exist or have been eliminated; and

(3) State that the foreign corporation's name satisfies the requirements of section 21-2,208.

(b) If the Secretary of State determines (1) that the application contains the information required by subsection (a) of this section and that the information is correct and (2) that the foreign corporation has paid to the Secretary of State all delinquent fees and has delivered to the Secretary of State a properly executed and signed biennial report, he or she shall cancel the certificate of revocation, prepare a certificate of reinstatement that recites his or her determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the foreign corporation under section 21-2,212.

(c) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the revocation and the foreign corporation shall resume carrying on its business as if the revocation had never occurred.

Source: Laws 2014, LB749, § 219.

Operative date January 1, 2016.

21-2,220 Appeal from revocation.

(MBCA 15.32) (a) If the Secretary of State denies a foreign corporation's application for reinstatement following administrative revocation of its certificate of authority under section 21-2,218, he or she shall serve the foreign corporation under section 21-2,212 with a written notice that explains the reason or reasons for denial.

(b) A foreign corporation may appeal the denial of reinstatement to the district court of Lancaster County within thirty days after service of the notice of denial is perfected under section 21-2,212. The foreign corporation appeals

by petitioning the court to set aside the revocation and attaching to the petition copies of the Secretary of State's certificate of revocation, the foreign corporation's application for reinstatement, and the Secretary of State's notice of denial.

(c) The court may summarily order the Secretary of State to reinstate the certificate of authority or may take any other action the court considers appropriate.

(d) The court's final decision may be appealed as in other civil proceedings.

Source: Laws 2014, LB749, § 220.

Operative date January 1, 2016.

PART 16—RECORDS AND REPORTS

SUBPART 1—RECORDS

21-2,221 Corporate records.

(MBCA 16.01) (a) A corporation shall keep as permanent records minutes of all meetings of its shareholders and board of directors, a record of all actions taken by the shareholders or board of directors without a meeting, and a record of all actions taken by a committee of the board of directors in place of the board of directors on behalf of the corporation.

(b) A corporation shall maintain appropriate accounting records.

(c) A corporation or its agent shall maintain a record of its shareholders, in a form that permits preparation of a list of the names and addresses of all shareholders, in alphabetical order by class of shares showing the number and class of shares held by each.

(d) A corporation shall maintain its records in the form of a document, including an electronic record or in another form capable of conversion into paper form within a reasonable time.

(e) A corporation shall keep a copy of the following records at its principal office:

(1) Its articles or restated articles of incorporation, all amendments to them currently in effect, and any notices to shareholders referred to in subdivision (k)(5) of section 21-203 regarding facts on which a filed document is dependent;

(2) Its bylaws or restated bylaws and all amendments to them currently in effect;

(3) Resolutions adopted by its board of directors creating one or more classes or series of shares and fixing their relative rights, preferences, and limitations if shares issued pursuant to those resolutions are outstanding;

(4) The minutes of all shareholders' meetings and records of all action taken by shareholders without a meeting for the past three years;

(5) All written communications to shareholders generally within the past three years, including the financial statements furnished for the past three years under section 21-2,227;

(6) A list of the names and business addresses of its current directors and officers; and

(7) Its most recent biennial report delivered to the Secretary of State under section 21-2,228.

Source: Laws 2014, LB749, § 221.
Operative date January 1, 2016.

21-2,222 Inspection of records by shareholders.

(MBCA 16.02) (a) A shareholder of a corporation is entitled to inspect and copy, during regular business hours at the corporation's principal office, any of the records of the corporation described in subsection (e) of section 21-2,221 if the shareholder gives the corporation a signed written notice of the shareholder's demand at least five business days before the date on which the shareholder wishes to inspect and copy.

(b) For any meeting of shareholders for which the record date for determining shareholders entitled to vote at the meeting is different than the record date for notice of the meeting, any person who becomes a shareholder subsequent to the record date for notice of the meeting and is entitled to vote at the meeting is entitled to obtain from the corporation upon request the notice and any other information provided by the corporation to shareholders in connection with the meeting unless the corporation has made such information generally available to shareholders by posting it on its web site or by other generally recognized means. Failure of a corporation to provide such information does not affect the validity of action taken at the meeting.

(c) A shareholder of a corporation is entitled to inspect and copy, during regular business hours at a reasonable location specified by the corporation, any of the following records of the corporation if the shareholder meets the requirements of subsection (d) of this section and gives the corporation a signed written notice of the shareholder's demand at least five business days before the date on which the shareholder wishes to inspect and copy:

(1) Excerpts from minutes of any meeting of the board of directors or a committee of the board of directors while acting in place of the board of directors on behalf of the corporation, minutes of any meeting of the shareholders, and records of action taken by the shareholders, board of directors, or a committee of the board without a meeting, to the extent not subject to inspection under subsection (a) of this section;

(2) Accounting records of the corporation; and

(3) The record of shareholders.

(d) A shareholder may inspect and copy the records described in subsection (c) of this section only if:

(1) The shareholder's demand is made in good faith and for a proper purpose;

(2) The shareholder describes with reasonable particularity the shareholder's purpose and the records the shareholder desires to inspect; and

(3) The records are directly connected with the shareholder's purpose.

(e) The right of inspection granted by this section may not be abolished or limited by a corporation's articles of incorporation or bylaws.

(f) This section does not affect:

(1) The right of a shareholder to inspect records under section 21-262 or, if the shareholder is in litigation with the corporation, to the same extent as any other litigant; or

(2) The power of a court, independently of the Nebraska Model Business Corporation Act, to compel the production of corporate records for examination.

(g) For purposes of this section, shareholder includes a beneficial owner whose shares are held in a voting trust or by a nominee on the shareholder's behalf.

Source: Laws 2014, LB749, § 222.

Operative date January 1, 2016.

21-2,223 Scope of inspection right.

(MBCA 16.03) (a) A shareholder's agent or attorney has the same inspection and copying rights as the shareholder represented.

(b) The right to copy records under section 21-2,222 includes, if reasonable, the right to receive copies by xerographic or other means, including copies through an electronic transmission if available and so requested by the shareholder.

(c) The corporation may comply at its expense with a shareholder's demand to inspect the record of shareholders under subdivision (c)(3) of section 21-2,222 by providing the shareholder with a list of shareholders that was compiled no earlier than the date of the shareholder's demand.

(d) The corporation may impose a reasonable charge, covering the costs of labor and material, for copies of any documents provided to the shareholder. The charge may not exceed the estimated cost of production, reproduction, or transmission of the records.

Source: Laws 2014, LB749, § 223.

Operative date January 1, 2016.

21-2,224 Court-ordered inspection.

(MBCA 16.04) (a) If a corporation does not allow a shareholder who complies with subsection (a) of section 21-2,222 to inspect and copy any records required by that subsection to be available for inspection, the district court of the county where the corporation's principal office, or, if none in this state, its registered office, is located may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the shareholder.

(b) If a corporation does not within a reasonable time allow a shareholder to inspect and copy any other record, the shareholder who complies with subsections (c) and (d) of section 21-2,222 may apply to the district court of the county where the corporation's principal office, or, if none in this state, its registered office, is located for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.

Source: Laws 2014, LB749, § 224.

Operative date January 1, 2016.

21-2,225 Inspection of records by directors.

(MBCA 16.05) (a) A director of a corporation is entitled to inspect and copy the books, records, and documents of the corporation at any reasonable time to the extent reasonably related to the performance of the director's duties as a director, including duties as a member of a committee, but not for any other purpose or in any manner that would violate any duty to the corporation.

(b) The district court of the county where the corporation's principal office, or, if none in this state, its registered office, is located may order inspection and copying of the books, records, and documents at the corporation's expense upon application of a director who has been refused such inspection rights, unless the corporation establishes that the director is not entitled to such inspection rights. The court shall dispose of an application under this subsection on an expedited basis.

(c) If an order is issued, the court may include provisions protecting the corporation from undue burden or expense and provisions prohibiting the director from using information obtained upon exercise of the inspection rights in a manner that would violate a duty to the corporation, and the court may also order the corporation to reimburse the director for the director's expenses incurred in connection with the application.

Source: Laws 2014, LB749, § 225.

Operative date January 1, 2016.

21-2,226 Exception to notice requirements.

(MBCA 16.06) (a) Whenever notice would otherwise be required to be given under any provision of the Nebraska Model Business Corporation Act to a shareholder, such notice need not be given if:

(1) Notices to shareholders of two consecutive annual meetings and all notices of meetings during the period between such two consecutive annual meetings have been sent to such shareholder at such shareholder's address as shown on the records of the corporation and have been returned undeliverable or could not be delivered; or

(2) All, but not less than two, payments of dividends on securities during a twelve-month period, or two consecutive payments of dividends on securities during a period of more than twelve months, have been sent to such shareholder at such shareholder's address as shown on the records of the corporation and have been returned undeliverable or could not be delivered.

(b) If any such shareholder shall deliver to the corporation a written notice setting forth such shareholder's then-current address, the requirement that notice be given to such shareholder shall be reinstated.

Source: Laws 2014, LB749, § 226.

Operative date January 1, 2016.

SUBPART 2—REPORTS

21-2,227 Financial statements for shareholders.

(MBCA 16.20) (a) A corporation shall deliver to its shareholders annual financial statements, which may be consolidated or combined statements of the corporation and one or more of its subsidiaries, as appropriate, that include a balance sheet as of the end of the fiscal year, an income statement for that year, and a statement of changes in shareholders' equity for the year unless that information appears elsewhere in the financial statements. If financial state-

ments are prepared for the corporation on the basis of generally accepted accounting principles, the annual financial statements must also be prepared on that basis.

(b) If the annual financial statements are reported upon by a public accountant, the report must accompany them. If not, the statements must be accompanied by a statement of the president or the person responsible for the corporation's accounting records:

(1) Stating such person's reasonable belief whether the statements were prepared on the basis of generally accepted accounting principles and, if not, describing the basis of preparation; and

(2) Describing any respects in which the statements were not prepared on a basis of accounting consistent with the statements prepared for the preceding year.

(c) Within one hundred twenty days after the close of each fiscal year, the corporation shall send the annual financial statements to each shareholder. Thereafter, on written request from a shareholder to whom the statements were not sent, the corporation shall send the shareholder the latest financial statements. A public corporation may fulfill its responsibilities under this section by delivering the specified financial statements or otherwise making them available in any manner permitted by the applicable rules and regulations of the United States Securities and Exchange Commission.

Source: Laws 2014, LB749, § 227.

Operative date January 1, 2016.

21-2,228 Biennial report for Secretary of State.

(MBCA 16.21) Each domestic corporation and each foreign corporation authorized to transact business in this state shall deliver to the Secretary of State for filing a biennial report as required under section 21-301 or 21-304.

Source: Laws 2014, LB749, § 228.

Operative date January 1, 2016.

21-2,229 Notice of incorporation, amendment, merger, or share exchange; notice of dissolution.

(a) Notice of incorporation, amendment, merger, or share exchange of a domestic corporation shall be published for three successive weeks in some legal newspaper of general circulation in the county where the corporation's principal office, or, if none in this state, its registered office, is located.

A notice of incorporation shall show (1) the corporate name for the corporation, (2) the number of shares the corporation is authorized to issue, (3) the street address of the corporation's initial registered office and the name of its initial registered agent at that office, and (4) the name and street address of each incorporator.

A brief resume of any amendment, merger, or share exchange of the corporation shall be published in the same manner and for the same period of time as a notice of incorporation is required to be published.

(b) Notice of the dissolution of a domestic corporation and the terms and conditions of such dissolution and the names of the persons who are to wind up and liquidate its business and affairs and their official titles with a statement of assets and liabilities of the corporation shall be published for three successive

weeks in some legal newspaper of general circulation in the county where the corporation's principal office, or, if none in this state, its registered office, is located.

(c) Proof of publication of any of the notices required to be published under this section shall be filed in the office of the Secretary of State. In the event any notice required to be given pursuant to this section is not given but is subsequently published for the required time and proof of the publication thereof is filed in the office of the Secretary of State, the acts of such corporation prior to, as well as after, such publication shall be valid.

Source: Laws 2014, LB749, § 229.

Operative date January 1, 2016.

PART 17—TRANSITION PROVISIONS

21-2,230 Application to existing domestic corporations.

(MBCA 17.01) The Nebraska Model Business Corporation Act applies to all domestic corporations in existence on January 1, 2016, that were incorporated under any general statute of this state providing for incorporation of corporations for profit if power to amend or repeal the statute under which the corporation was incorporated was reserved.

Source: Laws 2014, LB749, § 230.

Operative date January 1, 2016.

21-2,231 Application to qualified foreign corporations.

(MBCA 17.02) A foreign corporation authorized to transact business in this state on January 1, 2016, is subject to the Nebraska Model Business Corporation Act but is not required to obtain a new certificate of authority to transact business under the act.

Source: Laws 2014, LB749, § 231.

Operative date January 1, 2016.

21-2,232 Saving provisions.

(MBCA 17.03) (a) Except as provided in subsection (b) of this section, the repeal of a statute by Laws 2014, LB749, does not affect:

- (1) The operation of the statute or any action taken under it before its repeal;
- (2) Any ratification, right, remedy, privilege, obligation, or liability acquired, accrued, or incurred under the statute before its repeal;
- (3) Any violation of the statute, or any penalty, forfeiture, or punishment incurred because of the violation, before its repeal; or
- (4) Any proceeding, reorganization, or dissolution commenced under the statute before its repeal, and the proceeding, reorganization, or dissolution may be completed in accordance with the statute as if it had not been repealed.

(b) If a penalty or punishment imposed for violation of a statute repealed by Laws 2014, LB749, is reduced by Laws 2014, LB749, the penalty or punishment if not already imposed shall be imposed in accordance with Laws 2014, LB749.

(c) In the event that any provisions of the Nebraska Model Business Corporation Act are deemed to modify, limit, or supersede the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 et seq., as the

act existed on January 1, 2014, the provisions of the Nebraska Model Business Corporation Act shall control to the maximum extent permitted by section 102(a)(2) of that federal act, 15 U.S.C. 7002 (a)(2).

Source: Laws 2014, LB749, § 232.

Operative date January 1, 2016.

ARTICLE 3 OCCUPATION TAX

Section	
21-301.	Domestic corporations; biennial report and occupation tax; procedure.
21-302.	Domestic corporations; biennial report; contents.
21-303.	Domestic corporations; occupation tax; amount; stock without par value, determination of amount.
21-304.	Foreign corporations; biennial report and occupation tax; procedure.
21-305.	Foreign corporations; biennial report; contents.
21-306.	Foreign corporations; occupation tax; investigation by Secretary of State for collection purposes.
21-311.	Occupation taxes; disposition; monthly report of Secretary of State.
21-312.	Occupation taxes; lien; notice; lien subject to prior liens.
21-313.	Domestic corporation; foreign corporation; failure to file report or pay occupation tax; effect.
21-314.	Occupation taxes; how collected; credited to General Fund.
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21-317.	Repealed. Laws 2014, LB 749, § 298.
21-318.	List of corporations; duty of Secretary of State.
21-319.	Investigation by Secretary of State for collection purposes; duty of county clerk.
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21-322.	Dissolution; certificate required; filing; fees.
21-323.	Domestic corporations; reports and taxes; notice; failure to pay; administrative dissolution; lien; priority.
21-323.01.	Domestic corporation administratively dissolved; reinstatement; application; procedure; payment required.
21-323.02.	Domestic corporation administratively dissolved; denial of reinstatement; appeal.
21-325.	Foreign corporations; reports and taxes; notice; failure to pay; authority to transact business revoked; lien; priority.
21-325.01.	Foreign corporation authority to transact business revoked; reinstatement; procedure.
21-325.02.	Foreign corporation authority to transact business; reinstatement denied; appeal.
21-328.	Occupation tax; refund; procedure; appeal.
21-329.	Paid-up capital stock, defined.
21-330.	Corporations; excess payment; refund.

21-301 Domestic corporations; biennial report and occupation tax; procedure.

(1) Each domestic corporation subject to the Nebraska Model Business Corporation Act shall deliver a biennial report to the Secretary of State, as of January 1 of each even-numbered year, in such form as the Secretary of State may prescribe. The report shall be signed by one of the following: The president, a vice president, a secretary, or a treasurer of the corporation. The signature may be digital or electronic if it conforms to section 86-611. The report and occupation tax shall be delivered to the Secretary of State. The report and occupation tax shall be due on March 1 of each even-numbered year and shall become delinquent if not filed and paid by April 15 of each even-

numbered year. If the Secretary of State finds that such report and occupation tax conform to the requirements of the law, the Secretary of State shall file the report. If the Secretary of State finds that the report or occupation tax does not conform, the Secretary of State shall not file the report or accept the occupation tax but shall return the report and occupation tax to the corporation for any necessary corrections. A correction or amendment to the report may be filed at any time.

(2) In each even-numbered year, the Secretary of State shall cause a notice to be sent either by United States mail or electronically transmitted to each corporation for which a report and occupation tax as described in this section have not been received as of March 1. The notice shall state that the report has not been received, that the report and occupation tax are due on March 1, and that the corporation will be administratively dissolved if the report and proper occupation tax are not received by April 15.

Source: Laws 1913, c. 240, § 1, p. 745; R.S.1913, § 761; C.S.1922, § 679; C.S.1929, § 24-1701; R.S.1943, § 21-301; Laws 1967, c. 101, § 1, p. 309; Laws 1969, c. 124, § 1, p. 567; Laws 1982, LB 928, § 6; Laws 2002, LB 989, § 1; Laws 2003, LB 524, § 1; Laws 2006, LB 647, § 1; Laws 2008, LB379, § 1; Laws 2014, LB749, § 238. Operative date January 1, 2016.

Cross References

Nebraska Model Business Corporation Act, see section 21-201.

21-302 Domestic corporations; biennial report; contents.

The biennial report required under section 21-301 from a domestic corporation shall show:

- (1) The exact corporate name of the corporation;
- (2) The street address of the corporation's registered office and the name of its current registered agent at that office in this state. A post office box number may be provided in addition to the street address;
- (3) The street address of the corporation's principal office;
- (4) The names and street addresses of the corporation's directors and principal officers, which shall include the president, secretary, and treasurer;
- (5) A brief description of the nature of the corporation's business;
- (6) The amount of paid-up capital stock; and
- (7) The change or changes, if any, in the above particulars made since the last biennial report.

Source: Laws 1913, c. 240, § 2, p. 745; R.S.1913, § 762; C.S.1922, § 680; C.S.1929, § 24-1702; R.S.1943, § 21-302; Laws 1967, c. 101, § 2, p. 309; Laws 1995, LB 109, § 195; Laws 2003, LB 524, § 2; Laws 2008, LB379, § 2; Laws 2014, LB749, § 239. Operative date January 1, 2016.

21-303 Domestic corporations; occupation tax; amount; stock without par value, determination of amount.

(1) Upon the delivery of the biennial report required under section 21-301 to the Secretary of State, it shall be the duty of every domestic corporation registered in the office of the Secretary of State on January 1, whether

incorporated under the laws of this state or incorporated under the laws of any other state when such corporations have domesticated in this state, to pay to the Secretary of State an occupation tax in each even-numbered calendar year beginning January 1, which occupation tax shall be due and assessable on such date and delinquent if not paid on or before April 15 of each even-numbered year.

(2) The occupation tax shall be as follows: When the paid-up capital stock of a corporation does not exceed ten thousand dollars, an occupation tax of twenty-six dollars; when such paid-up capital stock exceeds ten thousand dollars but does not exceed twenty thousand dollars, an occupation tax of forty dollars; when such paid-up capital stock exceeds twenty thousand dollars but does not exceed thirty thousand dollars, an occupation tax of sixty dollars; when such paid-up capital stock exceeds thirty thousand dollars but does not exceed forty thousand dollars, an occupation tax of eighty dollars; when such paid-up capital stock exceeds forty thousand dollars but does not exceed fifty thousand dollars, an occupation tax of one hundred dollars; when such paid-up capital stock exceeds fifty thousand dollars but does not exceed sixty thousand dollars, an occupation tax of one hundred twenty dollars; when such paid-up capital stock exceeds sixty thousand dollars but does not exceed seventy thousand dollars, an occupation tax of one hundred forty dollars; when such paid-up capital stock exceeds seventy thousand dollars but does not exceed eighty thousand dollars, an occupation tax of one hundred sixty dollars; when such paid-up capital stock exceeds eighty thousand dollars but does not exceed ninety thousand dollars, an occupation tax of one hundred eighty dollars; when such paid-up capital stock exceeds ninety thousand dollars but does not exceed one hundred thousand dollars, an occupation tax of two hundred dollars; when such paid-up capital stock exceeds one hundred thousand dollars but does not exceed one hundred twenty-five thousand dollars, an occupation tax of two hundred forty dollars; when such paid-up capital stock exceeds one hundred twenty-five thousand dollars but does not exceed one hundred fifty thousand dollars, an occupation tax of two hundred eighty dollars; when such paid-up capital stock exceeds one hundred fifty thousand dollars but does not exceed one hundred seventy-five thousand dollars, an occupation tax of three hundred twenty dollars; when such paid-up capital stock exceeds one hundred seventy-five thousand dollars but does not exceed two hundred thousand dollars, an occupation tax of three hundred sixty dollars; when such paid-up capital stock exceeds two hundred thousand dollars but does not exceed two hundred twenty-five thousand dollars, an occupation tax of four hundred dollars; when such paid-up capital stock exceeds two hundred twenty-five thousand dollars but does not exceed two hundred fifty thousand dollars, an occupation tax of four hundred forty dollars; when such paid-up capital stock exceeds two hundred fifty thousand dollars but does not exceed two hundred seventy-five thousand dollars, an occupation tax of four hundred eighty dollars; when such paid-up capital stock exceeds two hundred seventy-five thousand dollars but does not exceed three hundred thousand dollars, an occupation tax of five hundred twenty dollars; when such paid-up capital stock exceeds three hundred thousand dollars but does not exceed three hundred twenty-five thousand dollars, an occupation tax of five hundred sixty dollars; when such paid-up capital stock exceeds three hundred twenty-five thousand dollars but does not exceed three hundred fifty thousand dollars, an occupation tax of six hundred dollars; when such paid-up capital stock exceeds three hundred fifty thousand

dollars but does not exceed four hundred thousand dollars, an occupation tax of six hundred sixty-six dollars; when such paid-up capital stock exceeds four hundred thousand dollars but does not exceed four hundred fifty thousand dollars, an occupation tax of seven hundred thirty dollars; when such paid-up capital stock exceeds four hundred fifty thousand dollars but does not exceed five hundred thousand dollars, an occupation tax of eight hundred dollars; when such paid-up capital stock exceeds five hundred thousand dollars but does not exceed six hundred thousand dollars, an occupation tax of nine hundred ten dollars; when such paid-up capital stock exceeds six hundred thousand dollars but does not exceed seven hundred thousand dollars, an occupation tax of one thousand ten dollars; when such paid-up capital stock exceeds seven hundred thousand dollars but does not exceed eight hundred thousand dollars, an occupation tax of one thousand one hundred twenty dollars; when such paid-up capital stock exceeds eight hundred thousand dollars but does not exceed nine hundred thousand dollars, an occupation tax of one thousand two hundred thirty dollars; when such paid-up capital stock exceeds nine hundred thousand dollars but does not exceed one million dollars, an occupation tax of one thousand three hundred thirty dollars; when such paid-up capital stock exceeds one million dollars but does not exceed ten million dollars, an occupation tax of one thousand three hundred thirty dollars, and eight hundred dollars additional for each million or fraction thereof over and above one million dollars; when such paid-up capital stock exceeds ten million dollars but does not exceed fifteen million dollars, an occupation tax of twelve thousand dollars; when such paid-up capital stock exceeds fifteen million dollars but does not exceed twenty million dollars, an occupation tax of fourteen thousand six hundred sixty dollars; when such paid-up capital stock exceeds twenty million dollars but does not exceed twenty-five million dollars, an occupation tax of seventeen thousand three hundred thirty dollars; when such paid-up capital stock exceeds twenty-five million dollars but does not exceed fifty million dollars, an occupation tax of twenty thousand six hundred sixty dollars; when such paid-up capital stock exceeds fifty million dollars but does not exceed one hundred million dollars, an occupation tax of twenty-one thousand three hundred thirty dollars; and when such paid-up capital stock exceeds one hundred million dollars, an occupation tax of twenty-three thousand nine hundred ninety dollars. The minimum occupation tax for filing such report shall be twenty-six dollars. For purposes of determining the occupation tax, the stock of corporations incorporated under the laws of any other state, which corporations have domesticated in this state and which stock is without par value, shall be deemed to have a par value of an amount equal to the amount paid in as capital for such shares at the time of the issuance thereof.

Source: Laws 1913, c. 240, § 3, p. 745; R.S.1913, § 763; C.S.1922, § 681; C.S.1929, § 24-1703; R.S.1943, § 21-303; Laws 1947, c. 55, § 1, p. 185; Laws 1955, c. 63, § 2, p. 200; Laws 1965, c. 87, § 1, p. 350; Laws 1967, c. 101, § 3, p. 310; Laws 1969, c. 124, § 2, p. 568; Laws 1982, LB 928, § 7; Laws 1992, LB 719A, § 90; Laws 2003, LB 524, § 3; Laws 2014, LB749, § 240.
Operative date January 1, 2016.

21-304 Foreign corporations; biennial report and occupation tax; procedure.

(1) Each foreign corporation subject to the Nebraska Model Business Corporation Act, doing business in this state, owning or using a part or all of its

capital or plant in this state, and subject to compliance with all other provisions of law shall, in addition to all other statements required by law, deliver a biennial report to the Secretary of State, as of January 1 of each even-numbered year, in such form as the Secretary of State may prescribe. The report shall be signed by one of the following: The president, a vice president, a secretary, or a treasurer of the corporation. The signature may be digital or electronic if it conforms to section 86-611. The report and occupation tax shall be delivered to the Secretary of State. The report and occupation tax shall be due on March 1 of each even-numbered year and shall become delinquent if not filed and paid by April 15 of each even-numbered year. If the Secretary of State finds that such report and occupation tax conform to the requirements of the law, the Secretary of State shall file the report. If the Secretary of State finds that the report or occupation tax does not conform, the Secretary of State shall not file the report or accept the occupation tax but shall return the report and occupation tax to the corporation for any necessary corrections. A correction or amendment to the report may be filed at any time.

(2) In each even-numbered year, the Secretary of State shall cause a notice to be sent either by United States mail or electronically transmitted to each corporation for which a report and occupation tax as described in this section have not been received as of March 1. The notice shall state that the report has not been received, that the report and occupation tax are due on March 1, and that the authority of the corporation to transact business in this state will be administratively revoked if the report and proper occupation tax are not received by April 15 of each even-numbered year.

Source: Laws 1913, c. 240, § 4, p. 748; R.S.1913, § 764; C.S.1922, § 682; C.S.1929, § 24-1704; R.S.1943, § 21-304; Laws 1955, c. 63, § 3, p. 203; Laws 1967, c. 101, § 4, p. 313; Laws 1969, c. 124, § 3, p. 571; Laws 1982, LB 928, § 8; Laws 2002, LB 989, § 2; Laws 2003, LB 524, § 4; Laws 2006, LB 647, § 2; Laws 2008, LB379, § 3; Laws 2014, LB749, § 241.
Operative date January 1, 2016.

Cross References

Nebraska Model Business Corporation Act, see section 21-201.

21-305 Foreign corporations; biennial report; contents.

The biennial report required under section 21-304 from a foreign corporation shall show:

- (1) The exact corporate name of the foreign corporation and the name of the state or country under whose law it is incorporated;
- (2) The street address of the foreign corporation's registered office and the name of its current registered agent at that office in this state. A post office box number may be provided in addition to the street address;
- (3) The street address of the foreign corporation's principal office;
- (4) The names and street addresses of the foreign corporation's directors and principal officers which shall include the president, secretary, and treasurer;
- (5) A brief description of the nature of the foreign corporation's business;
- (6) The value of the property owned and used by the foreign corporation in this state and where such property is situated; and

(7) The change or changes, if any, in the above particulars made since the last biennial report.

Source: Laws 1913, c. 240, § 5, p. 749; R.S.1913, § 765; C.S.1922, § 683; C.S.1929, § 24-1705; R.S.1943, § 21-305; Laws 1967, c. 101, § 5, p. 313; Laws 1995, LB 109, § 196; Laws 2003, LB 524, § 5; Laws 2008, LB379, § 4; Laws 2014, LB749, § 242.
Operative date January 1, 2016.

21-306 Foreign corporations; occupation tax; investigation by Secretary of State for collection purposes.

Upon the delivery of the biennial report required under section 21-304 to the Secretary of State, it shall be the duty of every foreign corporation doing business in this state to pay to the Secretary of State an occupation tax each even-numbered calendar year beginning January 1 and become due and assessable on March 1 of that year and become delinquent if not paid by April 15 of each even-numbered year. The occupation tax shall be measured by the property employed by the foreign corporation in the conduct of its business in this state. For such purpose the property shall consist of the sum total of the actual value of all real estate and personal property employed in this state by such foreign corporation in the transaction of its business. The occupation tax to be paid by such foreign corporation shall be based upon the sum so determined and shall be considered the capital stock of such foreign corporation in this state for the purpose of the occupation tax. The schedule of payment shall be double the occupation tax set forth in section 21-303, or any amendments thereto, except that the occupation tax shall not exceed thirty thousand dollars, and the Secretary of State, or any person deputized by the Secretary of State, shall have authority to investigate and obtain information from such corporation or any state, county, or city official. Such officers are authorized by this section to furnish such information to the Secretary of State, or anyone deputized by the Secretary of State, in order to determine all facts and give effect to the collection of the occupation tax.

Source: Laws 1913, c. 240, § 6, p. 749; R.S.1913, § 766; C.S.1922, § 684; C.S.1929, § 24-1706; Laws 1933, c. 32, § 1, p. 212; Laws 1935, c. 47, § 1, p. 172; C.S.Supp.,1941, § 24-1706; R.S.1943, § 21-306; Laws 1955, c. 63, § 4, p. 203; Laws 1965, c. 87, § 2, p. 353; Laws 1967, c. 101, § 6, p. 313; Laws 1969, c. 124, § 4, p. 571; Laws 1982, LB 928, § 9; Laws 2002, LB 989, § 3; Laws 2003, LB 524, § 6; Laws 2014, LB749, § 243.
Operative date January 1, 2016.

21-311 Occupation taxes; disposition; monthly report of Secretary of State.

The Secretary of State shall make a report monthly to the Tax Commissioner of the occupation taxes collected under sections 21-301 to 21-330 and remit them to the State Treasurer for credit to the General Fund. The report shall include the amount of any refunds paid out under section 21-328.

Source: Laws 1913, c. 240, § 11, p. 750; R.S.1913, § 771; C.S.1922, § 689; C.S.1929, § 24-1711; R.S.1943, § 21-311; Laws 1984, LB 799, § 2; Laws 2003, LB 524, § 7; Laws 2014, LB749, § 244.
Operative date January 1, 2016.

21-312 Occupation taxes; lien; notice; lien subject to prior liens.

The occupation taxes required to be paid by sections 21-301 to 21-330 shall be the first and best lien on all property of the corporation whether such real or personal property is employed by the corporation in the prosecution of its business or is in the hands of an assignee, trustee, or receiver for the benefit of the creditors and stockholders thereof. The Secretary of State may file notice of such lien in the office of the county clerk of the county wherein the personal property sought to be charged with such lien is situated and with the county clerk or register of deeds of the county wherein the real estate sought to be charged with such lien is situated. The lien provided for in this section shall be invalid as to any mortgagee or pledgee whose lien is filed, as against any judgment lien which attached, or as against any purchaser whose rights accrued, prior to the filing of such notice.

Source: Laws 1913, c. 240, § 12, p. 750; R.S.1913, § 772; C.S.1922, § 690; C.S.1929, § 24-1712; Laws 1943, c. 54, § 1, p. 218; R.S.1943, § 21-312; Laws 1969, c. 124, § 5, p. 572; Laws 1988, LB 800, § 1; Laws 2014, LB749, § 245.
Operative date January 1, 2016.

21-313 Domestic corporation; foreign corporation; failure to file report or pay occupation tax; effect.

(1) If a domestic corporation required to deliver the biennial report and pay the occupation tax prescribed in sections 21-301 to 21-330 fails or neglects to deliver such report or pay such occupation tax by April 15 of each even-numbered year, such corporation shall be administratively dissolved on April 16 of such year.

(2) If a foreign corporation required to deliver the biennial report and pay the occupation tax prescribed in sections 21-301 to 21-330 fails or neglects to deliver such report or pay such occupation tax by April 15 of each even-numbered year, the authority of such corporation to transact business in this state shall be administratively revoked on April 16 of such year.

Source: Laws 1913, c. 240, § 13, p. 750; R.S.1913, § 773; C.S.1922, § 691; C.S.1929, § 24-1713; R.S.1943, § 21-313; Laws 1945, c. 39, § 1, p. 195; Laws 1955, c. 63, § 7, p. 204; Laws 1967, c. 101, § 9, p. 315; Laws 1969, c. 124, § 6, p. 572; Laws 1982, LB 928, § 10; Laws 2002, LB 989, § 4; Laws 2003, LB 524, § 8; Laws 2014, LB749, § 246.
Operative date January 1, 2016.

21-314 Occupation taxes; how collected; credited to General Fund.

Occupation tax or taxes to be paid as provided in sections 21-301 to 21-330 may be recovered by an action in the name of the state and on collection shall be remitted to the State Treasurer for credit to the General Fund.

Source: Laws 1913, c. 240, § 14, p. 750; R.S.1913, § 774; C.S.1922, § 692; C.S.1929, § 24-1714; R.S.1943, § 21-314; Laws 1969, c. 124, § 7, p. 573; Laws 1988, LB 800, § 2; Laws 2003, LB 524, § 9; Laws 2014, LB749, § 247.
Operative date January 1, 2016.

21-315 Occupation taxes; collection; venue of action.

The Attorney General, on request of the Secretary of State, shall institute such action to recover occupation taxes in the district court of Lancaster County or any other county in the state in which such corporation has an office or place of business.

Source: Laws 1913, c. 240, § 15, p. 750; R.S.1913, § 775; C.S.1922, § 693; C.S.1929, § 24-1715; R.S.1943, § 21-315; Laws 2014, LB749, § 248.

Operative date January 1, 2016.

21-317 Repealed. Laws 2014, LB 749, § 298.

Operative date January 1, 2016.

21-318 List of corporations; duty of Secretary of State.

It shall be the duty of the Secretary of State to prepare and keep a correct list of all corporations subject to sections 21-301 to 21-330 and engaged in business within this state. For the purpose of obtaining the necessary information, the Secretary of State, or other person deputized by him or her, shall have access to the records of the offices of the county clerks of the state.

Source: Laws 1913, c. 240, § 18, p. 751; R.S.1913, § 778; C.S.1922, § 696; C.S.1929, § 24-1718; R.S.1943, § 21-318; Laws 1988, LB 800, § 3; Laws 2014, LB749, § 249.

Operative date January 1, 2016.

21-319 Investigation by Secretary of State for collection purposes; duty of county clerk.

Any county clerk shall, upon request of the Secretary of State, furnish him or her with such information as is shown by the records of his or her office concerning corporations located within his or her county and subject to sections 21-301 to 21-330. The Secretary of State, or any person deputized by him or her for the purpose of determining the amount of the occupation tax due from such corporation, shall have authority to investigate and determine the facts showing the proportion of the paid-up capital stock of the company represented by its property and business in this state.

Source: Laws 1913, c. 240, § 19, p. 751; R.S.1913, § 779; C.S.1922, § 697; C.S.1929, § 24-1719; R.S.1943, § 21-319; Laws 1988, LB 800, § 4; Laws 2014, LB749, § 250.

Operative date January 1, 2016.

21-321 Reports and fees; exemptions.

All banking, insurance, and building and loan association corporations paying fees and making reports to the Director of Insurance or the Director of Banking and Finance and all other corporations paying an occupation tax to the state under any other statutory provisions than those of sections 21-301 to 21-330 shall be exempt from the provisions of such sections.

Source: Laws 1913, c. 240, § 21, p. 752; R.S.1913, § 781; C.S.1922, § 699; C.S.1929, § 24-1721; R.S.1943, § 21-321; Laws 1969, c.

124, § 8, p. 573; Laws 1988, LB 800, § 5; Laws 2003, LB 524, § 10; Laws 2014, LB749, § 251.

Operative date January 1, 2016.

21-322 Dissolution; certificate required; filing; fees.

In case of dissolution of a corporation by action of a competent court, or the winding up of a corporation, either foreign or domestic, by proceedings in assignment or bankruptcy, a certificate shall be signed by the clerk of the court in which such proceedings were had and filed in the office of the Secretary of State. The fees for making and filing such certificate shall be taxed as costs in the proceedings and paid out of the funds of the corporation and shall have the same priority as other costs.

Source: Laws 1913, c. 240, § 22, p. 752; R.S.1913, § 782; C.S.1922, § 700; C.S.1929, § 24-1722; Laws 1943, c. 54, § 2, p. 218; R.S.1943, § 21-322; Laws 1967, c. 101, § 11, p. 315; Laws 2014, LB749, § 252.

Operative date January 1, 2016.

21-323 Domestic corporations; reports and taxes; notice; failure to pay; administrative dissolution; lien; priority.

(1) Prior to January 1 of each even-numbered year, the Secretary of State shall cause to be mailed by first-class mail to the last-named and appointed registered agent at the last-named street address of the registered office of each domestic corporation subject to sections 21-301 to 21-330 a notice stating that on or before March 1 of each even-numbered year occupation taxes are due to be paid and a properly executed and signed biennial report is due to be filed. If such occupation taxes are not paid and the report is not filed by April 15 of each even-numbered year, (a) such taxes and report shall become delinquent, (b) the delinquent corporation shall be administratively dissolved on April 16 of such year for nonpayment of occupation taxes and failure to file the report, and (c) the delinquent occupation tax shall be a lien upon the assets of the corporation subsequent only to state, county, and municipal taxes.

(2) Upon the failure of any domestic corporation to pay its occupation tax and deliver the biennial report within the time limited by sections 21-301 to 21-330, the Secretary of State shall on April 16 of such year administratively dissolve the corporation for nonpayment of taxes and make such entry and showing upon the records of his or her office.

(3)(a) The Secretary of State shall administratively dissolve a corporation by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The Secretary of State shall file the original of the certificate and serve a copy on the corporation under section 21-236.

(b) A corporation administratively dissolved continues its corporate existence but may not carry on any business, except that business necessary to wind up and liquidate its business and affairs under section 21-2,188 and notify claimants under sections 21-2,189 and 21-2,190.

(c) The administrative dissolution of a corporation shall not terminate the authority of its registered agent.

(4) All delinquent occupation taxes of the corporation shall be a lien upon the assets of the corporation, subsequent only to state, county, and municipal taxes.

(5) No domestic corporation shall be voluntarily dissolved until all occupation taxes and fees due to or assessable by the state have been paid and the biennial report filed by such corporation.

Source: Laws 1913, c. 240, § 22, p. 752; R.S.1913, § 782; C.S.1922, § 700; C.S.1929, § 24-1722; Laws 1943, c. 54, § 2, p. 218; R.S.1943, § 21-323; Laws 1957, c. 242, § 10, p. 823; Laws 1967, c. 101, § 12, p. 316; Laws 1969, c. 124, § 9, p. 573; Laws 1971, LB 485, § 1; Laws 1982, LB 928, § 11; Laws 1995, LB 109, § 197; Laws 2002, LB 989, § 5; Laws 2003, LB 524, § 11; Laws 2014, LB749, § 253.

Operative date January 1, 2016.

21-323.01 Domestic corporation administratively dissolved; reinstatement; application; procedure; payment required.

(1) A corporation administratively dissolved under section 21-323 may apply to the Secretary of State for reinstatement within five years after the effective date of its administrative dissolution. The application shall:

(a) Recite the name of the corporation and the effective date of its administrative dissolution;

(b) State that the ground or grounds for dissolution either did not exist or have been eliminated;

(c) State that the corporation's name satisfies the requirements of section 21-230; and

(d) Be accompanied by a fee in the amount prescribed in section 21-205, as such section may from time to time be amended, for an application for reinstatement.

(2) If the Secretary of State determines (a) that the application contains the information required by subsection (1) of this section and that the information is correct and (b) that the corporation has complied with subsection (4) of this section, he or she shall cancel the certificate of dissolution, prepare a certificate of reinstatement that recites his or her determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation under section 21-236.

(3) When the reinstatement is effective, it shall relate back to and take effect as of the effective date of the administrative dissolution and the corporation shall resume carrying on its business as if the administrative dissolution had never occurred.

(4) A corporation applying for reinstatement under this section shall:

(a)(i) Pay to the Secretary of State a sum equal to all occupation taxes delinquent at the time the corporation was administratively dissolved, plus a sum equal to all occupation taxes which would otherwise have been due for the years the corporation was administratively dissolved and (ii) deliver to the Secretary of State a properly executed and signed biennial report for the most recent even-numbered year; and

(b) Pay to the Secretary of State an additional amount derived by multiplying the rate specified in section 45-104.02, as such rate may from time to time be

adjusted, times the amount of occupation taxes required to be paid by it for each year that such corporation was administratively dissolved.

Source: Laws 1995, LB 109, § 198; Laws 1996, LB 1036, § 1; Laws 2003, LB 524, § 12; Laws 2012, LB854, § 2; Laws 2014, LB749, § 254.
Operative date January 1, 2016.

21-323.02 Domestic corporation administratively dissolved; denial of reinstatement; appeal.

(1) If the Secretary of State denies a corporation's application for reinstatement following administrative dissolution under section 21-323, he or she shall serve the corporation under section 21-236 with a written notice that explains the reason or reasons for denial.

(2) The corporation may appeal the denial of reinstatement to the district court of Lancaster County within thirty days after service of the notice of denial is perfected under section 21-236. The corporation shall appeal by petitioning the court to set aside the dissolution and attaching to the petition copies of the Secretary of State's certificate of dissolution, the corporation's application for reinstatement, and the Secretary of State's notice of denial.

(3) The court may summarily order the Secretary of State to reinstate the dissolved corporation or may take other action the court considers appropriate.

(4) The court's final decision may be appealed as in other civil proceedings.

Source: Laws 1995, LB 109, § 199; Laws 2014, LB749, § 255.
Operative date January 1, 2016.

21-325 Foreign corporations; reports and taxes; notice; failure to pay; authority to transact business revoked; lien; priority.

(1) Prior to January 1 of each even-numbered year, the Secretary of State shall cause to be mailed by first-class mail to the last-known address of each foreign corporation subject to sections 21-301 to 21-330 a notice stating that on or before March 1 of each even-numbered year occupation taxes are due to be paid and a properly executed and signed biennial report is due to be filed. If such occupation taxes are not paid and the report is not filed by April 15 of each even-numbered year, (a) such taxes and report shall become delinquent, (b) the authority of the delinquent corporation to transact business in this state shall be administratively revoked on April 16 of such year for nonpayment of occupation taxes and failure to file the report, and (c) the delinquent occupation tax shall be a lien upon the assets of the corporation subject only to state, county, and municipal taxes.

(2) Upon the failure of any foreign corporation to pay its occupation tax and deliver the biennial report within the time limited by sections 21-301 to 21-330, the Secretary of State shall on April 16 of such year administratively revoke the authority of the corporation to transact business in this state for nonpayment of taxes and shall bar the corporation from doing business in this state under the corporation laws of this state and make such entry and showing upon the records of his or her office.

(3)(a) The Secretary of State shall administratively revoke the authority of a foreign corporation by signing a certificate of revocation of authority to transact business in this state that recites the ground or grounds for revocation

and its effective date. The Secretary of State shall file the original of the certificate and serve a copy on the foreign corporation under section 21-2,212.

(b) The authority of a foreign corporation to transact business in this state shall cease on the date shown on the certificate revoking its certificate of authority.

(c) Revocation of a foreign corporation's certificate of authority shall not terminate the authority of the registered agent of the corporation.

(4) All delinquent corporation occupation taxes of the foreign corporation shall be a lien upon the assets of the corporation within the state, subsequent only to state, county, and municipal taxes. Nothing in sections 21-322 to 21-330 shall be construed to allow a foreign corporation to do business in this state without complying with the laws of this state.

(5) No foreign corporation shall be voluntarily withdrawn until all occupation taxes due to or assessable by this state have been paid and the biennial report filed by such corporation.

Source: Laws 1913, c. 240, § 23, p. 752; R.S.1913, § 783; Laws 1921, c. 173, § 2, p. 668; C.S.1922, § 701; C.S.1929, § 24-1723; R.S.1943, § 21-325; Laws 1957, c. 242, § 11, p. 824; Laws 1967, c. 101, § 13, p. 316; Laws 1969, c. 124, § 10, p. 574; Laws 1982, LB 928, § 12; Laws 1995, LB 109, § 200; Laws 2002, LB 989, § 6; Laws 2003, LB 524, § 13; Laws 2014, LB749, § 256.
Operative date January 1, 2016.

21-325.01 Foreign corporation authority to transact business revoked; reinstatement; procedure.

(1) A foreign corporation, the certificate of authority of which has been administratively revoked under section 21-325, may apply to the Secretary of State for reinstatement within five years after the effective date of the revocation. The application shall:

(a) Recite the name of the foreign corporation and the effective date of the revocation;

(b) State that the ground or grounds for revocation either did not exist or have been eliminated;

(c) State that the foreign corporation's name satisfies the requirements of section 21-2,208; and

(d) Be accompanied by a fee in the amount prescribed in section 21-205, as such section may from time to time be amended, for an application for reinstatement.

(2) If the Secretary of State determines (a) that the application contains the information required by subsection (1) of this section and that the information is correct and (b) that the foreign corporation has complied with subsection (4) of this section, he or she shall cancel the certificate of revocation, prepare a certificate of reinstatement that recites his or her determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the foreign corporation under section 21-2,212.

(3) When the reinstatement is effective, it shall relate back to and take effect as of the effective date of the administrative revocation and the foreign

corporation shall resume carrying on its business as if the administrative revocation had never occurred.

(4) A foreign corporation applying for reinstatement under this section shall:

(a)(i) Pay to the Secretary of State a sum equal to all occupation taxes delinquent as of the effective date of the revocation, plus a sum equal to all occupation taxes which would otherwise have been due for the years the foreign corporation's certificate of authority was revoked, and (ii) deliver to the Secretary of State a properly executed and signed biennial report for the most recent even-numbered year; and

(b) Pay to the Secretary of State an additional amount derived by multiplying the rate specified in section 45-104.02, as such rate may from time to time be adjusted, times the amount of occupation taxes required to be paid by it for each year that such foreign corporation's certificate of authority was revoked.

Source: Laws 1995, LB 109, § 201; Laws 1996, LB 1036, § 2; Laws 2003, LB 524, § 14; Laws 2012, LB854, § 3; Laws 2014, LB749, § 257.
Operative date January 1, 2016.

21-325.02 Foreign corporation authority to transact business; reinstatement denied; appeal.

(1) If the Secretary of State denies a foreign corporation's application for reinstatement following administrative revocation of its certificate of authority under section 21-325, he or she shall serve the foreign corporation under section 21-2,212 with a written notice that explains the reason or reasons for denial.

(2) The foreign corporation may appeal the denial of reinstatement to the district court of Lancaster County within thirty days after service of the notice of denial is perfected under section 21-2,212. The foreign corporation shall appeal by petitioning the court to set aside the revocation and attaching to the petition copies of the Secretary of State's certificate of revocation, the foreign corporation's application for reinstatement, and the Secretary of State's notice of denial.

(3) The court may summarily order the Secretary of State to reinstate the certificate of authority or may take any other action the court considers appropriate.

(4) The court's final decision may be appealed as in other civil proceedings.

Source: Laws 1996, LB 1036, § 3; Laws 2014, LB749, § 258.
Operative date January 1, 2016.

21-328 Occupation tax; refund; procedure; appeal.

Any corporation paying the occupation tax imposed by section 21-303 or 21-306 may claim a refund if the payment of such occupation tax was invalid for any reason. The corporation shall file a written claim and any evidence supporting the claim within two years after payment of such occupation tax. The Secretary of State shall either approve or deny the claim within thirty days after such filing. Any approved claims shall be paid out of the General Fund.

Appeal of a decision by the Secretary of State shall be in accordance with the Administrative Procedure Act.

Source: Laws 1984, LB 799, § 1; Laws 1988, LB 352, § 21; Laws 2014, LB749, § 259.

Operative date January 1, 2016.

Cross References

Administrative Procedure Act, see section 84-920.

21-329 Paid-up capital stock, defined.

For purposes of sections 21-301 to 21-330, the term paid-up capital stock shall mean, at any particular time, the sum of the par value of all shares of capital stock of the corporation issued and outstanding.

Source: Laws 1984, LB 800, § 1; Laws 1995, LB 109, § 202; Laws 1999, LB 35, § 1; Laws 2014, LB749, § 260.

Operative date January 1, 2016.

21-330 Corporations; excess payment; refund.

Any corporation which has paid occupation tax in excess of the proper amount of the occupation tax imposed in sections 21-301 to 21-330 shall be entitled to a refund of such excess payment. Claims for refund shall be filed with the Secretary of State or may be submitted by the Secretary of State based on his or her own investigation. If approved or submitted by the Secretary of State, the claim shall be forwarded to the State Treasurer for payment from the General Fund. The Secretary of State shall not refund any excess occupation tax payment if five years have passed from the date of the excess payment.

Source: Laws 1991, LB 829, § 25; Laws 1992, Fourth Spec. Sess., LB 1, § 1; Laws 1993, LB 345, § 1; Laws 1995, LB 182, § 21; Laws 2003, LB 524, § 15; Laws 2006, LB 647, § 3; Laws 2014, LB749, § 261.

Operative date January 1, 2016.

ARTICLE 4

NEBRASKA BENEFIT CORPORATION ACT

Section

- 21-401. Act, how cited.
- 21-402. Applicability of act; Business Corporation Act generally applicable.
- 21-403. Terms, defined.
- 21-404. Incorporation; articles of incorporation; statement required.
- 21-405. Existing business corporation; amend articles of incorporation; statement required; other entities; procedure.
- 21-406. Benefit corporation; terminate status; procedure.
- 21-407. General public benefit; specific public benefit.
- 21-408. Board of directors, committees of the board, and directors; duties; powers; liability.
- 21-409. Board of directors; benefit director; annual benefit report; contents; liability.
- 21-410. Officer; consider interests and factors; liability; duties.
- 21-411. Benefit officer; powers and duties.
- 21-412. Limitation on actions and claims; liability; benefit enforcement proceeding; when authorized.
- 21-413. Annual benefit report; contents.
- 21-414. Annual benefit report; distribution; posting; Secretary of State; filing; fee.

21-401 Act, how cited.

Sections 21-401 to 21-414 shall be known and may be cited as the Nebraska Benefit Corporation Act.

Source: Laws 2014, LB751, § 1.
Effective date July 18, 2014.

21-402 Applicability of act; Business Corporation Act generally applicable.

(1) The Nebraska Benefit Corporation Act applies to all benefit corporations.

(2) The existence of a provision of the Nebraska Benefit Corporation Act does not of itself create an implication that a contrary or different rule of law is applicable to a business corporation that is not a benefit corporation. The act does not affect a statute or rule of law that is applicable to a business corporation that is not a benefit corporation.

(3) Except as otherwise provided in the Nebraska Benefit Corporation Act, the Business Corporation Act is generally applicable to all benefit corporations. The specific provisions of the Nebraska Benefit Corporation Act control over the general provisions of the Business Corporation Act. A benefit corporation may be subject simultaneously to the Nebraska Benefit Corporation Act and one or more other statutes that provide for the incorporation of a specific type of business corporation.

(4) A provision of the articles of incorporation or bylaws of a benefit corporation may not limit, be inconsistent with, or supersede a provision of the Nebraska Benefit Corporation Act.

Source: Laws 2014, LB751, § 2.
Effective date July 18, 2014.

Cross References

Business Corporation Act, see section 21-2001.

21-403 Terms, defined.

The following words and phrases when used in the Nebraska Benefit Corporation Act have the meanings given to them in this section unless the context clearly indicates otherwise:

(1) Benefit corporation means a business corporation:

(a) Which has elected to become subject to the act; and

(b) The status of which as a benefit corporation has not been terminated;

(2) Benefit director means the director designated as the benefit director of a benefit corporation under section 21-409;

(3) Benefit enforcement proceeding means any claim or action or proceeding for:

(a) Failure of a benefit corporation to pursue or create general public benefit or a specific public benefit purpose set forth in its articles of incorporation; or

(b) Violation of any obligation, duty, or standard of conduct under the act;

(4) Benefit officer means the officer designated as the benefit officer of a benefit corporation under section 21-411;

(5) Business corporation means a domestic corporation as defined in section 21-2014;

(6) General public benefit means a material positive impact on society and the environment, taken as a whole, assessed against a third-party standard, from the business and operations of a benefit corporation;

(7) Independent means having no material relationship with a benefit corporation or a subsidiary of the benefit corporation. Serving as benefit director or benefit officer does not make an individual not independent. A material relationship between an individual and a benefit corporation or any of its subsidiaries will be conclusively presumed to exist if:

(a) The individual is, or has been within the last three years, an employee other than a benefit officer of the benefit corporation or a subsidiary;

(b) An immediate family member of the individual is, or has been within the last three years, an executive officer other than a benefit officer of the benefit corporation or a subsidiary; or

(c) There is beneficial or record ownership of five percent or more of the outstanding shares of the benefit corporation, calculated as if all outstanding rights to acquire equity interests in the benefit corporation had been exercised, by:

(i) The individual; or

(ii) An entity:

(A) Of which the individual is a director, an officer, or a manager; or

(B) In which the individual owns beneficially or of record five percent or more of the outstanding equity interests, calculated as if all outstanding rights to acquire equity interests in the entity had been exercised;

(8) Minimum status vote means:

(a) In the case of a business corporation, in addition to any other required approval or vote, the satisfaction of the following conditions:

(i) The shareholders of every class or series are entitled to vote separately on a corporate action regardless of a limitation stated in the articles of incorporation or bylaws on the voting rights of any class or series; and

(ii) The corporate action must be approved by a vote of the shareholders of each class or series entitled to cast at least two-thirds of the votes that all shareholders of the class or series are entitled to cast on the action; and

(b) In the case of a domestic entity other than a business corporation, in addition to any other required approval, vote, or consent, the satisfaction of the following conditions:

(i) The holders of every class or series of equity interests in the entity that are entitled to receive a distribution of any kind from the entity are entitled to vote separately on or consent to the action regardless of any otherwise applicable limitation on the voting or consent rights of any class or series; and

(ii) The action must be approved by a vote or consent of the holders described in subdivision (i) of this subdivision entitled to cast at least two-thirds of the votes or consents that all of those holders are entitled to cast on the action;

(9) Publicly traded corporation means a business corporation that has shares listed on a national securities exchange or traded in a market maintained by one or more members of a national securities association;

(10) Specific public benefit includes:

(a) Providing low-income or underserved individuals or communities with beneficial products or services;

(b) Promoting economic opportunity for individuals or communities beyond the creation of jobs in the normal course of business;

(c) Protecting or restoring the environment;

(d) Improving human health;

(e) Promoting the arts, sciences, or advancement of knowledge;

(f) Increasing the flow of capital to entities with a purpose to benefit society or the environment; and

(g) Conferring any other particular benefit on society or the environment;

(11) Subsidiary means in relation to a person, an entity in which the person owns beneficially or of record fifty percent or more of the outstanding equity interests; and

(12) Third-party standard means a recognized standard for defining, reporting, and assessing corporate social and environmental performance that is:

(a) Comprehensive because it assesses the effect of the business and its operations upon the interests listed in subdivisions (1)(a)(ii), (iii), (iv), and (v) of section 21-408;

(b) Developed by an entity that is not controlled by the benefit corporation;

(c) Credible because it is developed by an entity that both:

(i) Has access to necessary expertise to assess overall corporate social and environmental performance; and

(ii) Uses a balanced multistakeholder approach to develop the standard, including a reasonable public comment period; and

(d) Transparent because the following information is publicly available:

(i) About the standard:

(A) The criteria considered when measuring the overall social and environmental performance of a business; and

(B) The relative weightings, if any, of those criteria; and

(ii) About the development and revision of the standard:

(A) The identity of the directors, officers, material owners, and governing body of the entity that developed and controls revisions to the standard;

(B) The process by which revisions to the standard and changes to the membership of the governing body are made; and

(C) An accounting of the revenue and sources of financial support for the entity, with sufficient detail to disclose any relationships that could reasonably be considered to present a potential conflict of interest.

Source: Laws 2014, LB751, § 3.

Effective date July 18, 2014.

21-404 Incorporation; articles of incorporation; statement required.

A benefit corporation shall be incorporated in accordance with the Business Corporation Act, but its articles of incorporation must also state that it is a benefit corporation.

Source: Laws 2014, LB751, § 4.
Effective date July 18, 2014.

Cross References

Business Corporation Act, see section 21-2001.

21-405 Existing business corporation; amend articles of incorporation; statement required; other entities; procedure.

(1) An existing business corporation may become a benefit corporation under the Nebraska Benefit Corporation Act by amending its articles of incorporation so that they contain, in addition to the requirements of section 21-2018, a statement that the corporation is a benefit corporation. In order to be effective, the amendment must be adopted by at least the minimum status vote.

(2) An entity that is not a benefit corporation may become a benefit corporation pursuant to subsection (1) of this section if the entity is (a) a party to a merger or conversion or (b) an exchanging entity in a share exchange, and the surviving, new, or resulting entity in the merger, conversion, or share exchange is to be a benefit corporation. In order to be effective, a plan of merger, conversion, or share exchange subject to this subsection must be adopted by at least the minimum status vote.

Source: Laws 2014, LB751, § 5.
Effective date July 18, 2014.

21-406 Benefit corporation; terminate status; procedure.

(1) A benefit corporation may terminate its status as such and cease to be subject to the Nebraska Benefit Corporation Act by amending its articles of incorporation to delete the provision required by section 21-404 or 21-405 to be stated in the articles of a benefit corporation. In order to be effective, the amendment must be adopted by at least the minimum status vote.

(2) If a plan of merger, conversion, or share exchange would have the effect of terminating the status of a business corporation as a benefit corporation, the plan must be adopted by at least the minimum status vote in order to be effective. Any sale, lease, exchange, or other disposition of all or substantially all of the assets of a benefit corporation, unless the transaction is in the usual and regular course of business, is not effective unless the transaction is approved by at least the minimum status vote.

Source: Laws 2014, LB751, § 6.
Effective date July 18, 2014.

21-407 General public benefit; specific public benefit.

(1) A benefit corporation shall have a purpose of creating general public benefit. This purpose is in addition to its purpose under section 21-2024.

(2) The articles of incorporation of a benefit corporation may identify one or more specific public benefits that it is the purpose of the benefit corporation to create in addition to its purposes under section 21-2024 and subsection (1) of this section. The identification of a specific public benefit under this subsection

does not limit the purpose of a benefit corporation to create general public benefit under subsection (1) of this section.

(3) The creation of general public benefit and specific public benefit under subsections (1) and (2) of this section is in the best interests of the benefit corporation.

(4) A benefit corporation may amend its articles of incorporation to add, amend, or delete the identification of a specific public benefit that it is the purpose of the benefit corporation to create. In order to be effective, the amendment must be adopted by at least the minimum status vote.

Source: Laws 2014, LB751, § 7.
Effective date July 18, 2014.

21-408 Board of directors, committees of the board, and directors; duties; powers; liability.

(1) In discharging the duties of their respective positions and in considering the best interests of the benefit corporation, the board of directors, committees of the board, and individual directors of a benefit corporation:

(a) Shall consider the effects of any action or inaction upon:

(i) The shareholders of the benefit corporation;

(ii) The employees and work force of the benefit corporation, its subsidiaries, and its suppliers;

(iii) The interests of customers as beneficiaries of the general public benefit or specific public benefit purposes of the benefit corporation;

(iv) Community and societal factors, including those of each community in which offices or facilities of the benefit corporation, its subsidiaries, or its suppliers are located;

(v) The local and global environment;

(vi) The short-term and long-term interests of the benefit corporation, including benefits that may accrue to the benefit corporation from its long-term plans and the possibility that these interests may be best served by the continued independence of the benefit corporation; and

(vii) The ability of the benefit corporation to accomplish its general public benefit purpose and any specific public benefit purpose;

(b) May consider other pertinent factors or the interests of any other group that they deem appropriate; and

(c) Need not give priority to the interests of a particular person or group referred to in subdivision (a) or (b) of this subsection over the interests of any other person or group unless the benefit corporation has stated in its articles of incorporation its intention to give priority to certain interests related to its accomplishment of its general public benefit purpose or of a specific public benefit purpose identified in its articles of incorporation.

(2) The consideration of interests and factors in the manner required by subsection (1) of this section does not constitute a violation of section 21-2095.

(3) Except as provided in the articles of incorporation or bylaws, a director is not personally liable for monetary damages for:

(a) Any action or inaction in the course of performing the duties of a director under subsection (1) of this section if the director performed the duties of office in compliance with section 21-2095 and this section; or

(b) Failure of the benefit corporation to pursue or create general public benefit or specific public benefit.

(4) A director does not have a duty to a person that is a beneficiary of the general public benefit purpose or a specific public benefit purpose of a benefit corporation arising from the status of the person as a beneficiary.

(5) A director who makes a business judgment in good faith fulfills the duty under this section if the director:

(a) Is not interested in the subject of the business judgment;

(b) Is informed with respect to the subject of the business judgment to the extent the director reasonably believes to be appropriate under the circumstances; and

(c) Rationally believes that the business judgment is in the best interests of the benefit corporation.

Source: Laws 2014, LB751, § 8.

Effective date July 18, 2014.

21-409 Board of directors; benefit director; annual benefit report; contents; liability.

(1) The board of directors of a benefit corporation that is a publicly traded corporation shall, and the board of any other benefit corporation may, include a director, who:

(a) Shall be designated the benefit director; and

(b) Shall have, in addition to the powers, duties, rights, and immunities of the other directors of the benefit corporation, the powers, duties, rights, and immunities provided in this section.

(2) The benefit director shall be elected and may be removed in the manner provided by the Business Corporation Act. The benefit director shall be an individual who is independent. The benefit director may serve as the benefit officer at the same time as serving as the benefit director. The articles of incorporation or bylaws of a benefit corporation may prescribe additional qualifications of the benefit director not inconsistent with this subsection.

(3) The benefit director shall prepare, and the benefit corporation shall include in the annual benefit report to shareholders required by section 21-413, the opinion of the benefit director on all of the following:

(a) Whether the benefit corporation acted in accordance with its general public benefit purpose and any specific public benefit purpose in all material respects during the period covered by the benefit report;

(b) Whether the directors and officers complied with subsection (1) of section 21-408 and subsection (1) of section 21-410, respectively; and

(c) If, in the opinion of the benefit director, the benefit corporation or its directors or officers failed to act or comply in the manner described in subdivisions (3)(a) and (b) of this subsection, a description of the ways in which the benefit corporation or its directors or officers failed to act or comply.

(4) The action or inaction of an individual in the capacity of a benefit director constitutes for all purposes an action or inaction of that individual in the capacity of a director of the benefit corporation.

(5) Regardless of whether the articles of incorporation or bylaws of a benefit corporation include a provision eliminating or limiting the personal liability of directors authorized by section 21-2018, a benefit director is not personally liable for an act or omission in the capacity of a benefit director unless the act or omission constitutes self-dealing, willful misconduct, or a knowing violation of law.

Source: Laws 2014, LB751, § 9.
Effective date July 18, 2014.

Cross References

Business Corporation Act, see section 21-2001.

21-410 Officer; consider interests and factors; liability; duties.

(1) Each officer of a benefit corporation shall consider the interests and factors described in subsection (1) of section 21-408 in the manner provided in that subsection if:

(a) The officer has discretion to act with respect to a matter; and

(b) It reasonably appears to the officer that the matter may have a material effect on the creation by the benefit corporation of general public benefit or a specific public benefit identified in the articles of incorporation of the benefit corporation.

(2) The consideration of interests and factors in the manner described in subsection (1) of this section does not constitute a violation of section 21-2099.

(3) Except as provided in the articles of incorporation or bylaws, an officer is not personally liable for monetary damages for:

(a) An action or inaction as an officer in the course of performing the duties of an officer under subsection (1) of this section if the officer performed the duties of the position in compliance with section 21-2099 and this section; or

(b) Failure of the benefit corporation to pursue or create general public benefit or specific public benefit.

(4) An officer does not have a duty to a person that is a beneficiary of the general public benefit purpose or a specific public benefit purpose of a benefit corporation arising from the status of the person as a beneficiary.

(5) An officer who makes a business judgment in good faith fulfills the duty under this section if the officer:

(a) Is not interested in the subject of the business judgment;

(b) Is informed with respect to the subject of the business judgment to the extent the officer reasonably believes to be appropriate under the circumstances; and

(c) Rationally believes that the business judgment is in the best interests of the benefit corporation.

Source: Laws 2014, LB751, § 10.
Effective date July 18, 2014.

21-411 Benefit officer; powers and duties.

(1) A benefit corporation may have an officer designated the benefit officer.

(2) A benefit officer shall have:

(a) The powers and duties relating to the purpose of the corporation to create general public benefit or specific public benefit provided:

(i) By the bylaws; or

(ii) Absent controlling provisions in the bylaws, by resolutions or orders of the board of directors; and

(b) The duty to prepare the annual benefit report required by section 21-413.

Source: Laws 2014, LB751, § 11.

Effective date July 18, 2014.

21-412 Limitation on actions and claims; liability; benefit enforcement proceeding; when authorized.

(1)(a) Except in a benefit enforcement proceeding, no person may bring an action or assert a claim against a benefit corporation or its directors or officers with respect to:

(i) Failure to pursue or create general public benefit or a specific public benefit set forth in its articles of incorporation; or

(ii) Violation of an obligation, duty, or standard of conduct under the Nebraska Benefit Corporation Act.

(b) A benefit corporation is not liable for monetary damages under the act for any failure of the benefit corporation to pursue or create general public benefit or a specific public benefit.

(2) A benefit enforcement proceeding may be commenced or maintained only:

(a) Directly by the benefit corporation; or

(b) Derivatively in accordance with the Business Corporation Act by:

(i) A person or group of persons that owned beneficially or of record at least two percent of the total number of shares of a class or series outstanding at the time of the act or omission complained of;

(ii) A director;

(iii) A person or group of persons that owned beneficially or of record five percent or more of the outstanding equity interests in an entity of which the benefit corporation is a subsidiary at the time of the act or omission complained of; or

(iv) Other persons as specified in the articles of incorporation or bylaws of the benefit corporation.

(3) For purposes of this section, a person is the beneficial owner of shares or equity interests if the shares or equity interests are held in a voting trust or by a nominee on behalf of the beneficial owner.

Source: Laws 2014, LB751, § 12.

Effective date July 18, 2014.

Cross References

Business Corporation Act, see section 21-2001.

21-413 Annual benefit report; contents.

(1) A benefit corporation shall prepare an annual benefit report including all of the following:

(a) A narrative description of:

(i) The ways in which the benefit corporation pursued general public benefit during the year and the extent to which general public benefit was created;

(ii) Both:

(A) The ways in which the benefit corporation pursued a specific public benefit that the articles of incorporation state it is the purpose of the benefit corporation to create; and

(B) The extent to which that specific public benefit was created;

(iii) Any circumstances that have hindered the creation by the benefit corporation of general public benefit or specific public benefit; and

(iv) The process and rationale for selecting or changing the third-party standard used to prepare the benefit report;

(b) An assessment of the overall social and environmental performance of the benefit corporation against a third-party standard:

(i) Applied consistently with any application of that standard in prior benefit reports; or

(ii) Accompanied by an explanation of the reasons for:

(A) Any inconsistent application; or

(B) The change to that standard from the one used in the immediately prior benefit report;

(c) The name of the benefit director and the benefit officer, if any, and the address to which correspondence to each of them may be directed;

(d) The compensation paid by the benefit corporation during the year to each director in the capacity of a director;

(e) The statement of the benefit director described in subsection (3) of section 21-409; and

(f) A statement of any connection between the organization that established the third-party standard, or its directors, officers, or any holder of five percent or more of the governance interests in the organization, and the benefit corporation or its directors, officers, or any holder of five percent or more of the outstanding shares of the benefit corporation, including any financial or governance relationship which might materially affect the credibility of the use of the third-party standard.

(2) If, during the year covered by a benefit report, a benefit director resigned from or refused to stand for reelection to the position of benefit director, or was removed from the position of benefit director, and the benefit director furnished the benefit corporation with any written correspondence concerning the circumstances surrounding the resignation, refusal, or removal, the benefit report shall include that correspondence as an exhibit.

(3) Neither the benefit report nor the assessment of the performance of the benefit corporation in the benefit report required by subdivision (1)(b) of this section needs to be audited or certified by a third-party standards provider.

Source: Laws 2014, LB751, § 13.

Effective date July 18, 2014.

21-414 Annual benefit report; distribution; posting; Secretary of State; filing; fee.

(1) A benefit corporation shall send its annual benefit report to each shareholder:

(a) Within one hundred twenty days following the end of the fiscal year of the benefit corporation; or

(b) At the same time that the benefit corporation delivers any other annual report to its shareholders.

(2) A benefit corporation shall post all of its benefit reports on the public portion of its Internet web site, if any, except that the compensation paid to directors and financial or proprietary information included in the benefit reports may be omitted from the benefit reports as posted.

(3) If a benefit corporation does not have an Internet web site, the benefit corporation shall provide a copy of its most recent benefit report, without charge, to any person that requests a copy, except that the compensation paid to directors and financial or proprietary information included in the benefit report may be omitted from the copy of the benefit report provided.

(4)(a) Concurrently with the delivery of the benefit report to shareholders under subsection (1) of this section, the benefit corporation shall deliver a copy of the benefit report to the Secretary of State for filing, except that the compensation paid to directors and financial or proprietary information included in the benefit report may be omitted from the benefit report as delivered to the Secretary of State.

(b) The Secretary of State shall charge a fee in the amount prescribed in subdivision (1)(y) of section 21-2005 for filing a benefit report. The fee shall be remitted to the State Treasurer for credit to the Corporation Cash Fund.

Source: Laws 2014, LB751, § 14.

Effective date July 18, 2014.

ARTICLE 6**CHARITABLE AND FRATERNAL SOCIETIES**

Section

21-610. Societies declared to be corporations; power to act as administrator, executor, guardian, or trustee.

21-610 Societies declared to be corporations; power to act as administrator, executor, guardian, or trustee.

When any such organization has established in this state an institution for the care of children or persons who are incapacitated in any manner and such institution has been incorporated under the laws of Nebraska, such corporation shall have power to act either by itself or jointly with any natural person or persons (1) as administrator of the estate of any deceased person whose domicile was within the county in which the corporation is located or whose domicile was outside the State of Nebraska, (2) as executor under a last will and testament or as guardian of the property of any infant, person with an intellectual disability, person with a mental disorder, or person under other disability, or (3) as trustee for any person or of the estate of any deceased person under the appointment of any court of record having jurisdiction of the estate of such person.

Source: Laws 1917, c. 11, § 1, p. 70; Laws 1919, c. 156, § 1, p. 353; Laws 1921, c. 147, § 1, p. 624; Laws 1921, c. 174, § 1, p. 672;

C.S.1922, § 504; Laws 1923, c. 34, § 1, p. 146; Laws 1925, c. 148, § 1, p. 386; Laws 1929, c. 57, § 1, p. 225; C.S.1929, § 24-607; Laws 1935, c. 46, § 1, p. 171; Laws 1937, c. 52, § 1, p. 218; C.S.Supp.,1941, § 24-607; R.S.1943, § 21-610; Laws 1986, LB 1177, § 3; Laws 2013, LB23, § 1.

ARTICLE 13

COOPERATIVE COMPANIES

(a) GENERAL PROVISIONS

Section

21-1301. Cooperative corporation; formation; general purposes and powers; exceptions; action by cooperative corporation; vote required.

(a) GENERAL PROVISIONS

21-1301 Cooperative corporation; formation; general purposes and powers; exceptions; action by cooperative corporation; vote required.

Any number of persons, not less than ten, or one or more cooperative companies, may form and organize a cooperative corporation for the transaction of any lawful business by the adoption of articles of incorporation in the same manner and with like powers and duties as is required of other corporations except as provided in sections 21-1301 to 21-1306. Nothing in sections 21-1301 and 21-1303 shall be deemed to apply to electrical cooperatives or electric member associations. If the Nebraska Model Business Corporation Act requires an affirmative vote of a specified percentage of stockholders before action can be taken by a corporation, such percentage for a cooperative corporation shall be of the votes cast on the matter at the stockholders' meeting at which the same shall be voted upon.

Source: Laws 1911, c. 32, § 2, p. 196; R.S.1913, § 734; Laws 1919, c. 197, § 3, p. 879; Laws 1921, c. 28, § 1, p. 161; C.S.1922, § 642; Laws 1925, c. 79, § 1, p. 243; C.S.1929, § 24-1301; R.S.1943, § 21-1301; Laws 1963, c. 102, § 1, p. 422; Laws 1975, LB 156, § 1; Laws 1995, LB 109, § 203; Laws 2014, LB749, § 262.
Operative date January 1, 2016.

Cross References

Nebraska Model Business Corporation Act, see section 21-201.

Transactions exempt from Securities Act of Nebraska, see section 8-1111.

ARTICLE 17

CREDIT UNIONS

(a) CREDIT UNION ACT

Section

21-17,115. Credit union organized under laws of Nebraska; rights, powers, privileges, and immunities of federal credit union; exception.

(a) CREDIT UNION ACT

21-17,115 Credit union organized under laws of Nebraska; rights, powers, privileges, and immunities of federal credit union; exception.

Notwithstanding any of the other provisions of the Credit Union Act or any other Nebraska statute, any credit union incorporated under the laws of the

State of Nebraska and organized under the provisions of the act shall have all the rights, powers, privileges, benefits, and immunities which may be exercised as of January 1, 2014, by a federal credit union doing business in Nebraska on the condition that such rights, powers, privileges, benefits, and immunities shall not relieve such credit union from payment of state taxes assessed under any applicable laws of this state.

Source: Laws 1977, LB 246, § 5; Laws 1978, LB 772, § 1; Laws 1979, LB 307, § 1; Laws 1980, LB 793, § 1; Laws 1981, LB 60, § 1; Laws 1982, LB 775, § 2; Laws 1983, LB 143, § 1; Laws 1984, LB 643, § 1; Laws 1985, LB 430, § 1; Laws 1986, LB 963, § 1; Laws 1987, LB 197, § 1; Laws 1988, LB 957, § 1; Laws 1989, LB 126, § 1; Laws 1990, LB 1017, § 1; Laws 1991, LB 97, § 1; Laws 1992, LB 984, § 1; Laws 1993, LB 122, § 1; Laws 1994, LB 878, § 1; Laws 1995, LB 76, § 1; R.S.Supp.,1995, § 21-17,120.01; Laws 1996, LB 948, § 115; Laws 1997, LB 152, § 1; Laws 1998, LB 1321, § 75; Laws 1999, LB 278, § 1; Laws 2000, LB 932, § 27; Laws 2001, LB 53, § 26; Laws 2002, LB 957, § 20; Laws 2003, LB 217, § 32; Laws 2004, LB 999, § 21; Laws 2005, LB 533, § 32; Laws 2006, LB 876, § 24; Laws 2007, LB124, § 21; Laws 2008, LB851, § 17; Laws 2009, LB327, § 15; Laws 2010, LB890, § 14; Laws 2011, LB74, § 5; Laws 2012, LB963, § 22; Laws 2013, LB213, § 13; Laws 2014, LB712, § 3.
Effective date April 11, 2014.

ARTICLE 19

NEBRASKA NONPROFIT CORPORATION ACT

(d) NAMES

Section

21-1931. Corporate name.

21-1933. Registered name.

(n) FOREIGN CORPORATIONS

21-19,151. Foreign corporation; corporate name.

(o) RECORDS AND REPORTS

21-19,172. Biennial report; contents.

(d) NAMES

21-1931 Corporate name.

(a) A corporate name may not contain language stating or implying that the corporation is organized for a purpose other than that permitted by section 21-1927 and its articles of incorporation.

(b) Except as authorized by subsections (c) and (d) of this section, a corporate name shall not be the same as or deceptively similar to, upon the records of the Secretary of State, any of the names referenced in subdivisions (b)(1) through (5) of this section:

(1) The corporate name of a nonprofit or business corporation incorporated or authorized to do business in this state;

(2) A corporate name reserved or registered under section 21-231, 21-232, 21-1932, or 21-1933;

(3) The fictitious name of a foreign business or nonprofit corporation authorized to transact business in this state because its real name is unavailable;

(4) A trade name registered in this state pursuant to sections 87-208 to 87-219.01; and

(5) Any other business entity name registered or filed with the Secretary of State pursuant to Nebraska law.

(c) A corporation may apply to the Secretary of State for authorization to use a name that is deceptively similar to, upon the Secretary of State's records, one or more of the names described in subsection (b) of this section. The Secretary of State shall authorize use of the name applied for if:

(1) The other corporation or business entity consents to the use in writing; or

(2) The applicant delivers to the Secretary of State a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(d) A corporation may use the name (including the fictitious name) of another domestic or foreign business or nonprofit corporation or business entity that is used in this state if the other corporation or business entity is incorporated or authorized to do business in this state and the proposed user corporation:

(1) Has merged with the other corporation or business entity;

(2) Has been formed by reorganization of the other corporation or business entity; or

(3) Has acquired all or substantially all of the assets, including the name, of the other corporation or business entity.

(e) The Nebraska Nonprofit Corporation Act does not control the use of fictitious names.

Source: Laws 1996, LB 681, § 31; Laws 1997, LB 44, § 2; Laws 1997, LB 453, § 1; Laws 2003, LB 464, § 1; Laws 2011, LB462, § 1; Laws 2014, LB749, § 263.

Operative date January 1, 2016.

21-1933 Registered name.

(a) A foreign corporation may register its corporate name, or its corporate name with any change required by section 21-19,151, if the name is not the same as or deceptively similar to, upon the records of the Secretary of State:

(1) The corporate name of a nonprofit or business corporation incorporated or authorized to do business in this state;

(2) A corporate name reserved under section 21-231 or 21-1932 or registered under this section; and

(3) Any other business entity name registered or filed with the Secretary of State pursuant to Nebraska law.

(b) A foreign corporation registers its corporate name, or its corporate name with any change required by section 21-19,151, by delivering to the Secretary of State an application:

(1) Setting forth its corporate name, or its corporate name with any change required by section 21-19,151, the state or country and date of its incorporation, and a brief description of the nature of the activities in which it is engaged; and

(2) Accompanied by a certificate of existence (or a document of similar import) from the state or country of incorporation. Such certificate or document shall not bear a date of more than sixty days prior to the date the application is filed in this state.

(c) The corporate name is registered for the applicant's exclusive use upon the effective date of the application.

(d) A foreign corporation whose registration is effective may renew it for successive years by delivering to the Secretary of State for filing a renewal application, which complies with the requirements of subsection (b) of this section, between October 1 and December 31 of the preceding year. The renewal application renews the registration for the following calendar year.

(e) A foreign corporation whose registration is effective may thereafter qualify as a foreign corporation under that name or consent in writing to the use of that name by a corporation or other business entity thereafter incorporated under the Nebraska Nonprofit Corporation Act or authorized to transact business in this state or by another foreign corporation or business entity thereafter authorized to transact business in this state. The registration terminates when the domestic corporation is incorporated or the foreign corporation or business entity qualifies or consents to the qualification of another foreign corporation or business entity under the registered name.

Source: Laws 1996, LB 681, § 33; Laws 1997, LB 44, § 3; Laws 2003, LB 464, § 2; Laws 2014, LB749, § 264.
Operative date January 1, 2016.

(n) FOREIGN CORPORATIONS

21-19,151 Foreign corporation; corporate name.

(a) If the corporate name of a foreign corporation does not satisfy the requirements of section 21-1931, the foreign corporation, to obtain or maintain a certificate of authority to transact business in this state, may use a fictitious name to transact business in this state if its real name is unavailable and it delivers to the Secretary of State for filing a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious name.

(b) Except as authorized by subsections (c) and (d) of this section, the corporate name (including a fictitious name) of a foreign corporation shall not be the same as or deceptively similar to, upon the records of the Secretary of State, any of the names referenced in subdivisions (b)(1) through (5) of this section:

(1) The corporate name of a nonprofit or business corporation incorporated or authorized to transact business in this state;

(2) A corporate name reserved or registered under section 21-231, 21-232, 21-1932, or 21-1933;

(3) The fictitious name of another foreign business or nonprofit corporation authorized to transact business in this state;

(4) A trade name registered in this state pursuant to sections 87-208 to 87-219.01; and

(5) Any other business entity name registered or filed with the Secretary of State pursuant to Nebraska law.

(c) A foreign corporation may apply to the Secretary of State for authorization to use in this state the name of another corporation or business entity (incorporated or authorized to transact business in this state) that is deceptively similar to, upon the records of the Secretary of State, the name applied for. The Secretary of State shall authorize use of the name applied for if:

(1) The other corporation or business entity consents in writing to the use; or

(2) The applying corporation delivers to the Secretary of State a certified copy of a final judgment of a court of competent jurisdiction establishing its right to use the name applied for in this state.

(d) A foreign corporation may use in this state the name (including the fictitious name) of another domestic or foreign business or nonprofit corporation or business entity that is used in this state if the other corporation or business entity is incorporated or authorized to transact business in this state and the foreign corporation:

(1) Has merged with the other corporation or business entity;

(2) Has been formed by a reorganization of the other corporation or business entity; or

(3) Has acquired all or substantially all of the assets, including the name, of the other corporation or business entity.

(e) If a foreign corporation authorized to transact business in this state changes its corporate name to one that does not satisfy the requirements of section 21-1931, it shall not transact business in this state under the changed name until it adopts a name satisfying the requirements of section 21-1931 and obtains an amended certificate of authority under section 21-19,149.

Source: Laws 1996, LB 681, § 151; Laws 1997, LB 44, § 4; Laws 1997, LB 453, § 2; Laws 2003, LB 464, § 3; Laws 2011, LB462, § 2; Laws 2014, LB749, § 265.

Operative date January 1, 2016.

(o) RECORDS AND REPORTS

21-19,172 Biennial report; contents.

(a) Commencing in 1999 and each odd-numbered year thereafter, each domestic corporation, and each foreign corporation authorized to transact business in this state, shall deliver to the Secretary of State a biennial report on a form prescribed and furnished by the Secretary of State that sets forth:

(1) The name of the corporation and the state or country under whose law it is incorporated;

(2) The street address of its registered office and the name of its current registered agent at the office in this state. A post office box number may be provided in addition to the street address;

(3) The street address of its principal office;

(4) The names and business or residence addresses of its directors and principal officers;

(5) A brief description of the nature of its activities;

(6) Whether or not it has members;

(7) If it is a domestic corporation, whether it is a public benefit, mutual benefit, or religious corporation; and

(8) If it is a foreign corporation, whether it would be a public benefit, mutual benefit, or religious corporation had it been incorporated in this state.

(b) The information in the biennial report must be current on the date the biennial report is executed on behalf of the corporation.

(c) The first biennial report must be delivered to the Secretary of State between January 1 and April 1 of the odd-numbered year following the calendar year in which a domestic corporation was incorporated or a foreign corporation was authorized to transact business. Subsequent biennial reports must be delivered to the Secretary of State between January 1 and April 1 of the following odd-numbered years. For purposes of the Nebraska Nonprofit Corporation Act, the biennial report is due on April 1 of the odd-numbered year in which it must be delivered to the Secretary of State as required by this section.

(d) If a biennial report does not contain the information required by this section, the Secretary of State shall promptly notify the reporting domestic or foreign corporation in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the Secretary of State within thirty days after the effective date of notice, it is deemed to be timely filed.

(e) Upon the delivery of the biennial report as provided in this section, the Secretary of State shall charge and collect a fee as prescribed in section 21-1905. For purposes of the Nebraska Nonprofit Corporation Act, the fee is due on April 1 of the odd-numbered year in which the biennial report must be delivered to the Secretary of State as required by this section.

(f) Biennial reports shall be filed in 1997 pursuant to sections 21-1981 and 21-1982 (Reissue 1991) as if such sections had not been repealed by Laws 1996, LB 681. Fees, including penalties, due or delinquent prior to 1999 shall be paid pursuant to section 21-1982 (Reissue 1991) as if such section had not been repealed by Laws 1996, LB 681.

(g) A correction or an amendment to the biennial report may be delivered to the Secretary of State for filing at any time.

Source: Laws 1996, LB 681, § 172; Laws 2008, LB379, § 14; Laws 2014, LB774, § 3.
Effective date July 18, 2014.

ARTICLE 20

BUSINESS CORPORATION ACT

(a) GENERAL PROVISIONS

Section

21-2001.	Repealed. Laws 2014, LB 749, § 298.
21-2002.	Repealed. Laws 2014, LB 749, § 298.
21-2003.	Repealed. Laws 2014, LB 749, § 298.
21-2004.	Repealed. Laws 2014, LB 749, § 298.
21-2005.	Repealed. Laws 2014, LB 749, § 298.
21-2006.	Repealed. Laws 2014, LB 749, § 298.
21-2007.	Repealed. Laws 2014, LB 749, § 298.
21-2008.	Repealed. Laws 2014, LB 749, § 298.
21-2009.	Repealed. Laws 2014, LB 749, § 298.
21-2010.	Repealed. Laws 2014, LB 749, § 298.
21-2011.	Repealed. Laws 2014, LB 749, § 298.
21-2012.	Repealed. Laws 2014, LB 749, § 298.

BUSINESS CORPORATION ACT

Section

- 21-2013. Repealed. Laws 2014, LB 749, § 298.
- 21-2014. Repealed. Laws 2014, LB 749, § 298.
- 21-2015. Repealed. Laws 2014, LB 749, § 298.
- 21-2016. Repealed. Laws 2014, LB 749, § 298.

(b) INCORPORATION

- 21-2017. Repealed. Laws 2014, LB 749, § 298.
- 21-2018. Repealed. Laws 2014, LB 749, § 298.
- 21-2019. Repealed. Laws 2014, LB 749, § 298.
- 21-2020. Repealed. Laws 2014, LB 749, § 298.
- 21-2021. Repealed. Laws 2014, LB 749, § 298.
- 21-2022. Repealed. Laws 2014, LB 749, § 298.
- 21-2023. Repealed. Laws 2014, LB 749, § 298.

(c) PURPOSES AND POWERS

- 21-2024. Repealed. Laws 2014, LB 749, § 298.
- 21-2025. Repealed. Laws 2014, LB 749, § 298.
- 21-2026. Repealed. Laws 2014, LB 749, § 298.
- 21-2027. Repealed. Laws 2014, LB 749, § 298.

(d) NAME

- 21-2028. Repealed. Laws 2014, LB 749, § 298.
- 21-2029. Repealed. Laws 2014, LB 749, § 298.
- 21-2030. Repealed. Laws 2014, LB 749, § 298.

(e) OFFICE AND AGENT

- 21-2031. Repealed. Laws 2014, LB 749, § 298.
- 21-2032. Repealed. Laws 2014, LB 749, § 298.
- 21-2033. Repealed. Laws 2014, LB 749, § 298.
- 21-2034. Repealed. Laws 2014, LB 749, § 298.

(f) SHARES AND DISTRIBUTIONS

- 21-2035. Repealed. Laws 2014, LB 749, § 298.
- 21-2036. Repealed. Laws 2014, LB 749, § 298.
- 21-2037. Repealed. Laws 2014, LB 749, § 298.
- 21-2038. Repealed. Laws 2014, LB 749, § 298.
- 21-2039. Repealed. Laws 2014, LB 749, § 298.
- 21-2040. Repealed. Laws 2014, LB 749, § 298.
- 21-2041. Repealed. Laws 2014, LB 749, § 298.
- 21-2042. Repealed. Laws 2014, LB 749, § 298.
- 21-2043. Repealed. Laws 2014, LB 749, § 298.
- 21-2044. Repealed. Laws 2014, LB 749, § 298.
- 21-2045. Repealed. Laws 2014, LB 749, § 298.
- 21-2046. Repealed. Laws 2014, LB 749, § 298.
- 21-2047. Repealed. Laws 2014, LB 749, § 298.
- 21-2048. Repealed. Laws 2014, LB 749, § 298.
- 21-2049. Repealed. Laws 2014, LB 749, § 298.
- 21-2050. Repealed. Laws 2014, LB 749, § 298.

(g) SHAREHOLDERS

- 21-2051. Repealed. Laws 2014, LB 749, § 298.
- 21-2052. Repealed. Laws 2014, LB 749, § 298.
- 21-2053. Repealed. Laws 2014, LB 749, § 298.
- 21-2054. Repealed. Laws 2014, LB 749, § 298.
- 21-2055. Repealed. Laws 2014, LB 749, § 298.
- 21-2056. Repealed. Laws 2014, LB 749, § 298.
- 21-2057. Repealed. Laws 2014, LB 749, § 298.
- 21-2058. Repealed. Laws 2014, LB 749, § 298.
- 21-2059. Repealed. Laws 2014, LB 749, § 298.
- 21-2060. Repealed. Laws 2014, LB 749, § 298.
- 21-2061. Repealed. Laws 2014, LB 749, § 298.

CORPORATIONS AND OTHER COMPANIES

Section

21-2062.	Repealed. Laws 2014, LB 749, § 298.
21-2063.	Repealed. Laws 2014, LB 749, § 298.
21-2064.	Repealed. Laws 2014, LB 749, § 298.
21-2065.	Repealed. Laws 2014, LB 749, § 298.
21-2066.	Repealed. Laws 2014, LB 749, § 298.
21-2067.	Repealed. Laws 2014, LB 749, § 298.
21-2068.	Repealed. Laws 2014, LB 749, § 298.
21-2069.	Repealed. Laws 2014, LB 749, § 298.
21-2070.	Repealed. Laws 2014, LB 749, § 298.
21-2071.	Repealed. Laws 2014, LB 749, § 298.
21-2072.	Repealed. Laws 2014, LB 749, § 298.
21-2073.	Repealed. Laws 2014, LB 749, § 298.
21-2074.	Repealed. Laws 2014, LB 749, § 298.
21-2075.	Repealed. Laws 2014, LB 749, § 298.
21-2076.	Repealed. Laws 2014, LB 749, § 298.
21-2077.	Repealed. Laws 2014, LB 749, § 298.

(h) DIRECTORS AND OFFICERS

21-2078.	Repealed. Laws 2014, LB 749, § 298.
21-2079.	Repealed. Laws 2014, LB 749, § 298.
21-2080.	Repealed. Laws 2014, LB 749, § 298.
21-2081.	Repealed. Laws 2014, LB 749, § 298.
21-2082.	Repealed. Laws 2014, LB 749, § 298.
21-2083.	Repealed. Laws 2014, LB 749, § 298.
21-2084.	Repealed. Laws 2014, LB 749, § 298.
21-2085.	Repealed. Laws 2014, LB 749, § 298.
21-2086.	Repealed. Laws 2014, LB 749, § 298.
21-2087.	Repealed. Laws 2014, LB 749, § 298.
21-2088.	Repealed. Laws 2014, LB 749, § 298.
21-2089.	Repealed. Laws 2014, LB 749, § 298.
21-2090.	Repealed. Laws 2014, LB 749, § 298.
21-2091.	Repealed. Laws 2014, LB 749, § 298.
21-2092.	Repealed. Laws 2014, LB 749, § 298.
21-2093.	Repealed. Laws 2014, LB 749, § 298.
21-2094.	Repealed. Laws 2014, LB 749, § 298.
21-2095.	Repealed. Laws 2014, LB 749, § 298.
21-2096.	Repealed. Laws 2014, LB 749, § 298.
21-2097.	Repealed. Laws 2014, LB 749, § 298.
21-2098.	Repealed. Laws 2014, LB 749, § 298.
21-2099.	Repealed. Laws 2014, LB 749, § 298.
21-20,100.	Repealed. Laws 2014, LB 749, § 298.
21-20,101.	Repealed. Laws 2014, LB 749, § 298.
21-20,102.	Repealed. Laws 2014, LB 749, § 298.
21-20,103.	Repealed. Laws 2014, LB 749, § 298.
21-20,104.	Repealed. Laws 2014, LB 749, § 298.
21-20,105.	Repealed. Laws 2014, LB 749, § 298.
21-20,106.	Repealed. Laws 2014, LB 749, § 298.
21-20,107.	Repealed. Laws 2014, LB 749, § 298.
21-20,108.	Repealed. Laws 2014, LB 749, § 298.
21-20,109.	Repealed. Laws 2014, LB 749, § 298.
21-20,110.	Repealed. Laws 2014, LB 749, § 298.
21-20,111.	Repealed. Laws 2014, LB 749, § 298.
21-20,112.	Repealed. Laws 2014, LB 749, § 298.
21-20,113.	Repealed. Laws 2014, LB 749, § 298.
21-20,114.	Repealed. Laws 2014, LB 749, § 298.
21-20,115.	Repealed. Laws 2014, LB 749, § 298.

(i) AMENDMENT OF ARTICLES OF INCORPORATION AND BYLAWS

21-20,116.	Repealed. Laws 2014, LB 749, § 298.
21-20,117.	Repealed. Laws 2014, LB 749, § 298.
21-20,118.	Repealed. Laws 2014, LB 749, § 298.

BUSINESS CORPORATION ACT

Section

- 21-20,119. Repealed. Laws 2014, LB 749, § 298.
- 21-20,120. Repealed. Laws 2014, LB 749, § 298.
- 21-20,121. Repealed. Laws 2014, LB 749, § 298.
- 21-20,122. Repealed. Laws 2014, LB 749, § 298.
- 21-20,123. Repealed. Laws 2014, LB 749, § 298.
- 21-20,124. Repealed. Laws 2014, LB 749, § 298.
- 21-20,125. Repealed. Laws 2014, LB 749, § 298.
- 21-20,126. Repealed. Laws 2014, LB 749, § 298.
- 21-20,127. Repealed. Laws 2014, LB 749, § 298.

(j) MERGER AND SHARE EXCHANGE

- 21-20,128. Repealed. Laws 2014, LB 749, § 298.
- 21-20,129. Repealed. Laws 2014, LB 749, § 298.
- 21-20,130. Repealed. Laws 2014, LB 749, § 298.
- 21-20,131. Repealed. Laws 2014, LB 749, § 298.
- 21-20,132. Repealed. Laws 2014, LB 749, § 298.
- 21-20,133. Repealed. Laws 2014, LB 749, § 298.
- 21-20,134. Repealed. Laws 2014, LB 749, § 298.

(k) SALE OF ASSETS

- 21-20,135. Repealed. Laws 2014, LB 749, § 298.
- 21-20,135.01. Repealed. Laws 2014, LB 749, § 298.
- 21-20,136. Repealed. Laws 2014, LB 749, § 298.

(l) DISSENTERS' RIGHTS

- 21-20,137. Repealed. Laws 2014, LB 749, § 298.
- 21-20,138. Repealed. Laws 2014, LB 749, § 298.
- 21-20,139. Repealed. Laws 2014, LB 749, § 298.
- 21-20,140. Repealed. Laws 2014, LB 749, § 298.
- 21-20,141. Repealed. Laws 2014, LB 749, § 298.
- 21-20,142. Repealed. Laws 2014, LB 749, § 298.
- 21-20,143. Repealed. Laws 2014, LB 749, § 298.
- 21-20,144. Repealed. Laws 2014, LB 749, § 298.
- 21-20,145. Repealed. Laws 2014, LB 749, § 298.
- 21-20,146. Repealed. Laws 2014, LB 749, § 298.
- 21-20,147. Repealed. Laws 2014, LB 749, § 298.
- 21-20,148. Repealed. Laws 2014, LB 749, § 298.
- 21-20,149. Repealed. Laws 2014, LB 749, § 298.
- 21-20,150. Repealed. Laws 2014, LB 749, § 298.

(m) DISSOLUTION

- 21-20,151. Repealed. Laws 2014, LB 749, § 298.
- 21-20,152. Repealed. Laws 2014, LB 749, § 298.
- 21-20,153. Repealed. Laws 2014, LB 749, § 298.
- 21-20,154. Repealed. Laws 2014, LB 749, § 298.
- 21-20,155. Repealed. Laws 2014, LB 749, § 298.
- 21-20,156. Repealed. Laws 2014, LB 749, § 298.
- 21-20,157. Repealed. Laws 2014, LB 749, § 298.
- 21-20,158. Repealed. Laws 2014, LB 749, § 298.
- 21-20,159. Repealed. Laws 2014, LB 749, § 298.
- 21-20,160. Repealed. Laws 2014, LB 749, § 298.
- 21-20,161. Repealed. Laws 2014, LB 749, § 298.
- 21-20,162. Repealed. Laws 2014, LB 749, § 298.
- 21-20,163. Repealed. Laws 2014, LB 749, § 298.
- 21-20,164. Repealed. Laws 2014, LB 749, § 298.
- 21-20,165. Repealed. Laws 2014, LB 749, § 298.
- 21-20,166. Repealed. Laws 2014, LB 749, § 298.
- 21-20,167. Repealed. Laws 2014, LB 749, § 298.

(n) FOREIGN CORPORATIONS

- 21-20,168. Repealed. Laws 2014, LB 749, § 298.
- 21-20,169. Repealed. Laws 2014, LB 749, § 298.

Section

- 21-20,170. Repealed. Laws 2014, LB 749, § 298.
- 21-20,171. Repealed. Laws 2014, LB 749, § 298.
- 21-20,172. Repealed. Laws 2014, LB 749, § 298.
- 21-20,173. Repealed. Laws 2014, LB 749, § 298.
- 21-20,174. Repealed. Laws 2014, LB 749, § 298.
- 21-20,175. Repealed. Laws 2014, LB 749, § 298.
- 21-20,176. Repealed. Laws 2014, LB 749, § 298.
- 21-20,177. Repealed. Laws 2014, LB 749, § 298.
- 21-20,178. Repealed. Laws 2014, LB 749, § 298.
- 21-20,179. Repealed. Laws 2014, LB 749, § 298.
- 21-20,180. Repealed. Laws 2014, LB 749, § 298.
- 21-20,180.01. Repealed. Laws 2014, LB 749, § 298.
- 21-20,181. Repealed. Laws 2014, LB 749, § 298.
- 21-20,181.01. Repealed. Laws 2014, LB 749, § 298.
- 21-20,181.02. Repealed. Laws 2014, LB 749, § 298.
- 21-20,181.03. Repealed. Laws 2014, LB 749, § 298.

(o) RECORDS AND REPORTS

- 21-20,182. Repealed. Laws 2014, LB 749, § 298.
- 21-20,183. Repealed. Laws 2014, LB 749, § 298.
- 21-20,184. Repealed. Laws 2014, LB 749, § 298.
- 21-20,185. Repealed. Laws 2014, LB 749, § 298.
- 21-20,186. Repealed. Laws 2014, LB 749, § 298.
- 21-20,187. Repealed. Laws 2014, LB 749, § 298.
- 21-20,188. Repealed. Laws 2014, LB 749, § 298.

(p) PUBLICATION

- 21-20,189. Repealed. Laws 2014, LB 749, § 298.

(q) TRANSITION PROVISIONS

- 21-20,190. Repealed. Laws 2014, LB 749, § 298.
- 21-20,191. Repealed. Laws 2014, LB 749, § 298.
- 21-20,192. Repealed. Laws 2014, LB 749, § 298.
- 21-20,193. Repealed. Laws 2014, LB 749, § 298.

(r) CONVERSION

- 21-20,194. Repealed. Laws 2014, LB 749, § 298.
- 21-20,195. Repealed. Laws 2014, LB 749, § 298.
- 21-20,196. Repealed. Laws 2014, LB 749, § 298.
- 21-20,197. Repealed. Laws 2014, LB 749, § 298.

(a) GENERAL PROVISIONS

21-2001 Repealed. Laws 2014, LB 749, § 298.
Operative date January 1, 2016.

21-2002 Repealed. Laws 2014, LB 749, § 298.
Operative date January 1, 2016.

21-2003 Repealed. Laws 2014, LB 749, § 298.
Operative date January 1, 2016.

21-2004 Repealed. Laws 2014, LB 749, § 298.
Operative date January 1, 2016.

21-2005 Repealed. Laws 2014, LB 749, § 298.
Operative date January 1, 2016.

21-2006 Repealed. Laws 2014, LB 749, § 298.
Operative date January 1, 2016.

- 21-2007 Repealed. Laws 2014, LB 749, § 298.**
Operative date January 1, 2016.
- 21-2008 Repealed. Laws 2014, LB 749, § 298.**
Operative date January 1, 2016.
- 21-2009 Repealed. Laws 2014, LB 749, § 298.**
Operative date January 1, 2016.
- 21-2010 Repealed. Laws 2014, LB 749, § 298.**
Operative date January 1, 2016.
- 21-2011 Repealed. Laws 2014, LB 749, § 298.**
Operative date January 1, 2016.
- 21-2012 Repealed. Laws 2014, LB 749, § 298.**
Operative date January 1, 2016.
- 21-2013 Repealed. Laws 2014, LB 749, § 298.**
Operative date January 1, 2016.
- 21-2014 Repealed. Laws 2014, LB 749, § 298.**
Operative date January 1, 2016.
- 21-2015 Repealed. Laws 2014, LB 749, § 298.**
Operative date January 1, 2016.
- 21-2016 Repealed. Laws 2014, LB 749, § 298.**
Operative date January 1, 2016.

(b) INCORPORATION

- 21-2017 Repealed. Laws 2014, LB 749, § 298.**
Operative date January 1, 2016.
- 21-2018 Repealed. Laws 2014, LB 749, § 298.**
Operative date January 1, 2016.
- 21-2019 Repealed. Laws 2014, LB 749, § 298.**
Operative date January 1, 2016.
- 21-2020 Repealed. Laws 2014, LB 749, § 298.**
Operative date January 1, 2016.
- 21-2021 Repealed. Laws 2014, LB 749, § 298.**
Operative date January 1, 2016.
- 21-2022 Repealed. Laws 2014, LB 749, § 298.**
Operative date January 1, 2016.
- 21-2023 Repealed. Laws 2014, LB 749, § 298.**
Operative date January 1, 2016.

(c) PURPOSES AND POWERS

- 21-2024 Repealed. Laws 2014, LB 749, § 298.**
Operative date January 1, 2016.

21-2025 Repealed. Laws 2014, LB 749, § 298.
Operative date January 1, 2016.

21-2026 Repealed. Laws 2014, LB 749, § 298.
Operative date January 1, 2016.

21-2027 Repealed. Laws 2014, LB 749, § 298.
Operative date January 1, 2016.

(d) NAME

21-2028 Repealed. Laws 2014, LB 749, § 298.
Operative date January 1, 2016.

21-2029 Repealed. Laws 2014, LB 749, § 298.
Operative date January 1, 2016.

21-2030 Repealed. Laws 2014, LB 749, § 298.
Operative date January 1, 2016.

(e) OFFICE AND AGENT

21-2031 Repealed. Laws 2014, LB 749, § 298.
Operative date January 1, 2016.

21-2032 Repealed. Laws 2014, LB 749, § 298.
Operative date January 1, 2016.

21-2033 Repealed. Laws 2014, LB 749, § 298.
Operative date January 1, 2016.

21-2034 Repealed. Laws 2014, LB 749, § 298.
Operative date January 1, 2016.

(f) SHARES AND DISTRIBUTIONS

21-2035 Repealed. Laws 2014, LB 749, § 298.
Operative date January 1, 2016.

21-2036 Repealed. Laws 2014, LB 749, § 298.
Operative date January 1, 2016.

21-2037 Repealed. Laws 2014, LB 749, § 298.
Operative date January 1, 2016.

21-2038 Repealed. Laws 2014, LB 749, § 298.
Operative date January 1, 2016.

21-2039 Repealed. Laws 2014, LB 749, § 298.
Operative date January 1, 2016.

21-2040 Repealed. Laws 2014, LB 749, § 298.
Operative date January 1, 2016.

21-2041 Repealed. Laws 2014, LB 749, § 298.
Operative date January 1, 2016.

- 21-2042 Repealed. Laws 2014, LB 749, § 298.**
Operative date January 1, 2016.
- 21-2043 Repealed. Laws 2014, LB 749, § 298.**
Operative date January 1, 2016.
- 21-2044 Repealed. Laws 2014, LB 749, § 298.**
Operative date January 1, 2016.
- 21-2045 Repealed. Laws 2014, LB 749, § 298.**
Operative date January 1, 2016.
- 21-2046 Repealed. Laws 2014, LB 749, § 298.**
Operative date January 1, 2016.
- 21-2047 Repealed. Laws 2014, LB 749, § 298.**
Operative date January 1, 2016.
- 21-2048 Repealed. Laws 2014, LB 749, § 298.**
Operative date January 1, 2016.
- 21-2049 Repealed. Laws 2014, LB 749, § 298.**
Operative date January 1, 2016.
- 21-2050 Repealed. Laws 2014, LB 749, § 298.**
Operative date January 1, 2016.

(g) SHAREHOLDERS

- 21-2051 Repealed. Laws 2014, LB 749, § 298.**
Operative date January 1, 2016.
- 21-2052 Repealed. Laws 2014, LB 749, § 298.**
Operative date January 1, 2016.
- 21-2053 Repealed. Laws 2014, LB 749, § 298.**
Operative date January 1, 2016.
- 21-2054 Repealed. Laws 2014, LB 749, § 298.**
Operative date January 1, 2016.
- 21-2055 Repealed. Laws 2014, LB 749, § 298.**
Operative date January 1, 2016.
- 21-2056 Repealed. Laws 2014, LB 749, § 298.**
Operative date January 1, 2016.
- 21-2057 Repealed. Laws 2014, LB 749, § 298.**
Operative date January 1, 2016.
- 21-2058 Repealed. Laws 2014, LB 749, § 298.**
Operative date January 1, 2016.
- 21-2059 Repealed. Laws 2014, LB 749, § 298.**
Operative date January 1, 2016.

21-2060 Repealed. Laws 2014, LB 749, § 298.
Operative date January 1, 2016.

21-2061 Repealed. Laws 2014, LB 749, § 298.
Operative date January 1, 2016.

21-2062 Repealed. Laws 2014, LB 749, § 298.
Operative date January 1, 2016.

21-2063 Repealed. Laws 2014, LB 749, § 298.
Operative date January 1, 2016.

21-2064 Repealed. Laws 2014, LB 749, § 298.
Operative date January 1, 2016.

21-2065 Repealed. Laws 2014, LB 749, § 298.
Operative date January 1, 2016.

21-2066 Repealed. Laws 2014, LB 749, § 298.
Operative date January 1, 2016.

21-2067 Repealed. Laws 2014, LB 749, § 298.
Operative date January 1, 2016.

21-2068 Repealed. Laws 2014, LB 749, § 298.
Operative date January 1, 2016.

21-2069 Repealed. Laws 2014, LB 749, § 298.
Operative date January 1, 2016.

21-2070 Repealed. Laws 2014, LB 749, § 298.
Operative date January 1, 2016.

21-2071 Repealed. Laws 2014, LB 749, § 298.
Operative date January 1, 2016.

21-2072 Repealed. Laws 2014, LB 749, § 298.
Operative date January 1, 2016.

21-2073 Repealed. Laws 2014, LB 749, § 298.
Operative date January 1, 2016.

21-2074 Repealed. Laws 2014, LB 749, § 298.
Operative date January 1, 2016.

21-2075 Repealed. Laws 2014, LB 749, § 298.
Operative date January 1, 2016.

21-2076 Repealed. Laws 2014, LB 749, § 298.
Operative date January 1, 2016.

21-2077 Repealed. Laws 2014, LB 749, § 298.
Operative date January 1, 2016.

(h) DIRECTORS AND OFFICERS

21-2078 Repealed. Laws 2014, LB 749, § 298.
Operative date January 1, 2016.

- 21-2079 Repealed. Laws 2014, LB 749, § 298.**
Operative date January 1, 2016.
- 21-2080 Repealed. Laws 2014, LB 749, § 298.**
Operative date January 1, 2016.
- 21-2081 Repealed. Laws 2014, LB 749, § 298.**
Operative date January 1, 2016.
- 21-2082 Repealed. Laws 2014, LB 749, § 298.**
Operative date January 1, 2016.
- 21-2083 Repealed. Laws 2014, LB 749, § 298.**
Operative date January 1, 2016.
- 21-2084 Repealed. Laws 2014, LB 749, § 298.**
Operative date January 1, 2016.
- 21-2085 Repealed. Laws 2014, LB 749, § 298.**
Operative date January 1, 2016.
- 21-2086 Repealed. Laws 2014, LB 749, § 298.**
Operative date January 1, 2016.
- 21-2087 Repealed. Laws 2014, LB 749, § 298.**
Operative date January 1, 2016.
- 21-2088 Repealed. Laws 2014, LB 749, § 298.**
Operative date January 1, 2016.
- 21-2089 Repealed. Laws 2014, LB 749, § 298.**
Operative date January 1, 2016.
- 21-2090 Repealed. Laws 2014, LB 749, § 298.**
Operative date January 1, 2016.
- 21-2091 Repealed. Laws 2014, LB 749, § 298.**
Operative date January 1, 2016.
- 21-2092 Repealed. Laws 2014, LB 749, § 298.**
Operative date January 1, 2016.
- 21-2093 Repealed. Laws 2014, LB 749, § 298.**
Operative date January 1, 2016.
- 21-2094 Repealed. Laws 2014, LB 749, § 298.**
Operative date January 1, 2016.
- 21-2095 Repealed. Laws 2014, LB 749, § 298.**
Operative date January 1, 2016.
- 21-2096 Repealed. Laws 2014, LB 749, § 298.**
Operative date January 1, 2016.
- 21-2097 Repealed. Laws 2014, LB 749, § 298.**
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21-2098 Repealed. Laws 2014, LB 749, § 298.
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21-2099 Repealed. Laws 2014, LB 749, § 298.
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21-20,100 Repealed. Laws 2014, LB 749, § 298.
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21-20,101 Repealed. Laws 2014, LB 749, § 298.
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21-20,102 Repealed. Laws 2014, LB 749, § 298.
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21-20,103 Repealed. Laws 2014, LB 749, § 298.
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21-20,104 Repealed. Laws 2014, LB 749, § 298.
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21-20,105 Repealed. Laws 2014, LB 749, § 298.
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21-20,106 Repealed. Laws 2014, LB 749, § 298.
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21-20,107 Repealed. Laws 2014, LB 749, § 298.
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21-20,108 Repealed. Laws 2014, LB 749, § 298.
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21-20,109 Repealed. Laws 2014, LB 749, § 298.
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21-20,110 Repealed. Laws 2014, LB 749, § 298.
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21-20,111 Repealed. Laws 2014, LB 749, § 298.
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21-20,112 Repealed. Laws 2014, LB 749, § 298.
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21-20,113 Repealed. Laws 2014, LB 749, § 298.
Operative date January 1, 2016.

21-20,114 Repealed. Laws 2014, LB 749, § 298.
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21-20,115 Repealed. Laws 2014, LB 749, § 298.
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(i) AMENDMENT OF ARTICLES OF INCORPORATION AND BYLAWS

21-20,116 Repealed. Laws 2014, LB 749, § 298.
Operative date January 1, 2016.

- 21-20,117 Repealed. Laws 2014, LB 749, § 298.**
Operative date January 1, 2016.
- 21-20,118 Repealed. Laws 2014, LB 749, § 298.**
Operative date January 1, 2016.
- 21-20,119 Repealed. Laws 2014, LB 749, § 298.**
Operative date January 1, 2016.
- 21-20,120 Repealed. Laws 2014, LB 749, § 298.**
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- 21-20,121 Repealed. Laws 2014, LB 749, § 298.**
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- 21-20,122 Repealed. Laws 2014, LB 749, § 298.**
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- 21-20,123 Repealed. Laws 2014, LB 749, § 298.**
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- 21-20,124 Repealed. Laws 2014, LB 749, § 298.**
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- 21-20,125 Repealed. Laws 2014, LB 749, § 298.**
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- 21-20,126 Repealed. Laws 2014, LB 749, § 298.**
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- 21-20,127 Repealed. Laws 2014, LB 749, § 298.**
Operative date January 1, 2016.

(j) MERGER AND SHARE EXCHANGE

- 21-20,128 Repealed. Laws 2014, LB 749, § 298.**
Operative date January 1, 2016.
- 21-20,129 Repealed. Laws 2014, LB 749, § 298.**
Operative date January 1, 2016.
- 21-20,130 Repealed. Laws 2014, LB 749, § 298.**
Operative date January 1, 2016.
- 21-20,131 Repealed. Laws 2014, LB 749, § 298.**
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- 21-20,132 Repealed. Laws 2014, LB 749, § 298.**
Operative date January 1, 2016.
- 21-20,133 Repealed. Laws 2014, LB 749, § 298.**
Operative date January 1, 2016.
- 21-20,134 Repealed. Laws 2014, LB 749, § 298.**
Operative date January 1, 2016.

(k) SALE OF ASSETS

21-20,135 Repealed. Laws 2014, LB 749, § 298.
Operative date January 1, 2016.

21-20,135.01 Repealed. Laws 2014, LB 749, § 298.
Operative date January 1, 2016.

21-20,136 Repealed. Laws 2014, LB 749, § 298.
Operative date January 1, 2016.

(l) DISSENTERS' RIGHTS

21-20,137 Repealed. Laws 2014, LB 749, § 298.
Operative date January 1, 2016.

21-20,138 Repealed. Laws 2014, LB 749, § 298.
Operative date January 1, 2016.

21-20,139 Repealed. Laws 2014, LB 749, § 298.
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21-20,140 Repealed. Laws 2014, LB 749, § 298.
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21-20,141 Repealed. Laws 2014, LB 749, § 298.
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21-20,142 Repealed. Laws 2014, LB 749, § 298.
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21-20,143 Repealed. Laws 2014, LB 749, § 298.
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21-20,144 Repealed. Laws 2014, LB 749, § 298.
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21-20,145 Repealed. Laws 2014, LB 749, § 298.
Operative date January 1, 2016.

21-20,146 Repealed. Laws 2014, LB 749, § 298.
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21-20,147 Repealed. Laws 2014, LB 749, § 298.
Operative date January 1, 2016.

21-20,148 Repealed. Laws 2014, LB 749, § 298.
Operative date January 1, 2016.

21-20,149 Repealed. Laws 2014, LB 749, § 298.
Operative date January 1, 2016.

21-20,150 Repealed. Laws 2014, LB 749, § 298.
Operative date January 1, 2016.

(m) DISSOLUTION

- 21-20,151 Repealed. Laws 2014, LB 749, § 298.**
Operative date January 1, 2016.
- 21-20,152 Repealed. Laws 2014, LB 749, § 298.**
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- 21-20,153 Repealed. Laws 2014, LB 749, § 298.**
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- 21-20,154 Repealed. Laws 2014, LB 749, § 298.**
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- 21-20,155 Repealed. Laws 2014, LB 749, § 298.**
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- 21-20,156 Repealed. Laws 2014, LB 749, § 298.**
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- 21-20,157 Repealed. Laws 2014, LB 749, § 298.**
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- 21-20,158 Repealed. Laws 2014, LB 749, § 298.**
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- 21-20,159 Repealed. Laws 2014, LB 749, § 298.**
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- 21-20,160 Repealed. Laws 2014, LB 749, § 298.**
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- 21-20,162 Repealed. Laws 2014, LB 749, § 298.**
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- 21-20,163 Repealed. Laws 2014, LB 749, § 298.**
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- 21-20,164 Repealed. Laws 2014, LB 749, § 298.**
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- 21-20,165 Repealed. Laws 2014, LB 749, § 298.**
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- 21-20,166 Repealed. Laws 2014, LB 749, § 298.**
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- 21-20,167 Repealed. Laws 2014, LB 749, § 298.**
Operative date January 1, 2016.

(n) FOREIGN CORPORATIONS

- 21-20,168 Repealed. Laws 2014, LB 749, § 298.**
Operative date January 1, 2016.

- 21-20,169 Repealed. Laws 2014, LB 749, § 298.**
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- 21-20,170 Repealed. Laws 2014, LB 749, § 298.**
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- 21-20,171 Repealed. Laws 2014, LB 749, § 298.**
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- 21-20,172 Repealed. Laws 2014, LB 749, § 298.**
Operative date January 1, 2016.
- 21-20,173 Repealed. Laws 2014, LB 749, § 298.**
Operative date January 1, 2016.
- 21-20,174 Repealed. Laws 2014, LB 749, § 298.**
Operative date January 1, 2016.
- 21-20,175 Repealed. Laws 2014, LB 749, § 298.**
Operative date January 1, 2016.
- 21-20,176 Repealed. Laws 2014, LB 749, § 298.**
Operative date January 1, 2016.
- 21-20,177 Repealed. Laws 2014, LB 749, § 298.**
Operative date January 1, 2016.
- 21-20,178 Repealed. Laws 2014, LB 749, § 298.**
Operative date January 1, 2016.
- 21-20,179 Repealed. Laws 2014, LB 749, § 298.**
Operative date January 1, 2016.
- 21-20,180 Repealed. Laws 2014, LB 749, § 298.**
Operative date January 1, 2016.
- 21-20,180.01 Repealed. Laws 2014, LB 749, § 298.**
Operative date January 1, 2016.
- 21-20,181 Repealed. Laws 2014, LB 749, § 298.**
Operative date January 1, 2016.
- 21-20,181.01 Repealed. Laws 2014, LB 749, § 298.**
Operative date January 1, 2016.
- 21-20,181.02 Repealed. Laws 2014, LB 749, § 298.**
Operative date January 1, 2016.
- 21-20,181.03 Repealed. Laws 2014, LB 749, § 298.**
Operative date January 1, 2016.

(o) RECORDS AND REPORTS

- 21-20,182 Repealed. Laws 2014, LB 749, § 298.**
Operative date January 1, 2016.
- 21-20,183 Repealed. Laws 2014, LB 749, § 298.**
Operative date January 1, 2016.

21-20,184 Repealed. Laws 2014, LB 749, § 298.
Operative date January 1, 2016.

21-20,185 Repealed. Laws 2014, LB 749, § 298.
Operative date January 1, 2016.

21-20,186 Repealed. Laws 2014, LB 749, § 298.
Operative date January 1, 2016.

21-20,187 Repealed. Laws 2014, LB 749, § 298.
Operative date January 1, 2016.

21-20,188 Repealed. Laws 2014, LB 749, § 298.
Operative date January 1, 2016.

(p) PUBLICATION

21-20,189 Repealed. Laws 2014, LB 749, § 298.
Operative date January 1, 2016.

(q) TRANSITION PROVISIONS

21-20,190 Repealed. Laws 2014, LB 749, § 298.
Operative date January 1, 2016.

21-20,191 Repealed. Laws 2014, LB 749, § 298.
Operative date January 1, 2016.

21-20,192 Repealed. Laws 2014, LB 749, § 298.
Operative date January 1, 2016.

21-20,193 Repealed. Laws 2014, LB 749, § 298.
Operative date January 1, 2016.

(r) CONVERSION

21-20,194 Repealed. Laws 2014, LB 749, § 298.
Operative date January 1, 2016.

21-20,195 Repealed. Laws 2014, LB 749, § 298.
Operative date January 1, 2016.

21-20,196 Repealed. Laws 2014, LB 749, § 298.
Operative date January 1, 2016.

21-20,197 Repealed. Laws 2014, LB 749, § 298.
Operative date January 1, 2016.

ARTICLE 21

NEBRASKA BUSINESS DEVELOPMENT CORPORATION ACT

Section

- 21-2103. Business development corporations; incorporation.
- 21-2105. Powers.
- 21-2110. Shares; par value; authorized capital.
- 21-2115. Books and records.

21-2103 Business development corporations; incorporation.

One or more business development corporations may be incorporated in this state pursuant to the Nebraska Model Business Corporation Act not in conflict with or inconsistent with the provisions of the Nebraska Business Development Corporation Act.

Source: Laws 1967, c. 100, § 3, p. 303; Laws 1995, LB 109, § 204; Laws 2014, LB749, § 266.
Operative date January 1, 2016.

Cross References

Nebraska Model Business Corporation Act, see section 21-201.

21-2105 Powers.

(1) A development corporation shall have all the powers granted to corporations organized under the Nebraska Model Business Corporation Act, except that it shall not give security for any loan made to it by members unless all loans to it by members are secured ratably in proportion to unpaid balances due.

(2) The restriction in subsection (1) of this section shall in no manner be construed so as to prohibit a development corporation from making unsecured borrowings from the federal Small Business Administration.

Source: Laws 1967, c. 100, § 5, p. 304; Laws 1995, LB 109, § 205; Laws 2014, LB749, § 267.
Operative date January 1, 2016.

Cross References

Nebraska Model Business Corporation Act, see section 21-201.

21-2110 Shares; par value; authorized capital.

(1) Each share of stock of the corporation shall have a par value of not less than ten dollars per share, as fixed by its articles of incorporation, and shall be issued only for lawful money of the United States. At least two hundred thousand dollars shall be paid into the treasury for capital stock before a corporation shall be authorized to transact any business other than such business as relates to its organization.

(2) Each shareholder shall be entitled to one vote, in person or by proxy, for each share of capital stock held, and each member shall be entitled to one vote, in person or by proxy, as such member.

(3) The rights given by the Nebraska Model Business Corporation Act to shareholders to attend meetings and to receive notice thereof and to exercise voting rights shall apply to members as well as to shareholders of a corporation created under the Nebraska Business Development Corporation Act. The voting rights of the members shall be the same as if they were a separate class of shareholders, and shareholders and members shall in all cases vote separately by classes. A quorum at a shareholders' meeting shall require the presence in

person or by proxy of a majority of the holders of the voting rights of each class.

Source: Laws 1967, c. 100, § 10, p. 306; Laws 1995, LB 109, § 206; Laws 2014, LB749, § 268.

Operative date January 1, 2016.

Cross References

Nebraska Model Business Corporation Act, see section 21-201.

21-2115 Books and records.

A corporation shall keep, in addition to the books and records required by the Nebraska Model Business Corporation Act, a record showing the names and addresses of all members of the corporation and the current status of loans made by each to the corporation. Members shall have the same rights with respect to all books and records as are given to shareholders in the Nebraska Model Business Corporation Act.

Source: Laws 1967, c. 100, § 15, p. 308; Laws 1995, LB 109, § 207; Laws 2014, LB749, § 269.

Operative date January 1, 2016.

Cross References

Nebraska Model Business Corporation Act, see section 21-201.

ARTICLE 22

PROFESSIONAL CORPORATIONS

Section

21-2203. Powers, benefits, and privileges.

21-2204. Articles of incorporation; certificate of registration; filing.

21-2209. Provision of services in another jurisdiction; license required, when; foreign corporation; requirements.

21-2212. Death or disqualification of shareholder; purchase or redemption of shares; death or disqualification of last remaining shareholder; powers of successor in interest.

21-2203 Powers, benefits, and privileges.

Except as the Nebraska Professional Corporation Act shall otherwise require, professional corporations shall enjoy all the powers, benefits, and privileges and be subject to all the duties, restrictions, and liabilities of a business corporation under the Nebraska Model Business Corporation Act and sections 21-301 to 21-325.02.

Source: Laws 1969, c. 121, § 3, p. 556; Laws 1995, LB 109, § 208; Laws 2014, LB749, § 270.

Operative date January 1, 2016.

Cross References

Nebraska Model Business Corporation Act, see section 21-201.

21-2204 Articles of incorporation; certificate of registration; filing.

(1) One or more individuals residing within the State of Nebraska, each of whom is licensed or otherwise legally authorized to render the same professional service, may, by filing articles of incorporation and a certificate of registra-

tion with the Secretary of State, organize and become a shareholder in a professional corporation. The articles of incorporation shall conform to the requirements of section 21-220 and the certificate of registration shall conform to the requirements of sections 21-2216 to 21-2218.

(2) In addition to the requirements of subsection (1) of this section, the articles of incorporation shall contain a statement of the profession to be practiced by the corporation.

Source: Laws 1969, c. 121, § 4, p. 556; Laws 1995, LB 109, § 209; Laws 2004, LB 16, § 1; Laws 2014, LB749, § 271.
Operative date January 1, 2016.

21-2209 Provision of services in another jurisdiction; license required, when; foreign corporation; requirements.

(1) A professional corporation may provide professional services in another jurisdiction if such corporation complies with all applicable laws of such jurisdiction regulating the rendering of professional services. Notwithstanding any other provision of the Nebraska Professional Corporation Act, no shareholder, director, officer, employee, or agent of a professional corporation shall be required to be licensed to render professional services in this state or to reside in this state if such shareholder, director, officer, employee, or agent does not render professional services in this state and is licensed in one or more states, territories of the United States, or the District of Columbia to render a professional service described in the professional corporation's articles of incorporation.

(2) A foreign professional corporation shall not transact business in this state unless it renders one of the professional services specified in subdivision (3) of section 21-2202 and complies with the provisions of the act, including, without limitation, registration with the appropriate regulating board in this state as provided in sections 21-2216 to 21-2218. A foreign professional corporation shall not transact business in this state if the laws of the jurisdiction under which such foreign professional corporation is incorporated do not allow for a professional corporation incorporated under the laws of this state to transact business in such jurisdiction.

(3)(a) A foreign professional corporation shall (i) apply for a certificate of authority in the same manner as a foreign business corporation pursuant to sections 21-2,203 to 21-2,220 and (ii) file with the Secretary of State a current certificate of registration as provided in sections 21-2216 to 21-2218.

(b) Except as otherwise provided in the Nebraska Professional Corporation Act, foreign professional corporations shall enjoy all the powers, benefits, and privileges and shall be subject to all the duties, restrictions, and liabilities of a foreign business corporation under sections 21-301 to 21-325.02 and the Nebraska Model Business Corporation Act.

(c) A foreign professional corporation shall not be required as a condition to obtaining a certificate of authority to have all of its shareholders, directors, and officers licensed to render professional services in this state if all of its shareholders, directors, and officers, except the secretary and assistant secretary, are licensed in one or more states or territories of the United States or the District of Columbia to render a professional service described in its articles of incorporation and any shareholder, director, officer, employee, or agent who

renders professional services within this state on behalf of the foreign professional corporation is licensed to render professional services in this state.

(d) A foreign professional corporation is not required to obtain a certificate of authority to transact business in this state unless it maintains or intends to maintain an office in this state for the conduct of business or professional practice.

(4) For purposes of this section, foreign professional corporation means a corporation which is organized under the law of any other state or territory of the United States or the District of Columbia for the specific purpose of rendering professional services and which has as its shareholders only individuals who are duly licensed or otherwise legally authorized to render the same professional services as the corporation.

Source: Laws 1994, LB 488, § 2; Laws 1995, LB 109, § 210; Laws 1995, LB 406, § 3; Laws 2004, LB 16, § 2; Laws 2014, LB749, § 272.
Operative date January 1, 2016.

Cross References

Nebraska Model Business Corporation Act, see section 21-201.

21-2212 Death or disqualification of shareholder; purchase or redemption of shares; death or disqualification of last remaining shareholder; powers of successor in interest.

(1) The articles of incorporation or the bylaws of the professional corporation shall provide for the purchase or redemption of the shares of any shareholder upon his or her death or disqualification to render the professional services of the professional corporation within this state.

(2) Unless otherwise provided in the articles of incorporation or the bylaws of the professional corporation, upon the death or disqualification of the last remaining shareholder of a professional corporation, a successor in interest to such deceased or disqualified shareholder may dissolve the corporation and wind up and liquidate its business and affairs, notwithstanding the fact that such successor in interest could not have become a shareholder of the professional corporation. The successor in interest may file articles of dissolution with the Secretary of State in accordance with section 21-2,186. Thereafter, the successor in interest may wind up and liquidate the corporation's business and affairs in accordance with section 21-2,188 and notify claimants in accordance with sections 21-2,189 and 21-2,190.

Source: Laws 1969, c. 121, § 12, p. 558; Laws 2010, LB759, § 1; Laws 2014, LB749, § 273.
Operative date January 1, 2016.

ARTICLE 24

SHAREHOLDERS PROTECTION ACT

Section
21-2439. Control-share acquisition, defined.

21-2439 Control-share acquisition, defined.

Control-share acquisition shall mean an acquisition, directly or indirectly, by an acquiring person of ownership of voting stock of an issuing public corporation that, except for the Shareholders Protection Act, would, when added to all

other shares of the issuing public corporation owned by the acquiring person, entitle the acquiring person, immediately after the acquisition, to exercise or direct the exercise of a new range of voting power within any of the following ranges of voting power: (1) At least twenty percent but less than thirty-three and one-third percent; (2) at least thirty-three and one-third percent but less than or equal to fifty percent; or (3) over fifty percent.

The acquisition of any shares of an issuing public corporation shall not constitute a control-share acquisition if the acquisition is consummated in any of the following circumstances: (a) Before April 9, 1988; (b) pursuant to a contract existing before April 9, 1988; (c) pursuant to the laws of descent and distribution; (d) pursuant to the satisfaction of a pledge or other security interest created in good faith and not for the purpose of circumventing the Shareholders Protection Act; (e) pursuant to a merger or plan of share exchange effected in compliance with sections 21-2,161 to 21-2,168 if the issuing public corporation is a party to the plan of merger or plan of share exchange; or (f) from a person who owns over fifty percent of the shares of an issuing public corporation and who acquired the shares prior to April 9, 1988.

All shares, the ownership of which is acquired within a one-hundred-twenty-day period, and all shares, the ownership of which is acquired pursuant to a plan to make a control-share acquisition, shall be deemed to have been acquired in the same acquisition.

Source: Laws 1988, LB 1110, § 9; Laws 1995, LB 109, § 211; Laws 2014, LB749, § 274.

Operative date January 1, 2016.

ARTICLE 26

LIMITED LIABILITY COMPANIES

Section

21-2601.	Repealed. Laws 2013, LB 283, § 10.
21-2601.01.	Repealed. Laws 2013, LB 283, § 10.
21-2602.	Repealed. Laws 2013, LB 283, § 10.
21-2603.	Repealed. Laws 2013, LB 283, § 10.
21-2604.	Repealed. Laws 2013, LB 283, § 10.
21-2604.01.	Repealed. Laws 2013, LB 283, § 10.
21-2605.	Repealed. Laws 2013, LB 283, § 10.
21-2606.	Repealed. Laws 2013, LB 283, § 10.
21-2607.	Repealed. Laws 2013, LB 283, § 10.
21-2608.	Repealed. Laws 2013, LB 283, § 10.
21-2609.	Repealed. Laws 2013, LB 283, § 10.
21-2610.	Repealed. Laws 2013, LB 283, § 10.
21-2611.	Repealed. Laws 2013, LB 283, § 10.
21-2612.	Repealed. Laws 2013, LB 283, § 10.
21-2613.	Repealed. Laws 2013, LB 283, § 10.
21-2614.	Repealed. Laws 2013, LB 283, § 10.
21-2615.	Repealed. Laws 2013, LB 283, § 10.
21-2616.	Repealed. Laws 2013, LB 283, § 10.
21-2617.	Repealed. Laws 2013, LB 283, § 10.
21-2617.01.	Repealed. Laws 2013, LB 283, § 10.
21-2618.	Repealed. Laws 2013, LB 283, § 10.
21-2619.	Repealed. Laws 2013, LB 283, § 10.
21-2620.	Repealed. Laws 2013, LB 283, § 10.
21-2621.	Repealed. Laws 2013, LB 283, § 10.
21-2622.	Repealed. Laws 2013, LB 283, § 10.
21-2623.	Repealed. Laws 2013, LB 283, § 10.
21-2624.	Repealed. Laws 2013, LB 283, § 10.

Section

21-2625. Repealed. Laws 2013, LB 283, § 10.
21-2626. Repealed. Laws 2013, LB 283, § 10.
21-2627. Repealed. Laws 2013, LB 283, § 10.
21-2628. Repealed. Laws 2013, LB 283, § 10.
21-2629. Repealed. Laws 2013, LB 283, § 10.
21-2630. Repealed. Laws 2013, LB 283, § 10.
21-2631. Repealed. Laws 2013, LB 283, § 10.
21-2631.01. Repealed. Laws 2013, LB 283, § 10.
21-2631.02. Repealed. Laws 2013, LB 283, § 10.
21-2631.03. Repealed. Laws 2013, LB 283, § 10.
21-2632. Repealed. Laws 2013, LB 283, § 10.
21-2632.01. Repealed. Laws 2013, LB 283, § 10.
21-2633. Repealed. Laws 2013, LB 283, § 10.
21-2634. Repealed. Laws 2013, LB 283, § 10.
21-2635. Repealed. Laws 2013, LB 283, § 10.
21-2636. Repealed. Laws 2013, LB 283, § 10.
21-2637. Repealed. Laws 2013, LB 283, § 10.
21-2638. Repealed. Laws 2013, LB 283, § 10.
21-2639. Repealed. Laws 2013, LB 283, § 10.
21-2640. Repealed. Laws 2013, LB 283, § 10.
21-2641. Repealed. Laws 2013, LB 283, § 10.
21-2642. Repealed. Laws 2013, LB 283, § 10.
21-2643. Repealed. Laws 2013, LB 283, § 10.
21-2644. Repealed. Laws 2013, LB 283, § 10.
21-2645. Repealed. Laws 2013, LB 283, § 10.
21-2646. Repealed. Laws 2013, LB 283, § 10.
21-2647. Repealed. Laws 2013, LB 283, § 10.
21-2648. Repealed. Laws 2013, LB 283, § 10.
21-2649. Repealed. Laws 2013, LB 283, § 10.
21-2650. Repealed. Laws 2013, LB 283, § 10.
21-2651. Repealed. Laws 2013, LB 283, § 10.
21-2652. Repealed. Laws 2013, LB 283, § 10.
21-2653. Repealed. Laws 2013, LB 283, § 10.
21-2654. Repealed. Laws 2013, LB 283, § 10.

21-2601 Repealed. Laws 2013, LB 283, § 10.

21-2601.01 Repealed. Laws 2013, LB 283, § 10.

21-2602 Repealed. Laws 2013, LB 283, § 10.

21-2603 Repealed. Laws 2013, LB 283, § 10.

21-2604 Repealed. Laws 2013, LB 283, § 10.

21-2604.01 Repealed. Laws 2013, LB 283, § 10.

21-2605 Repealed. Laws 2013, LB 283, § 10.

21-2606 Repealed. Laws 2013, LB 283, § 10.

21-2607 Repealed. Laws 2013, LB 283, § 10.

21-2608 Repealed. Laws 2013, LB 283, § 10.

21-2609 Repealed. Laws 2013, LB 283, § 10.

21-2610 Repealed. Laws 2013, LB 283, § 10.

21-2611 Repealed. Laws 2013, LB 283, § 10.

- 21-2612 Repealed. Laws 2013, LB 283, § 10.
- 21-2613 Repealed. Laws 2013, LB 283, § 10.
- 21-2614 Repealed. Laws 2013, LB 283, § 10.
- 21-2615 Repealed. Laws 2013, LB 283, § 10.
- 21-2616 Repealed. Laws 2013, LB 283, § 10.
- 21-2617 Repealed. Laws 2013, LB 283, § 10.
- 21-2617.01 Repealed. Laws 2013, LB 283, § 10.
- 21-2618 Repealed. Laws 2013, LB 283, § 10.
- 21-2619 Repealed. Laws 2013, LB 283, § 10.
- 21-2620 Repealed. Laws 2013, LB 283, § 10.
- 21-2621 Repealed. Laws 2013, LB 283, § 10.
- 21-2622 Repealed. Laws 2013, LB 283, § 10.
- 21-2623 Repealed. Laws 2013, LB 283, § 10.
- 21-2624 Repealed. Laws 2013, LB 283, § 10.
- 21-2625 Repealed. Laws 2013, LB 283, § 10.
- 21-2626 Repealed. Laws 2013, LB 283, § 10.
- 21-2627 Repealed. Laws 2013, LB 283, § 10.
- 21-2628 Repealed. Laws 2013, LB 283, § 10.
- 21-2629 Repealed. Laws 2013, LB 283, § 10.
- 21-2630 Repealed. Laws 2013, LB 283, § 10.
- 21-2631 Repealed. Laws 2013, LB 283, § 10.
- 21-2631.01 Repealed. Laws 2013, LB 283, § 10.
- 21-2631.02 Repealed. Laws 2013, LB 283, § 10.
- 21-2631.03 Repealed. Laws 2013, LB 283, § 10.
- 21-2632 Repealed. Laws 2013, LB 283, § 10.
- 21-2632.01 Repealed. Laws 2013, LB 283, § 10.
- 21-2633 Repealed. Laws 2013, LB 283, § 10.
- 21-2634 Repealed. Laws 2013, LB 283, § 10.
- 21-2635 Repealed. Laws 2013, LB 283, § 10.
- 21-2636 Repealed. Laws 2013, LB 283, § 10.
- 21-2637 Repealed. Laws 2013, LB 283, § 10.

- 21-2638 Repealed. Laws 2013, LB 283, § 10.
- 21-2639 Repealed. Laws 2013, LB 283, § 10.
- 21-2640 Repealed. Laws 2013, LB 283, § 10.
- 21-2641 Repealed. Laws 2013, LB 283, § 10.
- 21-2642 Repealed. Laws 2013, LB 283, § 10.
- 21-2643 Repealed. Laws 2013, LB 283, § 10.
- 21-2644 Repealed. Laws 2013, LB 283, § 10.
- 21-2645 Repealed. Laws 2013, LB 283, § 10.
- 21-2646 Repealed. Laws 2013, LB 283, § 10.
- 21-2647 Repealed. Laws 2013, LB 283, § 10.
- 21-2648 Repealed. Laws 2013, LB 283, § 10.
- 21-2649 Repealed. Laws 2013, LB 283, § 10.
- 21-2650 Repealed. Laws 2013, LB 283, § 10.
- 21-2651 Repealed. Laws 2013, LB 283, § 10.
- 21-2652 Repealed. Laws 2013, LB 283, § 10.
- 21-2653 Repealed. Laws 2013, LB 283, § 10.
- 21-2654 Repealed. Laws 2013, LB 283, § 10.

ARTICLE 29

NEBRASKA LIMITED COOPERATIVE ASSOCIATION ACT

PART 2—FILING AND REPORTS

Section

21-2923. Biennial report.

PART 7—DIRECTORS AND OFFICERS

21-2971. Conflict of interest.

PART 8—INDEMNIFICATION

21-2976. Indemnification.

PART 2—FILING AND REPORTS

21-2923 Biennial report.

(1) A limited cooperative association or a foreign limited cooperative association authorized to transact business in this state shall deliver to the Secretary of State for filing a biennial report that states:

(a) The name of the limited cooperative association or foreign limited cooperative association;

(b) The street and mailing addresses of the limited cooperative association's or foreign limited cooperative association's designated office and the name and street and mailing addresses of its agent for service of process in this state;

(c) In the case of a limited cooperative association, the street and mailing addresses of its principal office if different from its designated office; and

(d) In the case of a foreign limited cooperative association, the state or other jurisdiction under whose law the foreign limited cooperative association is formed and any alternative name adopted under section 21-29,106.

(2) Information in the biennial report must be current as of the date the biennial report is delivered to the Secretary of State.

(3) Commencing on January 1, 2009, a biennial report shall be filed between January 1 and April 1 of each odd-numbered year following the year in which a limited cooperative association files articles of organization or a foreign limited cooperative association becomes authorized to transact business in this state.

(4) If a biennial report does not contain the information required in subsection (1) of this section, the Secretary of State shall promptly notify the reporting limited cooperative association or foreign limited cooperative association and return the report for correction. If the report is corrected to contain the information required in subsection (1) of this section and delivered to the Secretary of State within thirty days after the effective date of the notice, it is timely delivered.

(5) If a filed biennial report contains an address of a designated office or the name or address of an agent for service of process which differs from the information shown in the records of the Secretary of State immediately before the filing, the differing information in the biennial report is considered a statement of change under section 21-2914.

(6) If a limited cooperative association fails to file a biennial report under this section, the Secretary of State may proceed under section 21-2994 to administratively dissolve the limited cooperative association.

(7) If a foreign limited cooperative association fails to file a biennial report under this section, the Secretary of State may proceed under section 21-29,107 to revoke the certificate of authority of the foreign limited cooperative association.

(8) A correction or an amendment to the biennial report may be delivered to the Secretary of State for filing at any time.

Source: Laws 2007, LB368, § 23; Laws 2014, LB774, § 4.
Effective date July 18, 2014.

PART 7—DIRECTORS AND OFFICERS

21-2971 Conflict of interest.

Except as otherwise provided in section 21-2970, the Nebraska Model Business Corporation Act governs conflicts of interests between a director or member of a committee of the board of directors and the limited cooperative association.

Source: Laws 2007, LB368, § 71; Laws 2014, LB749, § 275.
Operative date January 1, 2016.

Cross References

Nebraska Model Business Corporation Act, see section 21-201.

PART 8—INDEMNIFICATION

21-2976 Indemnification.

Indemnification of any individual who has incurred liability, is a party, or is threatened to be made a party because of the performance of duties to, or activity on behalf of, the limited cooperative association is governed by the Nebraska Model Business Corporation Act.

Source: Laws 2007, LB368, § 76; Laws 2014, LB749, § 276.
Operative date January 1, 2016.

Cross References

Nebraska Model Business Corporation Act, see section 21-201.



CHAPTER 23

COUNTY GOVERNMENT AND OFFICERS

Article.

1. General Provisions.
 - (a) Corporate Powers. 23-104.03.
 - (e) County Zoning. 23-172.
2. Counties under Township Organization.
 - (b) County Boards in Counties under Township Organization. 23-277.
11. Salaries of County Officers. 23-1118.
19. County Surveyor and Engineer. 23-1901.01.
23. County Employees Retirement. 23-2301 to 23-2319.01.
25. Civil Service System.
 - (b) Counties of 150,000 to 300,000 Inhabitants. 23-2529.
35. Medical and Multiunit Facilities.
 - (a) General Provisions. 23-3526.

ARTICLE 1

GENERAL PROVISIONS

(a) CORPORATE POWERS

Section

23-104.03. Power to provide protective services.

(e) COUNTY ZONING

23-172. Standard codes; adoption; copy on file; area where applicable.

(a) CORPORATE POWERS

23-104.03 Power to provide protective services.

Each county shall have the authority (1) to plan, initiate, fund, maintain, administer, and evaluate facilities, programs, and services that meet the rehabilitation, treatment, care, training, educational, residential, diagnostic, evaluation, community supervision, and protective service needs of dependent, aged, blind, disabled, ill, or infirm persons, persons with a mental disorder, and persons with an intellectual disability domiciled in the county, (2) to purchase outright by installment contract or by mortgage with the power to borrow funds in connection with such contract or mortgage, hold, sell, and lease for a period of more than one year real estate necessary for use of the county to plan, initiate, fund, maintain, administer, and evaluate such facilities, programs, and services, (3) to lease personal property necessary for such facilities, programs, and services, and such lease may provide for installment payments which extend over a period of more than one year, notwithstanding the provisions of section 23-132 or 23-916, (4) to enter into compacts with other counties, state agencies, other political subdivisions, and private nonprofit agencies to exercise and carry out the powers to plan, initiate, fund, maintain, administer, and evaluate such facilities, programs, and services, and (5) to contract for such services from agencies, either public or private, which provide such services on a vendor basis. Compacts with other public agencies pursuant to subdivision (4) of this section shall be subject to the Interlocal Cooperation Act.

Source: Laws 1971, LB 599, § 1; Laws 1972, LB 1266, § 1; Laws 1985, LB 393, § 15; Laws 1986, LB 1177, § 4; Laws 2013, LB23, § 2.

Cross References

Interlocal Cooperation Act, see section 13-801.

(e) COUNTY ZONING

23-172 Standard codes; adoption; copy on file; area where applicable.

The county board may adopt by resolution, which shall have the force and effect of law, the conditions, provisions, limitations, and terms of a building code, a plumbing code, an electrical code, a fire prevention code, or any other code relating to building or relating to the erection, construction, reconstruction, alteration, repair, conversion, maintenance, placing, or using of any building, structure, automobile trailer, house trailer, or cabin trailer. For this purpose, the county board may adopt any standard code which contains rules or regulations printed as a code in book or pamphlet form by reference to such code or portions thereof without setting forth in the resolution the conditions, provisions, limitations, or terms of such code. When such code or any such standard code or portion thereof is incorporated by reference into any resolution, it shall have the same force and effect as though it has been spread at large in such resolution without further or additional publication. One copy of such code or such standard code or portion thereof shall be filed for use and examination by the public in the office of the clerk of such county prior to its adoption.

If there is no county resolution adopting a plumbing code in effect for such county, the 2009 Uniform Plumbing Code accredited by the American National Standards Institute shall apply to all buildings.

Any code adopted and approved by the county board, as provided in this section, or if there is no county resolution adopting a plumbing code in effect for such county, the 2009 Uniform Plumbing Code accredited by the American National Standards Institute, and the building permit requirements or occupancy permit requirements imposed by such code or by sections 23-114.04 and 23-114.05, shall apply to all of the county except within the limits of any incorporated city or village and except within an unincorporated area where a city or village has been granted zoning jurisdiction and is exercising such jurisdiction.

Nothing in this section shall be interpreted as creating an obligation for the county to inspect plumbing work done within its jurisdiction to determine compliance with the plumbing code.

Source: Laws 1941, c. 131, § 19, p. 515; C.S.Supp.,1941, § 26-159; R.S.1943, § 23-172; Laws 1961, c. 87, § 6, p. 302; Laws 1963, c. 57, § 5, p. 241; Laws 1967, c. 117, § 12, p. 375; Laws 1975, LB 410, § 28; Laws 1993, LB 35, § 1; Laws 1996, LB 1304, § 3; Laws 2012, LB42, § 3; Laws 2014, LB802, § 2.
Effective date July 18, 2014.

ARTICLE 2**COUNTIES UNDER TOWNSHIP ORGANIZATION**

(b) COUNTY BOARDS IN COUNTIES UNDER TOWNSHIP ORGANIZATION

Section
23-277. County supervisors; quorum.

(b) COUNTY BOARDS IN COUNTIES UNDER TOWNSHIP ORGANIZATION

23-277 County supervisors; quorum.

A majority of all the supervisors elected in any county shall constitute a quorum for the transaction of business, and all questions which shall arise at meetings shall be determined by the votes of a majority of the supervisors present, except in cases otherwise provided for.

Source: Laws 1879, § 68, p. 373; R.S.1913, § 1069; C.S.1922, § 971; C.S.1929, § 26-285; R.S.1943, § 23-277; Laws 2014, LB937, § 1. Effective date July 18, 2014.

ARTICLE 11**SALARIES OF COUNTY OFFICERS**

Section

23-1118. Employees of certain counties or municipal counties; retirement benefits; establish; approval of voters; contribution rates; funds; investment; employees, defined; reports.

23-1118 Employees of certain counties or municipal counties; retirement benefits; establish; approval of voters; contribution rates; funds; investment; employees, defined; reports.

(1)(a) Unless the county has adopted a retirement system pursuant to section 23-2329, the county board of any county having a population of one hundred fifty thousand inhabitants or more, as determined by the most recent federal decennial census, may, in its discretion and with the approval of the voters, provide retirement benefits for present and future employees of the county. The cost of such retirement benefits shall be funded in accordance with sound actuarial principles with the necessary cost being treated in the county budget in the same way as any other operating expense.

(b) Except as provided in subdivision (c) of this subsection, each employee shall be required to contribute, or have contributed on his or her behalf, an amount at least equal to the county's contribution to the cost of any such retirement program as to service performed after the adoption of such retirement program, but the cost of any benefits based on prior service shall be borne solely by the county.

(c) In a county or municipal county having a population of two hundred thousand or more inhabitants but not more than three hundred thousand inhabitants, as determined by the most recent federal decennial census, the county or municipal county shall establish the employee and employer contribution rates to the retirement program for each year after July 15, 1992. The county or municipal county shall contribute one hundred fifty percent of each employee's mandatory contribution, and for an employee hired on or after July 1, 2012, the county or municipal county shall contribute at least one hundred percent of each such employee's mandatory contribution. The combined contributions of the county or municipal county and its employees to the cost of any such retirement program shall not exceed thirteen percent of the employees' salaries.

(2) Before the county board or council provides retirement benefits for the employees of the county or municipal county, such question shall be submitted at a regular general or primary election held within the county or municipal

county, and in which election all persons eligible to vote for the officials of the county or municipal county shall be entitled to vote on such question, which shall be submitted in the following language: Shall the county board or council provide retirement benefits for present and future employees of the county or municipal county? If a majority of the votes cast upon such question are in favor of such question, then the county board or council shall be empowered to provide retirement benefits for present and future employees as provided in this section. If such retirement benefits for present and future county and municipal county employees are approved by the voters and authorized by the county board or council, then the funds of such retirement system, in excess of the amount required for current operations as determined by the county board or council, may be invested and reinvested in the class of securities and investments described in section 30-3209.

(3) As used in this section, employees shall mean all persons or officers devoting more than twenty hours per week to employment by the county or municipal county, all elected officers of the county or municipal county, and such other persons or officers as are classified from time to time as permanent employees by the county board or council.

(4) The county or municipal county may pick up the member contributions required by this section for all compensation paid on or after January 1, 1985, and the contributions so picked up shall be treated as employer contributions in determining federal tax treatment under the Internal Revenue Code, except that the county or municipal county shall continue to withhold federal income taxes based upon these contributions until the Internal Revenue Service or the federal courts rule that, pursuant to section 414(h) of the Internal Revenue Code, these contributions shall not be included as gross income of the member until such time as they are distributed or made available. The county or municipal county shall pay these member contributions from the same source of funds which is used in paying earnings to the member. The county or municipal county shall pick up these contributions by a salary deduction either through a reduction in the cash salary of the member or a combination of a reduction in salary and offset against a future salary increase. Member contributions picked up shall be treated in the same manner and to the same extent as member contributions made prior to the date picked up.

(5)(a) Beginning December 31, 1998, and each December 31 thereafter, the chairperson of the county board or council with a retirement plan established pursuant to this section and section 401(a) of the Internal Revenue Code shall file with the Public Employees Retirement Board a report on such plan and shall submit copies of such report to the Auditor of Public Accounts. The Auditor of Public Accounts may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. The report shall be in a form prescribed by the Public Employees Retirement Board and shall contain the following information for each such retirement plan:

- (i) The number of persons participating in the retirement plan;
- (ii) The contribution rates of participants in the plan;
- (iii) Plan assets and liabilities;
- (iv) The names and positions of persons administering the plan;
- (v) The names and positions of persons investing plan assets;
- (vi) The form and nature of investments;

(vii) For each defined contribution plan, a full description of investment policies and options available to plan participants; and

(viii) For each defined benefit plan, the levels of benefits of participants in the plan, the number of members who are eligible for a benefit, and the total present value of such members' benefits, as well as the funding sources which will pay for such benefits.

If a plan contains no current active participants, the chairperson may file in place of such report a statement with the Public Employees Retirement Board indicating the number of retirees still drawing benefits, and the sources and amount of funding for such benefits.

(b) If such retirement plan is a defined benefit plan which was open to new members on January 1, 2004, in addition to the reports required by section 13-2402, the county board of a county or council of the municipal county with a retirement plan established pursuant to this section shall cause to be prepared an annual report and the chairperson shall file the same with the Public Employees Retirement Board and the Nebraska Retirement Systems Committee of the Legislature and submit to the Auditor of Public Accounts a copy of such report. The Auditor of Public Accounts may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. If the county board or council does not submit a copy of the report to the Auditor of Public Accounts within six months after the end of the plan year, the Auditor of Public Accounts may audit, or cause to be audited, the county or municipal county. All costs of the audit shall be paid by the county or municipal county. The report shall consist of a full actuarial analysis of each such retirement plan established pursuant to this section. The analysis shall be prepared by an independent private organization or public entity employing actuaries who are members in good standing of the American Academy of Actuaries, and which organization or entity has demonstrated expertise to perform this type of analysis and is unrelated to any organization offering investment advice or which provides investment management services to the retirement plan. The report to the Nebraska Retirement Systems Committee shall be submitted electronically.

Source: Laws 1961, c. 97, § 1, p. 327; Laws 1967, c. 257, § 3, p. 680; Laws 1967, c. 129, § 1, p. 412; Laws 1984, LB 216, § 1; Laws 1985, LB 353, § 2; Laws 1992, LB 672, § 30; Laws 1995, LB 369, § 1; Laws 1995, LB 574, § 30; Laws 1998, LB 1191, § 22; Laws 1999, LB 795, § 10; Laws 2001, LB 142, § 31; Laws 2011, LB474, § 10; Laws 2012, LB867, § 1; Laws 2014, LB759, § 15. Effective date July 18, 2014.

ARTICLE 19

COUNTY SURVEYOR AND ENGINEER

Section

23-1901.01. County surveyor; residency; appointed from another county; when; term.

23-1901.01 County surveyor; residency; appointed from another county; when; term.

(1) A person need not be a resident of the county when he or she files for election as county surveyor, but if elected as county surveyor, such person shall reside in a county for which he or she holds office.

(2) In a county having a population of less than one hundred fifty thousand inhabitants in which the voters have voted against the election of a county

surveyor pursuant to section 32-525 or in which no county surveyor has been elected and qualified, the county board of such county shall appoint a competent surveyor either on a full-time or part-time basis from any other county of the State of Nebraska to such office. In making such appointment, the county board shall negotiate a contract with the surveyor, such contract shall specify the responsibility of the appointee to carry out the statutory duties of the office of county surveyor and shall specify the compensation of the surveyor for the performance of such duties, which compensation shall not be subject to section 33-116. A county surveyor appointed under this subsection shall serve the same term as that of an elected surveyor.

(3) A person appointed to the office of county surveyor in any county shall not be required to reside in the county of appointment.

Source: Laws 1951, c. 45, § 1, p. 162; Laws 1979, LB 115, § 1; Laws 1982, LB 127, § 3; Laws 1986, LB 812, § 7; Laws 1996, LB 1085, § 35; Laws 2014, LB946, § 2.
Operative date January 1, 2015.

ARTICLE 23

COUNTY EMPLOYEES RETIREMENT

- Section 23-2301. Terms, defined.
- 23-2306. Retirement system; members; employees; elected officials; new employee; participation in another governmental plan; how treated; separate employment; effect.
- 23-2307. Retirement system; members; contribution; amount; county pay.
- 23-2309.01. Defined contribution benefit; employee account; investment options; procedures; administration.
- 23-2310.04. County Employees Defined Contribution Retirement Expense Fund; County Employees Cash Balance Retirement Expense Fund; created; use; investment; forfeiture funds; use.
- 23-2315. Retirement system; retirement; when; conditions; application for benefits; deferment of payment; board; duties; certain required minimum distributions; election authorized.
- 23-2317. Retirement system; future service retirement benefit; when payable; how computed; selection of annuity; board; provide tax information; certain required minimum distributions; election authorized.
- 23-2319. Termination of employment; termination benefit; vesting; certain required minimum distributions; election authorized.
- 23-2319.01. Termination of employment; account forfeited; when; County Employer Retirement Expense Fund; created; use; investment.

23-2301 Terms, defined.

For purposes of the County Employees Retirement Act, unless the context otherwise requires:

(1) Actuarial equivalent means the equality in value of the aggregate amounts expected to be received under different forms of an annuity payment. The mortality assumption used for purposes of converting the member cash balance account shall be the 1994 Group Annuity Mortality Table using a unisex rate that is fifty percent male and fifty percent female. For purposes of converting the member cash balance account attributable to contributions made prior to January 1, 1984, that were transferred pursuant to the act, the 1994 Group Annuity Mortality Table for males shall be used;

(2) Annuity means equal monthly payments provided by the retirement system to a member or beneficiary under forms determined by the board

beginning the first day of the month after an annuity election is received in the office of the Nebraska Public Employees Retirement Systems or the first day of the month after the employee's termination of employment, whichever is later. The last payment shall be at the end of the calendar month in which the member dies or in accordance with the payment option chosen by the member;

(3) Annuity start date means the date upon which a member's annuity is first effective and shall be the first day of the month following the member's termination or following the date the application is received by the board, whichever is later;

(4) Cash balance benefit means a member's retirement benefit that is equal to an amount based on annual employee contribution credits plus interest credits and, if vested, employer contribution credits plus interest credits and dividend amounts credited in accordance with subdivision (4)(c) of section 23-2317;

(5)(a) Compensation means gross wages or salaries payable to the member for personal services performed during the plan year. Compensation does not include insurance premiums converted into cash payments, reimbursement for expenses incurred, fringe benefits, per diems, or bonuses for services not actually rendered, including, but not limited to, early retirement inducements, cash awards, and severance pay, except for retroactive salary payments paid pursuant to court order, arbitration, or litigation and grievance settlements. Compensation includes overtime pay, member retirement contributions, and amounts contributed by the member to plans under sections 125, 403(b), and 457 of the Internal Revenue Code or any other section of the code which defers or excludes such amounts from income.

(b) Compensation in excess of the limitations set forth in section 401(a)(17) of the Internal Revenue Code shall be disregarded. For an employee who was a member of the retirement system before the first plan year beginning after December 31, 1995, the limitation on compensation shall not be less than the amount which was allowed to be taken into account under the retirement system as in effect on July 1, 1993;

(6) Date of adoption of the retirement system by each county means the first day of the month next following the date of approval of the retirement system by the county board or January 1, 1987, whichever is earlier;

(7) Date of disability means the date on which a member is determined by the board to be disabled;

(8) Defined contribution benefit means a member's retirement benefit from a money purchase plan in which member benefits equal annual contributions and earnings pursuant to section 23-2309 and, if vested, employer contributions and earnings pursuant to section 23-2310;

(9) Disability means an inability to engage in a substantially gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or be of a long and indefinite duration;

(10) Employee means all persons or officers who are employed by a county of the State of Nebraska on a permanent basis, persons or officers employed by or serving in a municipal county formed by at least one county participating in the retirement system, persons employed as provided in section 2-1608, all elected officers of a county, and such other persons or officers as are classified from time to time as permanent employees by the county board of the county by which they are employed, except that employee does not include judges,

employees or officers of any county having a population in excess of two hundred thousand inhabitants as determined by the most recent federal decennial census, or, except as provided in section 23-2306, persons making contributions to the School Employees Retirement System of the State of Nebraska;

(11) Employee contribution credit means an amount equal to the member contribution amount required by section 23-2307;

(12) Employer contribution credit means an amount equal to the employer contribution amount required by section 23-2308;

(13) Final account value means the value of a member's account on the date the account is either distributed to the member or used to purchase an annuity from the plan, which date shall occur as soon as administratively practicable after receipt of a valid application for benefits, but no sooner than forty-five days after the member's termination;

(14) Five-year break in service means a period of five consecutive one-year breaks in service;

(15) Full-time employee means an employee who is employed to work one-half or more of the regularly scheduled hours during each pay period;

(16) Future service means service following the date of adoption of the retirement system;

(17) Guaranteed investment contract means an investment contract or account offering a return of principal invested plus interest at a specified rate. For investments made after July 19, 1996, guaranteed investment contract does not include direct obligations of the United States or its instrumentalities, bonds, participation certificates or other obligations of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Government National Mortgage Association, or collateralized mortgage obligations and other derivative securities. This subdivision shall not be construed to require the liquidation of investment contracts or accounts entered into prior to July 19, 1996;

(18) Interest credit rate means the greater of (a) five percent or (b) the applicable federal mid-term rate, as published by the Internal Revenue Service as of the first day of the calendar quarter for which interest credits are credited, plus one and one-half percent, such rate to be compounded annually;

(19) Interest credits means the amounts credited to the employee cash balance account and the employer cash balance account at the end of each day. Such interest credit for each account shall be determined by applying the daily portion of the interest credit rate to the account balance at the end of the previous day. Such interest credits shall continue to be credited to the employee cash balance account and the employer cash balance account after a member ceases to be an employee, except that no such credit shall be made with respect to the employee cash balance account and the employer cash balance account for any day beginning on or after the member's date of final account value. If benefits payable to the member's surviving spouse or beneficiary are delayed after the member's death, interest credits shall continue to be credited to the employee cash balance account and the employer cash balance account until such surviving spouse or beneficiary commences receipt of a distribution from the plan;

(20) Member cash balance account means an account equal to the sum of the employee cash balance account and, if vested, the employer cash balance

account and dividend amounts credited in accordance with subdivision (4)(c) of section 23-2317;

(21) One-year break in service means a plan year during which the member has not completed more than five hundred hours of service;

(22) Participation means qualifying for and making the required deposits to the retirement system during the course of a plan year;

(23) Part-time employee means an employee who is employed to work less than one-half of the regularly scheduled hours during each pay period;

(24) Plan year means the twelve-month period beginning on January 1 and ending on December 31;

(25) Prior service means service prior to the date of adoption of the retirement system;

(26) Regular interest means the rate of interest earned each calendar year as determined by the retirement board in conformity with actual and expected earnings on the investments through December 31, 1985;

(27) Required contribution means the deduction to be made from the compensation of employees as provided in the act;

(28) Retirement means qualifying for and accepting the retirement benefit granted under the act after terminating employment;

(29) Retirement application means the form approved and provided by the retirement system for acceptance of a member's request for either regular or disability retirement;

(30) Retirement board or board means the Public Employees Retirement Board;

(31) Retirement date means (a) the first day of the month following the date upon which a member's request for retirement is received on a retirement application if the member is eligible for retirement and has terminated employment or (b) the first day of the month following termination of employment if the member is eligible for retirement and has filed an application but has not yet terminated employment;

(32) Retirement system means the Retirement System for Nebraska Counties;

(33) Service means the actual total length of employment as an employee and is not deemed to be interrupted by (a) temporary or seasonal suspension of service that does not terminate the employee's employment, (b) leave of absence authorized by the employer for a period not exceeding twelve months, (c) leave of absence because of disability, or (d) military service, when properly authorized by the retirement board. Service does not include any period of disability for which disability retirement benefits are received under section 23-2315;

(34) Surviving spouse means (a) the spouse married to the member on the date of the member's death or (b) the spouse or former spouse of the member if survivorship rights are provided under a qualified domestic relations order filed with the board pursuant to the Spousal Pension Rights Act. The spouse or former spouse shall supersede the spouse married to the member on the date of the member's death as provided under a qualified domestic relations order. If the benefits payable to the spouse or former spouse under a qualified domestic relations order are less than the value of benefits entitled to the surviving

spouse, the spouse married to the member on the date of the member's death shall be the surviving spouse for the balance of the benefits;

(35) Termination of employment occurs on the date on which a county which is a member of the retirement system determines that its employer-employee relationship with an employee is dissolved. The county shall notify the board of the date on which such a termination has occurred. Termination of employment does not occur if an employee whose employer-employee relationship with a county is dissolved enters into an employer-employee relationship with the same or another county which participates in the Retirement System for Nebraska Counties and there are less than one hundred twenty days between the date when the employee's employer-employee relationship ceased with the county and the date when the employer-employee relationship commenced with the same or another county which qualifies the employee for participation in the plan. It is the responsibility of the employer that is involved in the termination of employment to notify the board of such change in employment and provide the board with such information as the board deems necessary. If the board determines that termination of employment has not occurred and a retirement benefit has been paid to a member of the retirement system pursuant to section 23-2319, the board shall require the member who has received such benefit to repay the benefit to the retirement system; and

(36) Vesting credit means credit for years, or a fraction of a year, of participation in another Nebraska governmental plan for purposes of determining vesting of the employer account.

Source: Laws 1965, c. 94, § 1, p. 402; Laws 1969, c. 172, § 1, p. 750; Laws 1973, LB 216, § 1; Laws 1974, LB 905, § 1; Laws 1975, LB 47, § 1; Laws 1975, LB 45, § 1; Laws 1984, LB 216, § 2; Laws 1985, LB 347, § 1; Laws 1985, LB 432, § 1; Laws 1986, LB 311, § 2; Laws 1991, LB 549, § 1; Laws 1993, LB 417, § 1; Laws 1994, LB 833, § 1; Laws 1995, LB 369, § 2; Laws 1996, LB 847, § 2; Laws 1996, LB 1076, § 1; Laws 1996, LB 1273, § 14; Laws 1997, LB 624, § 1; Laws 1998, LB 1191, § 23; Laws 1999, LB 703, § 1; Laws 2000, LB 1192, § 1; Laws 2001, LB 142, § 32; Laws 2002, LB 407, § 1; Laws 2002, LB 687, § 3; Laws 2003, LB 451, § 2; Laws 2004, LB 1097, § 2; Laws 2006, LB 366, § 2; Laws 2006, LB 1019, § 1; Laws 2011, LB509, § 2; Laws 2012, LB916, § 4; Laws 2013, LB263, § 2.

Cross References

Spousal Pension Rights Act, see section 42-1101.

23-2306 Retirement system; members; employees; elected officials; new employee; participation in another governmental plan; how treated; separate employment; effect.

(1) The membership of the retirement system shall be composed of all persons who are or were employed by member counties and who maintain an account balance with the retirement system.

(2) The following employees of member counties are authorized to participate in the retirement system: (a) All permanent full-time employees shall begin participation in the retirement system upon employment and full-time elected officials shall begin participation in the retirement system upon taking office, (b) all permanent part-time employees who have attained the age of eighteen

years may exercise the option to begin participation in the retirement system within the first thirty days of employment, and (c) all part-time elected officials may exercise the option to begin participation in the retirement system within thirty days after taking office. An employee who exercises the option to begin participation in the retirement system shall remain in the system until termination or retirement, regardless of any change of status as a permanent or temporary employee.

(3) On and after July 1, 2010, no employee of a member county shall be authorized to participate in the retirement system provided for in the County Employees Retirement Act unless the employee (a) is a United States citizen or (b) is a qualified alien under the federal Immigration and Nationality Act, 8 U.S.C. 1101 et seq., as such act existed on January 1, 2009, and is lawfully present in the United States.

(4) On and after July 1, 2013, the board may determine that a governmental entity currently participating in the retirement system no longer qualifies under section 414(d) of the Internal Revenue Code as a participating employer in a governmental plan. Upon such determination, affected plan members shall be considered fully vested. The board shall notify such entity within ten days after making a determination. Within ninety days after the board's notice to such entity, affected plan members shall become inactive. The board may adopt and promulgate rules and regulations to carry out this subsection.

(5) Within the first one hundred eighty days of employment, a full-time employee may apply to the board for vesting credit for years of participation in another Nebraska governmental plan, as defined by section 414(d) of the Internal Revenue Code. During the years of participation in the other Nebraska governmental plan, the employee must have been a full-time employee, as defined in the Nebraska governmental plan in which the credit was earned. The board may adopt and promulgate rules and regulations governing the assessment and granting of vesting credit.

(6) Any employee who qualifies for membership in the retirement system pursuant to this section may not be disqualified from membership in the retirement system solely because such employee also maintains separate employment which qualifies the employee for membership in another public retirement system, nor may membership in this retirement system disqualify such an employee from membership in another public retirement system solely by reason of separate employment which qualifies such employee for membership in this retirement system.

(7) A full-time or part-time employee of a city, village, or township who becomes a county employee pursuant to a merger of services shall receive vesting credit for his or her years of participation in a Nebraska governmental plan, as defined by section 414(d) of the Internal Revenue Code, of the city, village, or township.

(8) A full-time or part-time employee of a city, village, fire protection district, or township who becomes a municipal county employee shall receive credit for his or her years of employment with the city, village, fire protection district, or township for purposes of the vesting provisions of this section.

(9) A full-time or part-time employee of the state who becomes a county employee pursuant to transfer of assessment function to a county under section 77-1340 or 77-1340.04 shall not be deemed to have experienced a termination

of employment and shall receive vesting credit for his or her years of participation in the State Employees Retirement System of the State of Nebraska.

(10) Counties shall ensure that employees authorized to participate in the retirement system pursuant to this section shall enroll and make required contributions to the retirement system immediately upon becoming an employee. Information necessary to determine membership in the retirement system shall be provided by the employer.

Source: Laws 1965, c. 94, § 6, p. 405; Laws 1975, LB 32, § 1; Laws 1984, LB 216, § 3; Laws 1985, LB 349, § 1; Laws 1991, LB 549, § 3; Laws 1995, LB 501, § 1; Laws 1996, LB 1076, § 2; Laws 1997, LB 250, § 5; Laws 1997, LB 624, § 2; Laws 1998, LB 1191, § 24; Laws 2000, LB 1192, § 2; Laws 2001, LB 142, § 33; Laws 2002, LB 407, § 2; Laws 2002, LB 687, § 5; Laws 2004, LB 1097, § 3; Laws 2006, LB 366, § 3; Laws 2008, LB1147, § 1; Laws 2009, LB188, § 1; Laws 2010, LB950, § 1; Laws 2011, LB509, § 4; Laws 2013, LB263, § 3.

23-2307 Retirement system; members; contribution; amount; county pay.

Each employee who is a member of the retirement system shall pay to the county or have picked up by the county a sum equal to four and one-half percent of his or her compensation for each pay period. The contributions, although designated as employee contributions, shall be paid by the county in lieu of employee contributions. The county shall pick up the employee contributions required by this section for all compensation paid on or after January 1, 1985, and the contributions so picked up shall be treated as employer contributions pursuant to section 414(h)(2) of the Internal Revenue Code in determining federal tax treatment under the code and shall not be included as gross income of the employee until such time as they are distributed or made available. The county shall pay these employee contributions from the same source of funds which is used in paying earnings to the employee. The county shall pick up these contributions by a compensation deduction through a reduction in the cash compensation of the employee. Employee contributions picked up shall be treated for all purposes of the County Employees Retirement Act in the same manner and to the extent as employee contributions made prior to the date picked up.

Source: Laws 1965, c. 94, § 7, p. 405; Laws 1981, LB 459, § 1; Laws 1984, LB 218, § 1; Laws 1985, LB 347, § 4; Laws 1991, LB 549, § 4; Laws 1992, LB 1057, § 1; Laws 1995, LB 574, § 31; Laws 2001, LB 186, § 1; Laws 2001, LB 408, § 1; Laws 2013, LB263, § 4.

23-2309.01 Defined contribution benefit; employee account; investment options; procedures; administration.

(1) Each member employed and participating in the retirement system prior to January 1, 2003, who has elected not to participate in the cash balance benefit, shall be allowed to allocate all contributions to his or her employee account to various investment options. The investment options shall include, but not be limited to, the following:

(a) An investor select account which shall be invested under the direction of the state investment officer with an asset allocation and investment strategy

substantially similar to the investment allocations made by the state investment officer for the defined benefit plans under the retirement systems described in subdivision (1)(a) of section 84-1503. Investments shall most likely include domestic and international equities, fixed income investments, and real estate, as well as potentially additional asset classes;

(b) A stable return account which shall be invested by or under the direction of the state investment officer in a stable value strategy that provides capital preservation and consistent, steady returns;

(c) An equities account which shall be invested by or under the direction of the state investment officer in equities;

(d) A balanced account which shall be invested by or under the direction of the state investment officer in equities and fixed income instruments;

(e) An index fund account which shall be invested by or under the direction of the state investment officer in a portfolio of common stocks designed to closely duplicate the total return of the Standard and Poor's division of The McGraw-Hill Companies, Inc., 500 Index;

(f) A fixed income account which shall be invested by or under the direction of the state investment officer in fixed income instruments;

(g) A money market account which shall be invested by or under the direction of the state investment officer in short-term fixed income securities; and

(h) Beginning July 1, 2006, an age-based account which shall be invested under the direction of the state investment officer with an asset allocation and investment strategy that changes based upon the age of the member. The board shall develop an account mechanism that changes the investments as the employee nears retirement age. The asset allocation and asset classes utilized in the investments shall move from aggressive, to moderate, and then to conservative as retirement age approaches.

If a member fails to select an option or combination of options, all of his or her funds shall be placed in the option described in subdivision (b) of this subsection. Each member shall be given a detailed current description of each investment option prior to making or revising his or her allocation.

(2) Members of the retirement system may allocate their contributions to the investment options in percentage increments as set by the board in any proportion, including full allocation to any one option. A member under subdivision (1)(a) of section 23-2321 or his or her beneficiary may transfer any portion of his or her funds among the options, except for restrictions on transfers to or from the stable return account pursuant to rule or regulation. The board shall adopt and promulgate rules and regulations for changes of a member's allocation of contributions to his or her accounts after his or her most recent allocation and for transfers from one investment account to another.

(3) The board shall develop a schedule for the allocation of administrative costs of maintaining the various investment options and shall assess the costs so that each member pays a reasonable fee as determined by the board.

(4) In order to carry out this section, the board may enter into administrative services agreements for accounting or record-keeping services. No agreement shall be entered into unless the board determines that it will result in administrative economy and will be in the best interests of the county and its participating employees.

(5) The state, the board, the state investment officer, the members of the Nebraska Investment Council, or the county shall not be liable for any investment results resulting from the member's exercise of control over the assets in the employee account.

Source: Laws 1985, LB 347, § 11; Laws 1991, LB 549, § 7; Laws 1994, LB 833, § 3; Laws 1996, LB 847, § 4; Laws 1999, LB 703, § 2; Laws 2000, LB 1200, § 1; Laws 2001, LB 408, § 2; Laws 2002, LB 407, § 4; Laws 2002, LB 687, § 8; Laws 2005, LB 503, § 1; Laws 2008, LB1147, § 2; Laws 2010, LB950, § 3; Laws 2012, LB916, § 7; Laws 2014, LB759, § 16.
Effective date July 18, 2014.

23-2310.04 County Employees Defined Contribution Retirement Expense Fund; County Employees Cash Balance Retirement Expense Fund; created; use; investment; forfeiture funds; use.

(1) The County Employees Defined Contribution Retirement Expense Fund is created. The fund shall be credited with money from the retirement system assets and income sufficient to pay the pro rata share of administrative expenses incurred as directed by the board for the proper administration of the County Employees Retirement Act and necessary in connection with the administration and operation of the retirement system, except as provided in sections 23-2308.01, 23-2309.01, and 23-2310.05. 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 County Employees Cash Balance Retirement Expense Fund is created. The fund shall be credited with money forfeited pursuant to section 23-2319.01 and with money from the retirement system assets and income sufficient to pay the pro rata share of administrative expenses incurred as directed by the board for the proper administration of the County Employees Retirement Act and necessary in connection with the administration and operation of the retirement system, except as provided in sections 23-2308.01, 23-2309.01, and 23-2310.05. 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.

(3) Forfeiture funds collected from members participating in the defined contribution benefit shall be used to either pay expenses or reduce employer contributions related to the defined contribution benefit. Any unused funds shall be allocated as earnings of and transferred to the accounts of the remaining members within twelve months after receipt of the funds by the board.

Source: Laws 1997, LB 623, § 2; Laws 2000, LB 1200, § 2; Laws 2001, LB 408, § 3; Laws 2003, LB 451, § 5; Laws 2005, LB 364, § 3; Laws 2007, LB328, § 2; Laws 2010, LB950, § 4; Laws 2013, LB263, § 5.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

23-2315 Retirement system; retirement; when; conditions; application for benefits; deferment of payment; board; duties; certain required minimum distributions; election authorized.

(1) Upon filing an application for benefits with the board, an employee may elect to retire at any time after attaining the age of fifty-five or an employee may retire as a result of disability at any age.

(2) The member shall specify in the application for benefits the manner in which he or she wishes to receive the retirement benefit under the options provided by the County Employees Retirement Act. Payment under the application for benefits shall be made (a) for annuities, no sooner than the annuity start date, and (b) for other distributions, no sooner than the date of final account value.

(3) Payment of any benefit provided under the retirement system may not be deferred later than April 1 of the year following the year in which the employee has both attained at least age seventy and one-half years and terminated his or her employment with the county.

(4) The board shall make reasonable efforts to locate the member or the member's beneficiary and distribute benefits by the required beginning date as specified by section 401(a)(9) of the Internal Revenue Code and the regulations issued thereunder. If the board is unable to make such a distribution, the benefit shall be distributed pursuant to the Uniform Disposition of Unclaimed Property Act and no amounts may be applied to increase the benefits any member would otherwise receive under the County Employees Retirement Act.

(5) A participant or beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of section 401(a)(9)(H) of the Internal Revenue Code, and who would have satisfied that requirement by receiving distributions that are either equal to the 2009 required minimum distributions or one or more payments in a series of substantially equal distributions, including the 2009 required minimum distribution, made at least annually and expected to last for the life or life expectancy of the participant, the joint lives or joint life expectancy of the participant and the participant's designated beneficiary, or for a period of at least ten years, shall receive those distributions for 2009 unless the participant or beneficiary chooses not to receive such distributions. Participants and beneficiaries shall be given the opportunity to elect to stop receiving the distributions described in this subsection.

Source: Laws 1965, c. 94, § 15, p. 407; Laws 1975, LB 47, § 2; Laws 1979, LB 391, § 1; Laws 1982, LB 287, § 1; Laws 1986, LB 311, § 5; Laws 1987, LB 60, § 1; Laws 1987, LB 296, § 1; Laws 1994, LB 833, § 7; Laws 1996, LB 1076, § 3; Laws 2003, LB 451, § 6; Laws 2009, LB188, § 3; Laws 2013, LB263, § 6.

Cross References

Uniform Disposition of Unclaimed Property Act, see section 69-1329.

23-2317 Retirement system; future service retirement benefit; when payable; how computed; selection of annuity; board; provide tax information; certain required minimum distributions; election authorized.

(1) The future service retirement benefit shall be an annuity, payable monthly with the first payment made no earlier than the annuity start date, which shall

be the actuarial equivalent of the retirement value as specified in section 23-2316 based on factors determined by the board, except that gender shall not be a factor when determining the amount of such payments pursuant to subsection (2) of this section.

Except as provided in section 42-1107, at any time before the annuity start date, the retiring employee may choose to receive his or her annuity either in the form of an annuity as provided under subsection (4) of this section or any optional form that is determined by the board.

Except as provided in section 42-1107, in lieu of the future service retirement annuity, a retiring employee may receive a benefit not to exceed the amount in his or her employer and employee accounts as of the date of final account value payable in a lump sum and, if the employee chooses not to receive the entire amount in such accounts, an annuity equal to the actuarial equivalent of the remainder of the retirement value, and the employee may choose any form of such annuity as provided for by the board.

In any case, the amount of the monthly payment shall be such that the annuity chosen shall be the actuarial equivalent of the retirement value as specified in section 23-2316 except as provided in this section.

The board shall provide to any county employee who is eligible for retirement, prior to his or her selecting any of the retirement options provided by this section, information on the federal and state income tax consequences of the various annuity or retirement benefit options.

(2) Except as provided in subsection (4) of this section, the monthly income payable to a member retiring on or after January 1, 1984, shall be as follows:

He or she shall receive at retirement the amount which may be purchased by the accumulated contributions based on annuity rates in effect on the annuity start date which do not utilize gender as a factor, except that such amounts shall not be less than the retirement income which can be provided by the sum of the amounts derived pursuant to subdivisions (a) and (b) of this subsection as follows:

(a) The income provided by the accumulated contributions made prior to January 1, 1984, based on male annuity purchase rates in effect on the date of purchase; and

(b) The income provided by the accumulated contributions made on and after January 1, 1984, based on the annuity purchase rates in effect on the date of purchase which do not use gender as a factor.

(3) Any amount, in excess of contributions, which may be required in order to purchase the retirement income specified in subsection (2) of this section shall be withdrawn from the County Equal Retirement Benefit Fund.

(4)(a) The normal form of payment shall be a single life annuity with five-year certain, which is an annuity payable monthly during the remainder of the member's life with the provision that, in the event of his or her death before sixty monthly payments have been made, the monthly payments will be continued to his or her estate or to the beneficiary he or she has designated until sixty monthly payments have been made in total. Such annuity shall be equal to the actuarial equivalent of the member cash balance account or the sum of the employee and employer accounts, whichever is applicable, as of the date of final account value. As a part of the annuity, the normal form of payment may

include a two and one-half percent cost-of-living adjustment purchased by the member, if the member elects such a payment option.

Except as provided in section 42-1107, a member may elect a lump-sum distribution of his or her member cash balance account as of the date of final account value upon termination of service or retirement.

For a member employed and participating in the retirement system prior to January 1, 2003, who has elected to participate in the cash balance benefit pursuant to section 23-2308.01, or for a member employed and participating in the retirement system beginning on and after January 1, 2003, the balance of his or her member cash balance account as of the date of final account value shall be converted to an annuity using an interest rate used in the actuarial valuation as recommended by the actuary and approved by the board.

For an employee who is a member prior to January 1, 2003, who has elected not to participate in the cash balance benefit pursuant to section 23-2308.01, and who, at the time of retirement, chooses the annuity option rather than the lump-sum option, his or her employee and employer accounts as of the date of final account value shall be converted to an annuity using an interest rate that is equal to the lesser of (i) the Pension Benefit Guaranty Corporation initial interest rate for valuing annuities for terminating plans as of the beginning of the year during which payment begins plus three-fourths of one percent or (ii) the interest rate used in the actuarial valuation as recommended by the actuary and approved by the board.

(b) For the calendar year beginning January 1, 2003, and each calendar year thereafter, the actuary for the board shall perform an actuarial valuation of the system using the entry age actuarial cost method. Under this method, the actuarially required funding rate is equal to the normal cost rate plus the contribution rate necessary to amortize the unfunded actuarial accrued liability on a level-payment basis. The normal cost under this method shall be determined for each individual member on a level percentage of salary basis. The normal cost amount is then summed for all members. The initial unfunded actual accrued liability as of January 1, 2003, if any, shall be amortized over a twenty-five-year period. During each subsequent actuarial valuation, changes in the unfunded actuarial accrued liability due to changes in benefits, actuarial assumptions, the asset valuation method, or actuarial gains or losses shall be measured and amortized over a twenty-five-year period beginning on the valuation date of such change. If the unfunded actuarial accrued liability under the entry age actuarial cost method is zero or less than zero on an actuarial valuation date, then all prior unfunded actuarial accrued liabilities shall be considered fully funded and the unfunded actuarial accrued liability shall be reinitialized and amortized over a twenty-five-year period as of the actuarial valuation date. If the actuarially required contribution rate exceeds the rate of all contributions required pursuant to the County Employees Retirement Act, there shall be a supplemental appropriation sufficient to pay for the difference between the actuarially required contribution rate and the rate of all contributions required pursuant to the act.

(c) If the unfunded accrued actuarial liability under the entry age actuarial cost method is less than zero on an actuarial valuation date, and on the basis of all data in the possession of the retirement board, including such mortality and other tables as are recommended by the actuary engaged by the retirement board and adopted by the retirement board, the retirement board may elect to

pay a dividend to all members participating in the cash balance option in an amount that would not increase the actuarial contribution rate above ninety percent of the actual contribution rate. Dividends shall be credited to the employee cash balance account and the employer cash balance account based on the account balances on the actuarial valuation date. In the event a dividend is granted and paid after the actuarial valuation date, interest for the period from the actuarial valuation date until the dividend is actually paid shall be paid on the dividend amount. The interest rate shall be the interest credit rate earned on regular contributions.

(5) At the option of the retiring member, any lump sum or annuity provided under this section or section 23-2334 may be deferred to commence at any time, except that no benefit shall be deferred later than April 1 of the year following the year in which the employee has both attained at least seventy and one-half years of age and has terminated his or her employment with the county. Such election by the retiring member may be made at any time prior to the commencement of the lump-sum or annuity payments.

(6) A participant or beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of section 401(a)(9)(H) of the Internal Revenue Code, and who would have satisfied that requirement by receiving distributions that are either equal to the 2009 required minimum distributions or one or more payments in a series of substantially equal distributions, including the 2009 required minimum distribution, made at least annually and expected to last for the life or life expectancy of the participant, the joint lives or joint life expectancy of the participant and the participant's designated beneficiary, or for a period of at least ten years, shall receive those distributions for 2009 unless the participant or beneficiary chooses not to receive such distributions. Participants and beneficiaries shall be given the opportunity to elect to stop receiving the distributions described in this subsection.

Source: Laws 1965, c. 94, § 17, p. 407; Laws 1979, LB 416, § 2; Laws 1981, LB 462, § 2; Laws 1983, LB 210, § 1; Laws 1985, LB 347, § 8; Laws 1986, LB 311, § 6; Laws 1987, LB 60, § 2; Laws 1992, LB 543, § 1; Laws 1993, LB 417, § 3; Laws 1996, LB 1273, § 15; Laws 2002, LB 687, § 12; Laws 2003, LB 451, § 8; Laws 2006, LB 1019, § 4; Laws 2007, LB328, § 3; Laws 2009, LB188, § 4; Laws 2012, LB916, § 9; Laws 2013, LB263, § 7.

23-2319 Termination of employment; termination benefit; vesting; certain required minimum distributions; election authorized.

(1) Except as provided in section 42-1107, upon termination of employment, except for retirement or disability, and after filing an application with the board, a member may receive:

(a) If not vested, a termination benefit equal to the amount of his or her employee account or member cash balance account as of the date of final account value payable in a lump sum or an annuity with the lump-sum or first annuity payment made at any time after termination but no later than April 1 of the year following the year in which the member attains the age of seventy and one-half years; or

(b) If vested, a termination benefit equal to (i) the amount of his or her member cash balance account as of the date of final account value payable in a

lump sum or an annuity with the lump-sum or first annuity payment made at any time after termination but no later than April 1 of the year following the year in which the member attains the age of seventy and one-half years or (ii)(A) the amount of his or her employee account as of the date of final account value payable in a lump sum or an annuity with the lump-sum or first annuity payment made at any time after termination but no later than April 1 of the year following the year in which the member attains the age of seventy and one-half years plus (B) the amount of his or her employer account as of the date of final account value payable in a lump sum or an annuity with the lump-sum or first annuity payment made at any time after termination but no later than April 1 of the year following the year in which the member attains the age of seventy and one-half years.

The member cash balance account or employer and employee accounts of a terminating member shall be retained by the board, and the termination benefit shall be deferred until a valid application for benefits has been received.

(2) At the option of the terminating member, any lump sum of the employer account or member cash balance account or any annuity payment provided under subsection (1) of this section shall commence as of the first of the month at any time after such member has terminated his or her employment with the county and no later than April 1 of the year following the year in which the member attains the age of seventy and one-half years. Such election by the terminating member shall be made at any time prior to the commencement of the lump-sum or annuity payments.

(3) Members of the retirement system shall be vested after a total of three years of participation in the system as a member pursuant to section 23-2306, including vesting credit. If an employee retires pursuant to section 23-2315, such employee shall be fully vested in the retirement system.

(4) A participant or beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of section 401(a)(9)(H) of the Internal Revenue Code, and who would have satisfied that requirement by receiving distributions that are either equal to the 2009 required minimum distributions or one or more payments in a series of substantially equal distributions, including the 2009 required minimum distribution, made at least annually and expected to last for the life or life expectancy of the participant, the joint lives or joint life expectancy of the participant and the participant's designated beneficiary, or for a period of at least ten years, shall receive those distributions for 2009 unless the participant or beneficiary chooses not to receive such distributions. Participants and beneficiaries shall be given the opportunity to elect to stop receiving the distributions described in this subsection.

Source: Laws 1965, c. 94, § 19, p. 408; Laws 1975, LB 32, § 3; Laws 1975, LB 47, § 4; Laws 1984, LB 216, § 4; Laws 1986, LB 311, § 7; Laws 1987, LB 60, § 3; Laws 1991, LB 549, § 11; Laws 1993, LB 417, § 4; Laws 1994, LB 1306, § 1; Laws 1996, LB 1076, § 4; Laws 1996, LB 1273, § 16; Laws 1997, LB 624, § 4; Laws 1998, LB 1191, § 28; Laws 2002, LB 687, § 13; Laws 2003, LB 451, § 9; Laws 2006, LB 366, § 6; Laws 2009, LB188, § 5; Laws 2013, LB263, § 8.

23-2319.01 Termination of employment; account forfeited; when; County Employer Retirement Expense Fund; created; use; investment.

(1) For a member who has terminated employment and is not vested, the balance of the member's employer account or employer cash balance account shall be forfeited. The forfeited account shall be credited to the County Employees Retirement Fund and shall first be used to meet the expense charges incurred by the retirement board in connection with administering the retirement system, which charges shall be credited to the County Employees Defined Contribution Retirement Expense Fund, if the member participated in the defined contribution option, or to the County Employees Cash Balance Retirement Expense Fund, if the member participated in the cash balance option, and the remainder, if any, shall then be used to restore employer accounts or employer cash balance accounts. Except as provided in subsection (3) of section 23-2310.04 and subdivision (4)(c) of section 23-2317, no forfeited amounts shall be applied to increase the benefits any member would otherwise receive under the County Employees Retirement Act.

(2)(a) If a member ceases to be an employee due to the termination of his or her employment by the county and a grievance or other appeal of the termination is filed, transactions involving forfeiture of his or her employer account or employer cash balance account and, except as provided in subdivision (b) of this subsection, transactions for payment of benefits under sections 23-2315 and 23-2319 shall be suspended pending the final outcome of the grievance or other appeal.

(b) If a member elects to receive benefits payable under sections 23-2315 and 23-2319 after a grievance or appeal is filed, the member may receive an amount up to the balance of his or her employee account or member cash balance account or twenty-five thousand dollars payable from the employee account or member cash balance account, whichever is less.

(3) The County Employer Retirement Expense Fund is created. The fund shall be administered by the Public Employees Retirement Board. Prior to July 1, 2012, the County Employer Retirement Expense Fund shall be used to meet expenses of the retirement system whether such expenses are incurred in administering the member's employer account or in administering the member's employer cash balance account when the funds available in the County Employees Defined Contribution Retirement Expense Fund or County Employees Cash Balance Retirement Expense Fund make such use reasonably necessary. The County Employer Retirement Expense Fund shall consist of any reduction in a county contribution which would otherwise be required to fund future service retirement benefits or to restore employer accounts or employer cash balance accounts referred to in subsection (1) of this section. On July 1, 2012, or as soon as practicable thereafter, any money in the County Employer Retirement Expense Fund shall be transferred by the State Treasurer to the County Employees Retirement Fund and credited to the cash balance benefit established in section 23-2308.01.

(4) Prior to July 1, 2012, expenses incurred as a result of a county depositing amounts into the County Employer Retirement Expense Fund shall be deducted prior to any additional expenses being allocated. Any remaining amount shall be allocated in accordance with subsection (3) of this section. Any money in the County Employer Retirement Expense Fund available for investment shall be

invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1997, LB 624, § 5; Laws 2000, LB 1200, § 4; Laws 2002, LB 687, § 14; Laws 2003, LB 451, § 10; Laws 2005, LB 364, § 5; Laws 2007, LB328, § 4; Laws 2011, LB509, § 7; Laws 2012, LB916, § 10; Laws 2013, LB263, § 9.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

ARTICLE 25

CIVIL SERVICE SYSTEM

(b) COUNTIES OF 150,000 TO 300,000 INHABITANTS

Section

23-2529. Veterans preference; sections applicable.

(b) COUNTIES OF 150,000 TO 300,000 INHABITANTS

23-2529 Veterans preference; sections applicable.

Veterans preference shall be given in accordance with sections 48-225 to 48-231.

Source: Laws 1974, LB 995, § 13; Laws 1991, LB 2, § 4; Laws 2014, LB588, § 1.

Operative date January 1, 2015.

ARTICLE 35

MEDICAL AND MULTIUNIT FACILITIES

(a) GENERAL PROVISIONS

Section

23-3526. Retirement plan; authorized; reports.

(a) GENERAL PROVISIONS

23-3526 Retirement plan; authorized; reports.

(1) The board of trustees of each facility, as provided by section 23-3501, shall, upon approval of the county board, have the power and authority to establish and fund a retirement plan for the benefit of its full-time employees. The plan may be funded by any actuarially recognized method approved by the county board. Employees participating in the plan may be required to contribute toward funding the benefits. The facility shall pay all costs of establishing and maintaining the plan. The plan may be integrated with old age and survivor's insurance.

(2)(a) Beginning December 31, 1998, and each December 31 thereafter, the chairperson of the board of trustees of a facility with a retirement plan established pursuant to this section and section 401(a) of the Internal Revenue Code shall file with the Public Employees Retirement Board an annual report on such plan and shall submit copies of such report to the Auditor of Public Accounts. The Auditor of Public Accounts may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. The annual report

shall be in a form prescribed by the Public Employees Retirement Board and shall contain the following information for each such retirement plan:

- (i) The number of persons participating in the retirement plan;
- (ii) The contribution rates of participants in the plan;
- (iii) Plan assets and liabilities;
- (iv) The names and positions of persons administering the plan;
- (v) The names and positions of persons investing plan assets;
- (vi) The form and nature of investments;
- (vii) For each defined contribution plan which is not administered by a retirement system under the County Employees Retirement Act, a full description of investment policies and options available to plan participants; and
- (viii) For each defined benefit plan which is not administered by a retirement system under the County Employees Retirement Act, the levels of benefits of participants in the plan, the number of members who are eligible for a benefit, and the total present value of such members' benefits, as well as the funding sources which will pay for such benefits.

If a plan which is not administered by a retirement system under the County Employees Retirement Act contains no current active participants, the chairperson may file in place of such report a statement with the Public Employees Retirement Board indicating the number of retirees still drawing benefits, and the sources and amount of funding for such benefits.

(b) If such retirement plan is a defined benefit plan which was open to new members on January 1, 2004, in addition to the reports required by section 13-2402, the board of trustees shall cause to be prepared an annual report for each retirement plan which is not administered by a retirement system under the County Employees Retirement Act, and the chairperson shall file the same with the Public Employees Retirement Board and the Nebraska Retirement Systems Committee of the Legislature and submit to the Auditor of Public Accounts a copy of such report. The Auditor of Public Accounts may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. If the board of trustees does not submit a copy of the report to the Auditor of Public Accounts within six months after the end of the plan year, the Auditor of Public Accounts may audit, or cause to be audited, the facility. All costs of the audit shall be paid by the facility. The report shall consist of a full actuarial analysis of each such retirement plan established pursuant to this section which is not administered by a retirement system under the County Employees Retirement Act. The analysis shall be prepared by an independent private organization or public entity employing actuaries who are members in good standing of the American Academy of Actuaries, and which organization or entity has demonstrated expertise to perform this type of analysis and is unrelated to any organization offering investment advice or which provides investment management services to the retirement plan. The report to the Nebraska Retirement Systems Committee shall be submitted electronically.

Source: Laws 1977, LB 346, § 1; R.S.1943, (1987), § 23-343.121; Laws 1998, LB 1191, § 35; Laws 1999, LB 795, § 11; Laws 2011, LB474, § 11; Laws 2014, LB759, § 17.
Effective date July 18, 2014.

Cross References

County Employees Retirement Act, see section 23-2331.



CHAPTER 24

COURTS

Article.

2. Supreme Court.
 - (a) Organization. 24-201.01 to 24-205.
 - (g) Supreme Court Automation Cash Fund. 24-227.01.
 - (i) Counsel for Discipline Cash Fund. 24-229.
 - (j) Judicial Hearing Officers. 24-230.
3. District Court.
 - (a) Organization. 24-301.02, 24-313.
 - (c) Clerk. 24-337.01, 24-337.04.
5. County Court.
 - (a) Organization. 24-502 to 24-517.
7. Judges, General Provisions.
 - (a) Judges Retirement. 24-701 to 24-710.13.
 - (c) Retired Judges. 24-730.
 - (d) General Powers. 24-734.
8. Selection and Retention of Judges.
 - (c) Term of Office. 24-819.
10. Courts, General Provisions. 24-1007.
12. Judicial Resources Commission. 24-1205, 24-1206.

ARTICLE 2

SUPREME COURT

(a) ORGANIZATION

Section

- 24-201.01. Supreme Court judges; salary; amount; restriction on other employment of judges.
- 24-201.02. Supreme Court judicial districts; numbers; boundaries; established by maps; Clerk of Legislature; Secretary of State; duties.
- 24-201.04. Supreme Court judicial districts; population figures and maps; basis.
- 24-205. Supreme Court Education Fund; created; use; investment.
- (g) SUPREME COURT AUTOMATION CASH FUND
- 24-227.01. Supreme Court Automation Cash Fund; created; use; investment.
- (i) COUNSEL FOR DISCIPLINE CASH FUND
- 24-229. Counsel for Discipline Cash Fund; created; use; investment.
- (j) JUDICIAL HEARING OFFICERS
- 24-230. Judicial hearing officer; appointment by Supreme Court; powers; qualifications; rights of parties.

(a) ORGANIZATION

24-201.01 Supreme Court judges; salary; amount; restriction on other employment of judges.

On July 1, 2012, the salary of the Chief Justice and the judges of the Supreme Court shall be one hundred forty-five thousand six hundred fourteen dollars and seventy-four cents. On July 1, 2013, the salary of the Chief Justice and the judges of the Supreme Court shall be one hundred fifty-two thousand eight hundred ninety-five dollars and forty-eight cents. On July 1, 2014, the salary of

the Chief Justice and the judges of the Supreme Court shall be one hundred sixty thousand five hundred forty dollars and twenty-five cents.

The Chief Justice and the judges of the Supreme Court shall hold no other public office of profit or trust during their terms of office nor accept any public appointment or employment under the authority of the government of the United States for which they receive compensation for their services. Such salaries shall be payable in equal monthly installments.

Source: Laws 1947, c. 345, § 1, p. 1089; Laws 1951, c. 58, § 1, p. 191; Laws 1955, c. 77, § 1, p. 231; Laws 1959, c. 93, § 1, p. 406; Laws 1963, c. 127, § 1, p. 480; Laws 1963, c. 534, § 1, p. 1676; Laws 1967, c. 136, § 1, p. 421; Laws 1969, c. 173, § 1, p. 754; Laws 1969, c. 174, § 1, p. 755; Laws 1972, LB 1293, § 2; Laws 1974, LB 923, § 1; Laws 1976, LB 76, § 1; Laws 1978, LB 672, § 1; Laws 1979, LB 398, § 1; Laws 1983, LB 269, § 1; Laws 1986, LB 43, § 1; Laws 1987, LB 564, § 1; Laws 1990, LB 42, § 1; Laws 1995, LB 189, § 1; Laws 1997, LB 362, § 1; Laws 1999, LB 350, § 1; Laws 2001, LB 357, § 1; Laws 2005, LB 348, § 1; Laws 2007, LB377, § 1; Laws 2009, LB414, § 1; Laws 2012, LB862, § 1; Laws 2013, LB306, § 1.

24-201.02 Supreme Court judicial districts; numbers; boundaries; established by maps; Clerk of Legislature; Secretary of State; duties.

(1) Based on the 2010 Census of Population by the United States Department of Commerce, Bureau of the Census, the State of Nebraska is hereby divided into six Supreme Court judicial districts. Each district shall be entitled to one Supreme Court judge.

(2) The numbers and boundaries of the districts are designated and established by maps identified and labeled as maps SC11-19002-1, SC11-19002-2, SC11-19002-3, SC11-19002-4, SC11-19002-5, and SC11-19002-6, filed with the Clerk of the Legislature, and incorporated by reference as part of Laws 2011, LB699.

(3)(a) The Clerk of the Legislature shall transfer possession of the maps referred to in subsection (2) of this section to the Secretary of State on May 27, 2011.

(b) When questions of interpretation of district boundaries arise, maps referred to in subsection (2) of this section in possession of the Secretary of State shall serve as the indication of the legislative intent in drawing the district boundaries.

(c) Each election commissioner or county clerk shall obtain copies of maps referred to in subsection (2) of this section for the election commissioner's or clerk's county from the Secretary of State.

(d) The Secretary of State shall also have available for viewing on his or her web site maps referred to in subsection (2) of this section identifying the boundaries for the districts.

Source: Laws 1971, LB 545, § 1; Laws 1981, LB 552, § 1; R.S.1943, (1987), § 5-109; Laws 1990, LB 822, § 9; Laws 1991, LB 616, § 1; Laws 2001, LB 853, § 1; Laws 2011, LB699, § 1.

Cross References

Constitutional provisions, see Article V, section 5, Constitution of Nebraska.

24-201.04 Supreme Court judicial districts; population figures and maps; basis.

For purposes of section 24-201.02, the Legislature adopts the official population figures and maps from the 2010 Census Redistricting (Public Law 94-171) TIGER/Line Shapefiles published by the United States Department of Commerce, Bureau of the Census.

Source: Laws 1991, LB 616, § 2; Laws 2001, LB 853, § 2; Laws 2011, LB699, § 2.

24-205 Supreme Court Education Fund; created; use; investment.

The Supreme Court Education Fund is created. The State Court Administrator shall administer the fund. The fund shall consist of money remitted pursuant to section 33-154. The fund shall only be used to aid in supporting the mandatory training and education program for judges and employees of the Supreme Court, Court of Appeals, district courts, separate juvenile courts, county courts, and Nebraska Probation System as enacted by rule of the Supreme Court.

On July 1, 2014, or as soon thereafter as administratively possible, the State Treasurer shall transfer one hundred nine thousand three hundred eighty-three dollars from the Supreme Court Education Fund to the Nebraska Retirement Fund for Judges as an offset to the increase in the state's contribution to the Nebraska Judges Retirement System.

Any money in the Supreme Court Education 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 760, § 1; Laws 2009, First Spec. Sess., LB3, § 9; Laws 2011, LB378, § 16; Laws 2014, LB906, § 13.
Effective date March 30, 2014.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

(g) SUPREME COURT AUTOMATION CASH FUND

24-227.01 Supreme Court Automation Cash Fund; created; use; investment.

The Supreme Court Automation Cash Fund is created. The State Court Administrator shall administer the fund. The fund shall only be used to support automation expenses of the Supreme Court, Court of Appeals, district courts, separate juvenile courts, county courts, and Nebraska Probation System from the computer automation budget program.

On July 1, 2014, or as soon thereafter as administratively possible, the State Treasurer shall transfer six hundred thousand dollars from the Supreme Court Automation Cash Fund to the Nebraska Retirement Fund for Judges as an offset to the increase in the state's contribution to the Nebraska Judges Retirement System.

Any money in the Supreme Court Automation 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 2002, Second Spec. Sess., LB 13, § 1; Laws 2009, First Spec. Sess., LB3, § 10; Laws 2011, LB378, § 17; Laws 2014, LB906, § 14.

Effective date March 30, 2014.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

(i) COUNSEL FOR DISCIPLINE CASH FUND

24-229 Counsel for Discipline Cash Fund; created; use; investment.

The Counsel for Discipline Cash Fund is created. The fund shall be established within the Supreme Court and administered by the State Court Administrator. The fund shall consist of a portion of the annual membership dues assessed by the Nebraska State Bar Association and remitted to the Supreme Court for credit to the fund. Except as otherwise directed by the Supreme Court during the period from November 21, 2009, until June 30, 2011, the fund shall only be used to pay the costs associated with the operation of the Office of the Counsel for Discipline. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2007, LB322, § 1; Laws 2009, First Spec. Sess., LB3, § 11.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

(j) JUDICIAL HEARING OFFICERS

24-230 Judicial hearing officer; appointment by Supreme Court; powers; qualifications; rights of parties.

(1) The Supreme Court may appoint judicial hearing officers as needed to serve on a full-time or part-time basis for county courts sitting as juvenile courts and for separate juvenile courts. A judicial hearing officer is entitled to receive a salary as established by the Supreme Court.

(2) In accordance with the rules of the Supreme Court, a judicial hearing officer may preside in, hear, and determine any case or proceeding initiated under the Nebraska Juvenile Code.

(3) To be qualified for appointment as a judicial hearing officer, a person shall be an attorney in good standing admitted to the practice of law in the State of Nebraska and shall meet any other requirements imposed by the Supreme Court. A judicial hearing officer shall be sworn or affirmed to faithfully hear and examine the cause and to make a just and true report according to the best of his or her understanding. The oath or affirmation may be administered by any judge of the State of Nebraska. A judicial hearing officer may be removed at any time by the Supreme Court.

(4) In any and all cases referred to a judicial hearing officer by a county court sitting as a juvenile court or a separate juvenile court, the parties shall have the

right to take exceptions to the findings and recommendations made by the hearing officer and to have a further hearing before such court for final disposition. The court upon receipt of the findings, recommendations, and exceptions shall review the judicial hearing officer's report and may accept or reject all or any part of the report and enter judgment based on the court's own determination.

(5) The Supreme Court shall promulgate rules for all other qualifications of judicial hearing officers; for the extent of authority which may be assigned and the procedure for assignment of authority by a county court sitting as a juvenile court or a separate juvenile court; for practice and procedure before such judicial hearing officers; and for the training of judicial hearing officers, including rules for training sessions and continuing education requirements.

Source: Laws 2011, LB669, § 6.

Cross References

Nebraska Juvenile Code, see section 43-2,129.

**ARTICLE 3
DISTRICT COURT**

(a) ORGANIZATION

Section

24-301.02. District court judicial districts; described; number of judges.

24-313. Inferior tribunal; powers over.

(c) CLERK

24-337.01. Clerk of the district court; assist clerk of county court; agreement; contents.

24-337.04. Clerk of district court; residency.

(a) ORGANIZATION

24-301.02 District court judicial districts; described; number of judges.

The State of Nebraska shall be divided into the following twelve district court judicial districts:

District No. 1 shall contain the counties of Clay, Nuckolls, Saline, Jefferson, Gage, Thayer, Johnson, Pawnee, Nemaha, Fillmore, and Richardson;

District No. 2 shall contain the counties of Sarpy, Cass, and Otoe;

District No. 3 shall contain the county of Lancaster;

District No. 4 shall contain the county of Douglas;

District No. 5 shall contain the counties of Merrick, Platte, Colfax, Boone, Nance, Hamilton, Polk, York, Butler, Seward, and Saunders;

District No. 6 shall contain the counties of Dixon, Dakota, Cedar, Burt, Thurston, Dodge, and Washington;

District No. 7 shall contain the counties of Knox, Cuming, Antelope, Pierce, Wayne, Madison, and Stanton;

District No. 8 shall contain the counties of Cherry, Keya Paha, Brown, Rock, Blaine, Loup, Custer, Boyd, Holt, Garfield, Wheeler, Valley, Greeley, Sherman, and Howard;

District No. 9 shall contain the counties of Buffalo and Hall;

District No. 10 shall contain the counties of Adams, Phelps, Kearney, Harlan, Franklin, and Webster;

District No. 11 shall contain the counties of Hooker, Thomas, Arthur, McPherson, Logan, Keith, Perkins, Lincoln, Dawson, Chase, Hayes, Frontier, Gosper, Dundy, Hitchcock, Red Willow, and Furnas; and

District No. 12 shall contain the counties of Sioux, Dawes, Box Butte, Sheridan, Scotts Bluff, Morrill, Garden, Banner, Kimball, Cheyenne, Grant, and Deuel.

In the fourth district there shall be sixteen judges of the district court. In the third district, until June 30, 2011, there shall be seven judges of the district court and, beginning July 1, 2011, there shall be eight judges of the district court. In the second, fifth, ninth, eleventh, and twelfth districts there shall be four judges of the district court. In the first and sixth districts there shall be three judges of the district court. In the seventh, eighth, and tenth districts there shall be two judges of the district court.

Source: Laws 1911, c. 5, § 1, p. 70; Laws 1913, c. 203, § 1, p. 623; R.S.1913, § 217; Laws 1915, c. 12, § 1, p. 64; Laws 1917, c. 3, § 1, p. 55; Laws 1919, c. 114, § 1, p. 278; Laws 1921, c. 146, § 1, p. 620; C.S.1922, § 199; Laws 1923, c. 119, § 1, p. 283; C.S.1929, § 5-103; R.S.1943, § 5-105; Laws 1961, c. 11, § 1, p. 99; Laws 1963, c. 24, § 1, p. 125; Laws 1965, c. 23, § 1, p. 186; Laws 1965, c. 24, § 1, p. 189; Laws 1969, c. 27, § 1, p. 229; Laws 1972, LB 1301, § 1; Laws 1975, LB 1, § 1; Laws 1980, LB 618, § 1; Laws 1983, LB 121, § 1; Laws 1985, LB 287, § 1; Laws 1986, LB 516, § 1; R.S.1943, (1987), § 5-105; Laws 1990, LB 822, § 10; Laws 1991, LB 181, § 1; Laws 1992, LB 1059, § 3; Laws 1993, LB 306, § 1; Laws 1995, LB 19, § 1; Laws 1995, LB 189, § 2; Laws 1998, LB 404, § 1; Laws 2001, LB 92, § 1; Laws 2004, LB 1207, § 1; Laws 2007, LB377, § 2; Laws 2009, LB35, § 4.

Cross References

Constitutional provisions, see Article V, sections 10 and 11, Constitution of Nebraska.

24-313 Inferior tribunal; powers over.

The district court may by rule compel an inferior court or board to allow an appeal or to make or amend records according to law either by correcting an evident mistake or supplying an evident omission. This section shall not apply if the Administrative Procedure Act otherwise provides.

Source: Laws 1879, § 28, p. 88; R.S.1913, § 1172; C.S.1922, § 1095; C.S.1929, § 27-313; R.S.1943, § 24-313; Laws 1988, LB 352, § 23; Laws 1989, LB 182, § 7; Laws 2010, LB800, § 1.

Cross References

Administrative Procedure Act, see section 84-920.

(c) CLERK

24-337.01 Clerk of the district court; assist clerk of county court; agreement; contents.

When the clerk of the county court or the county court staff are temporarily unavailable or available on less than a full-time basis, the clerk of the district

court shall, under the direction of the county court judge and in cooperation and agreement with the Supreme Court and State Court Administrator, assist the clerk of the county court in the provision of county court services which would otherwise require the presence of county court staff. Any agreement entered into under this section must be signed and stipulated to by the State Court Administrator, the county board, and the clerk of the district court after obtaining input from the clerk of the county court, a district court judge, a county court judge, and the county attorney. Any agreement entered into under this section may include, but is not limited to, financial considerations and scheduling.

Source: Laws 2011, LB669, § 5.

24-337.04 Clerk of district court; residency.

A clerk of the district court elected after 2008 need not be a resident of the county when he or she files for election as clerk of the district court, but a clerk of the district court shall reside in a county for which he or she holds office.

Source: Laws 2009, LB7, § 1.

**ARTICLE 5
COUNTY COURT**

(a) ORGANIZATION

Section

24-502. Court of record; location.

24-503. County judge districts; created; number of judges; membership.

24-507. Clerk magistrates; appointment; serve as clerk of court; assist clerk of district court; agreement; contents; ex officio clerk of the district court; when.

24-512. Repealed. Laws 2011, LB 669, § 30.

24-515. Courtroom and office facilities; costs; standards; property transfers from municipal courts; standards.

24-517. Jurisdiction.

(a) ORGANIZATION

24-502 Court of record; location.

There shall be a county court in and for each county in this state. The county court shall be a court of record and shall be located at the county seat.

Source: Laws 1972, LB 1032, § 2; Laws 1990, LB 822, § 12; Laws 2011, LB669, § 2.

24-503 County judge districts; created; number of judges; membership.

For the purpose of serving the county courts in each county, twelve county judge districts are hereby created:

District No. 1 shall contain the counties of Saline, Jefferson, Gage, Thayer, Johnson, Pawnee, Nemaha, and Richardson;

District No. 2 shall contain the counties of Sarpy, Cass, and Otoe;

District No. 3 shall contain the county of Lancaster;

District No. 4 shall contain the county of Douglas;

District No. 5 shall contain the counties of Merrick, Platte, Colfax, Boone, Nance, Hamilton, Polk, York, Butler, Seward, and Saunders;

District No. 6 shall contain the counties of Dixon, Dakota, Cedar, Burt, Thurston, Dodge, and Washington;

District No. 7 shall contain the counties of Knox, Cuming, Antelope, Pierce, Wayne, Madison, and Stanton;

District No. 8 shall contain the counties of Cherry, Keya Paha, Brown, Rock, Blaine, Loup, Custer, Boyd, Holt, Garfield, Wheeler, Valley, Greeley, Sherman, and Howard;

District No. 9 shall contain the counties of Buffalo and Hall;

District No. 10 shall contain the counties of Fillmore, Adams, Clay, Phelps, Kearney, Harlan, Franklin, Webster, and Nuckolls;

District No. 11 shall contain the counties of Hooker, Thomas, Arthur, McPherson, Logan, Keith, Perkins, Lincoln, Dawson, Chase, Hayes, Frontier, Gosper, Dundy, Hitchcock, Red Willow, and Furnas; and

District No. 12 shall contain the counties of Sioux, Dawes, Box Butte, Sheridan, Scotts Bluff, Morrill, Garden, Banner, Kimball, Cheyenne, Grant, and Deuel.

District 4 shall have twelve county judges. District 3 shall have seven county judges. Districts 5, 11, and 12 shall have five county judges. Districts 2, 6, and 9 shall have four county judges. Districts 1, 7, 8, and 10 shall have three county judges.

Judge of the county court shall include any person appointed to the office of county judge or municipal judge prior to July 1, 1985, pursuant to Article V, section 21, of the Constitution of Nebraska.

Any person serving as a municipal judge in district 3 or 4 immediately prior to July 1, 1985, shall be a judge of the county court and shall be empowered to hear only those cases as provided in section 24-517 which the presiding judge of the county court for such district, with the concurrence of the Supreme Court, shall direct.

Source: Laws 1972, LB 1032, § 3; Laws 1974, LB 785, § 1; Laws 1980, LB 618, § 2; Laws 1984, LB 13, § 7; Laws 1985, LB 287, § 2; Laws 1986, LB 516, § 3; Laws 1987, LB 509, § 1; Laws 1990, LB 822, § 13; Laws 1991, LB 181, § 2; Laws 1992, LB 1059, § 4; Laws 1993, LB 306, § 2; Laws 1998, LB 404, § 2; Laws 2007, LB377, § 3; Laws 2012, LB790, § 1.

24-507 Clerk magistrates; appointment; serve as clerk of court; assist clerk of district court; agreement; contents; ex officio clerk of the district court; when.

(1) There shall be appointed a clerk magistrate to serve each county. Clerk magistrates shall be appointed by the county judge, or judges if the district has more than one county judge, and shall serve at the pleasure of the county judge or judges, subject to personnel rules adopted by the Supreme Court.

(2) The clerk magistrate shall be the clerk of the county court and if appointed as clerk magistrate for more than one county shall be the clerk of the county court for each county.

(3) In counties when the district court clerk or staff is temporarily unavailable, the clerk magistrate as clerk of the county court shall, under the direction of the district court judge and in cooperation and agreement with the Supreme Court, State Court Administrator, and clerk of the district court, assist the clerk

of the district court in the provision of district court services which would otherwise require the presence of district court staff. Any agreement entered into under this subsection must be signed and stipulated to by the State Court Administrator, the county board, and the clerk of the district court after obtaining input from the clerk of the county court, a district court judge, a county court judge, and the county attorney. Any agreement entered into under this subsection may include, but is not limited to, financial considerations and scheduling.

(4) When an agreement has been reached pursuant to subdivision (1)(b) of section 32-524 or subsection (3) of section 32-524 for a clerk magistrate as clerk of the county court to be ex officio clerk of the district court, the clerk magistrate shall perform the duties required by law of the clerk of the district court under the direction of the district court judge for the county and the State Court Administrator.

Source: Laws 1972, LB 1032, § 7; Laws 1986, LB 529, § 2; Laws 2011, LB669, § 3.

24-512 Repealed. Laws 2011, LB 669, § 30.

24-515 Courtroom and office facilities; costs; standards; property transfers from municipal courts; standards.

Each county shall be responsible for all costs involved in establishing, furnishing, and maintaining appropriate courtroom and office facilities for the county court at the county seat. On July 1, 1985, the courtroom and office facilities of a municipal court shall be transferred, by sale, lease, or other arrangement, from cities of the metropolitan or primary class to the county responsible pursuant to this section for the establishing, furnishing, and maintaining of courtroom and office facilities for the county court at the county seat. Payments by a city and county on the bonded indebtedness on any facility constructed for joint use by a city and county shall continue in the same manner and in the same proportionate shares as payments made prior to July 1, 1985, subject to any sale, lease, or other arrangement pursuant to this section. All other property, equipment, books, and records of the municipal courts shall be transferred on July 1, 1985, to the county court.

The Supreme Court shall prescribe minimum standards for all courtroom and office facilities. The Supreme Court may establish standards by class of county, based on population, caseload, and other pertinent factors.

Source: Laws 1972, LB 1032, § 15; Laws 1984, LB 13, § 10; Laws 1992, LB 1059, § 5; Laws 1993, LB 593, § 2; Laws 2011, LB669, § 4.

24-517 Jurisdiction.

Each county court shall have the following jurisdiction:

(1) Exclusive original jurisdiction of all matters relating to decedents' estates, including the probate of wills and the construction thereof, except as provided in subsection (c) of section 30-2464 and section 30-2486;

(2) Exclusive original jurisdiction in all matters relating to the guardianship of a person, except if a separate juvenile court already has jurisdiction over a child in need of a guardian, concurrent original jurisdiction with the separate juvenile court in such guardianship;

(3) Exclusive original jurisdiction of all matters relating to conservatorship of any person, including (a) original jurisdiction to consent to and authorize a voluntary selection, partition, and setoff of a ward's interest in real estate owned in common with others and to exercise any right of the ward in connection therewith which the ward could exercise if competent and (b) original jurisdiction to license the sale of such real estate for cash or on such terms of credit as shall seem best calculated to produce the highest price subject only to the requirements set forth in section 30-3201;

(4) Concurrent jurisdiction with the district court to involuntarily partition a ward's interest in real estate owned in common with others;

(5) Concurrent original jurisdiction with the district court in all civil actions of any type when the amount in controversy is forty-five thousand dollars or less through June 30, 2005, and as set by the Supreme Court pursuant to subdivision (b) of this subdivision on and after July 1, 2005.

(a) When the pleadings or discovery proceedings in a civil action indicate that the amount in controversy is greater than the jurisdictional amount of subdivision (5) of this section, the county court shall, upon the request of any party, certify the proceedings to the district court as provided in section 25-2706. An award of the county court which is greater than the jurisdictional amount of subdivision (5) of this section is not void or unenforceable because it is greater than such amount, however, if an award of the county court is greater than the jurisdictional amount, the county court shall tax as additional costs the difference between the filing fee in district court and the filing fee in county court.

(b) The Supreme Court shall adjust the jurisdictional amount for the county court every fifth year commencing July 1, 2005. The adjusted jurisdictional amount shall be equal to the then current jurisdictional amount adjusted by the average percentage change in the unadjusted Consumer Price Index for All Urban Consumers published by the Federal Bureau of Labor Statistics for the five-year period preceding the adjustment date. The jurisdictional amount shall be rounded to the nearest one-thousand-dollar amount;

(6) Concurrent original jurisdiction with the district court in any criminal matter classified as a misdemeanor or for any infraction. The district court shall have concurrent original jurisdiction in any criminal matter classified as a misdemeanor that arises from the same incident as a charged felony;

(7) Concurrent original jurisdiction with the district court in domestic relations matters as defined in section 25-2740 and with the district court and separate juvenile court in paternity or custody determinations as provided in section 25-2740;

(8) Concurrent original jurisdiction with the district court in matters arising under the Nebraska Uniform Trust Code;

(9) Exclusive original jurisdiction in any action based on violation of a city or village ordinance, except with respect to violations committed by persons under eighteen years of age;

(10) The jurisdiction of a juvenile court as provided in the Nebraska Juvenile Code when sitting as a juvenile court in counties which have not established separate juvenile courts;

(11) Exclusive original jurisdiction in matters of adoption, except if a separate juvenile court already has jurisdiction over the child to be adopted, concurrent original jurisdiction with the separate juvenile court; and

(12) All other jurisdiction heretofore provided and not specifically repealed by Laws 1972, Legislative Bill 1032, and such other jurisdiction as hereafter provided by law.

Source: Laws 1972, LB 1032, § 17; Laws 1973, LB 226, § 6; Laws 1977, LB 96, § 1; Laws 1979, LB 373, § 1; Laws 1983, LB 137, § 1; Laws 1984, LB 13, § 12; Laws 1986, LB 529, § 7; Laws 1986, LB 1229, § 1; Laws 1991, LB 422, § 1; Laws 1996, LB 1296, § 2; Laws 1997, LB 229, § 1; Laws 1998, LB 1041, § 1; Laws 2001, LB 269, § 1; Laws 2003, LB 130, § 114; Laws 2005, LB 361, § 29; Laws 2008, LB280, § 1; Laws 2008, LB1014, § 4; Laws 2009, LB35, § 5; Laws 2014, LB464, § 2.
Operative date July 18, 2014.

Cross References

Nebraska Juvenile Code, see section 43-2,129.
Nebraska Uniform Trust Code, see section 30-3801.

ARTICLE 7
JUDGES, GENERAL PROVISIONS

(a) JUDGES RETIREMENT

Section

- 24-701. Terms, defined.
- 24-701.01. Act, how cited.
- 24-703. Judges; contributions; payment; funding of system; late fees.
- 24-703.01. Participation in retirement system; requirements.
- 24-704. Administration of system; Public Employees Retirement Board, Auditor of Public Accounts, and Nebraska Investment Council; duties; employer education program.
- 24-705. Technical and administrative employees; actuary; report; expenses.
- 24-707. Death of judge; benefits spouse entitled to receive; contributions paid to beneficiary; when; direct transfer to retirement plan; death while performing qualified military service; additional death benefit.
- 24-710. Judges; retirement annuity; amount; how computed; cost-of-living adjustment.
- 24-710.02. Retirement benefits; exemption from legal process; exception; payment for civil damages; conditions.
- 24-710.05. Direct rollover; terms, defined; distributee; powers; board; duties.
- 24-710.07. Repealed. Laws 2011, LB 509, § 55.
- 24-710.09. Repealed. Laws 2011, LB 509, § 55.
- 24-710.10. Repealed. Laws 2011, LB 509, § 55.
- 24-710.11. Repealed. Laws 2011, LB 509, § 55.
- 24-710.13. Annual benefit adjustment; cost-of-living adjustment calculation method.

(c) RETIRED JUDGES

- 24-730. Retired judge; temporary duty; compensation.

(d) GENERAL POWERS

- 24-734. Judges; powers; enumerated.

(a) JUDGES RETIREMENT

24-701 Terms, defined.

For purposes of the Judges Retirement Act, unless the context otherwise requires:

- (1) Fund means the Nebraska Retirement Fund for Judges;

(2) Judge means and includes (a) all duly elected or appointed Chief Justices or judges of the Supreme Court and judges of the district courts of Nebraska who serve in such capacity on and after January 3, 1957, (b)(i) all duly appointed judges of the Nebraska Workmen's Compensation Court who served in such capacity on and after September 20, 1957, and prior to July 17, 1986, and (ii) judges of the Nebraska Workers' Compensation Court who serve in such capacity on and after July 17, 1986, (c) judges of separate juvenile courts, (d) judges of the county courts of the respective counties who serve in such capacity on and after January 5, 1961, (e) judges of the county court and clerk magistrates who were associate county judges and members of the fund at the time of their appointment as clerk magistrates, (f) judges of municipal courts established by Chapter 26, article 1, who served in such capacity on and after October 23, 1967, and prior to July 1, 1985, and (g) judges of the Court of Appeals;

(3) Prior service means all the periods of time any person has served as a (a) judge of the Supreme Court or judge of the district court prior to January 3, 1957, (b) judge of the county court prior to January 5, 1961, (c) judge of the Nebraska Workmen's Compensation Court prior to September 20, 1957, (d) judge of the separate juvenile court, or (e) judge of the municipal court prior to October 23, 1967;

(4)(a) Current service means the period of service (i) any judge of the Supreme Court or judge of the district court serves in such capacity from and after January 3, 1957, (ii)(A) any judge of the Nebraska Workmen's Compensation Court served in such capacity from and after September 20, 1957, and prior to July 17, 1986, and (B) any judge of the Nebraska Workers' Compensation Court serves in such capacity on and after July 17, 1986, (iii) any county judge serves in such capacity from and after January 5, 1961, (iv) any judge of a separate juvenile court serves in such capacity, (v) any judge of the municipal court served in such capacity subsequent to October 23, 1967, and prior to July 1, 1985, (vi) any judge of the county court or associate county judge serves in such capacity subsequent to January 4, 1973, (vii) any clerk magistrate, who was an associate county judge and a member of the fund at the time of appointment as a clerk magistrate, serves in such capacity from and after July 1, 1986, and (viii) any judge of the Court of Appeals serves in such capacity on or after September 6, 1991.

(b) Current service shall not be deemed to be interrupted by (i) temporary or seasonal suspension of service that does not terminate the employee's employment, (ii) leave of absence authorized by the employer for a period not exceeding twelve months, (iii) leave of absence because of disability, or (iv) military service, when properly authorized by the board. Current service does not include any period of disability for which disability retirement benefits are received under section 24-709;

(5) Military service means active service of (a) any judge of the Supreme Court or judge of the district court in any of the armed forces of the United States during a war or national emergency prior or subsequent to September 18, 1955, if such service commenced while such judge was holding the office of judge, (b) any judge of the Nebraska Workmen's Compensation Court or the Nebraska Workers' Compensation Court in any of the armed forces of the United States during a war or national emergency prior or subsequent to September 20, 1957, if such service commenced while such judge was holding the office of judge, (c) any judge of the municipal court in any of the armed

forces of the United States during a war or national emergency prior or subsequent to October 23, 1967, and prior to July 1, 1985, if such service commenced while such judge was holding the office of judge, (d) any judge of the county court or associate county judge in any of the armed forces of the United States during a war or national emergency prior or subsequent to January 4, 1973, if such service commenced while such judge was holding the office of judge, (e) any clerk magistrate, who was an associate county judge and a member of the fund at the time of appointment as a clerk magistrate, in any of the armed forces of the United States during a war or national emergency on or after July 1, 1986, if such service commenced while such clerk magistrate was holding the office of clerk magistrate, and (f) any judge of the Court of Appeals in any of the armed forces of the United States during a war or national emergency on or after September 6, 1991, if such service commenced while such judge was holding the office of judge. The board shall have the power to determine when a national emergency exists or has existed for the purpose of applying this definition and provision;

(6) Creditable service means the total number of years served as a judge, including prior service, military service, and current service, computed to the nearest one-twelfth year. For current service prior to the time that the member has contributed the required percentage of salary until the maximum benefit as limited by section 24-710 has been earned, creditable service does not include current service for which member contributions are not made or are withdrawn and not repaid;

(7)(a) Compensation means the statutory salary of a judge or the salary being received by such judge pursuant to law. Compensation does not include compensation for unused sick leave or unused vacation leave converted to cash payments, insurance premiums converted into cash payments, reimbursement for expenses incurred, fringe benefits, per diems, or bonuses for services not actually rendered, including, but not limited to, early retirement inducements, cash awards, and severance pay, except for retroactive salary payments paid pursuant to court order, arbitration, or litigation and grievance settlements. Compensation includes overtime pay, member retirement contributions, and amounts contributed by the member to plans under sections 125 and 457 of the Internal Revenue Code as defined in section 49-801.01 or any other section of the code which defers or excludes such amounts from income.

(b) Compensation in excess of the limitations set forth in section 401(a)(17) of the Internal Revenue Code as defined in section 49-801.01 shall be disregarded. For an employee who was a member of the retirement system before the first plan year beginning after December 31, 1995, the limitation on compensation shall not be less than the amount which was allowed to be taken into account under the retirement system as in effect on July 1, 1993;

(8) Beneficiary means a person so designated by a judge in the last designation of beneficiary on file with the board or, if no designated person survives or if no designation is on file, the estate of such judge;

(9) Normal form annuity means a series of equal monthly payments payable at the end of each calendar month during the life of a retired judge as provided in sections 24-707 and 24-710, except as provided in section 42-1107. The first payment shall include all amounts accrued since the effective date of the award of the annuity. The last payment shall be at the end of the calendar month in which such judge dies. If at the time of death the amount of annuity payments

such judge has received is less than contributions to the fund made by such judge, plus regular interest, the difference shall be paid to the beneficiary or estate;

(10) Board means the Public Employees Retirement Board;

(11) Member means a judge eligible to participate in the retirement system established under the Judges Retirement Act;

(12) Original member means a judge who first served as a judge prior to December 25, 1969, who does not elect to become a future member pursuant to subsection (8) of section 24-703 or section 24-710.01, and who was retired on or before December 31, 1992;

(13) Future member means a judge who first served as a judge on or after December 25, 1969, or means a judge who first served as a judge prior to December 25, 1969, who elects to become a future member on or before June 30, 1970, as provided in subsection (8) of section 24-703 or section 24-710.01;

(14) Final average compensation means the average monthly compensation for the three twelve-month periods of service as a judge in which compensation was the greatest or, in the event of a judge serving less than three twelve-month periods, the average monthly compensation for such judge's period of service;

(15) Regular interest means interest fixed at a rate equal to the daily treasury yield curve for one-year treasury securities, as published by the Secretary of the Treasury of the United States, that applies on July 1 of each year, which may be credited monthly, quarterly, semiannually, or annually as the board may direct;

(16) Normal retirement date means the first day of the month following attainment of age sixty-five;

(17) Actuarial equivalence means the equality in value of the aggregate amounts expected to be received under different forms of payment. The determinations are to be based on the 1994 Group Annuity Mortality Table reflecting sex-distinct factors blended using seventy-five percent of the male table and twenty-five percent of the female table. An interest rate of eight percent per annum shall be reflected in making these determinations;

(18) Current benefit means the initial benefit increased by all adjustments made pursuant to the Judges Retirement Act;

(19) Initial benefit means the retirement benefit calculated at the time of retirement;

(20) Plan year means the twelve-month period beginning on July 1 and ending on June 30 of the following year;

(21) Retirement application means the form approved and provided by the retirement system for acceptance of a member's request for either regular or disability retirement;

(22) Retirement date means (a) the first day of the month following the date upon which a member's request for retirement is received on a retirement application if the member is eligible for retirement and has terminated employment or (b) the first day of the month following termination of employment if the member is eligible for retirement and has filed an application but has not yet terminated employment;

(23) Retirement system or system means the Nebraska Judges Retirement System as provided in the Judges Retirement Act;

(24) Surviving spouse means (a) the spouse married to the member on the date of the member's death or (b) the spouse or former spouse of the member if survivorship rights are provided under a qualified domestic relations order filed with the board pursuant to the Spousal Pension Rights Act. The spouse or former spouse shall supersede the spouse married to the member on the date of the member's death as provided under a qualified domestic relations order. If the benefits payable to the spouse or former spouse under the qualified domestic relations order are less than the value of benefits entitled to the surviving spouse, the spouse married to the member on the date of the member's death shall be the surviving spouse for the balance of the benefits; and

(25) Termination of employment occurs on the date on which the State Court Administrator's office determines that the judge's employer-employee relationship with the State of Nebraska is dissolved. The State Court Administrator's office shall notify the board of the date on which such a termination has occurred. Termination of employment does not include ceasing employment as a judge if the judge returns to regular employment as a judge or is employed on a regular basis by another agency of the State of Nebraska and there are less than one hundred twenty days between the date when the judge's employer-employee relationship ceased and the date when the employer-employee relationship recommences. It is the responsibility of the employer that is involved in the termination of employment to notify the board of such change in employment and provide the board with such information as the board deems necessary. If the board determines that termination of employment has not occurred and a retirement benefit has been paid to a member of the retirement system pursuant to section 24-710, the board shall require the member who has received such benefit to repay the benefit to the retirement system.

Source: Laws 1955, c. 83, § 1, p. 244; Laws 1957, c. 78, § 1, p. 315; Laws 1957, c. 79, § 1, p. 318; Laws 1959, c. 95, § 1, p. 409; Laws 1959, c. 189, § 13, p. 687; Laws 1965, c. 115, § 1, p. 440; Laws 1969, c. 178, § 1, p. 759; Laws 1971, LB 987, § 4; Laws 1972, LB 1032, § 120; Laws 1973, LB 226, § 10; Laws 1974, LB 905, § 3; Laws 1983, LB 223, § 1; Laws 1984, LB 13, § 32; Laws 1984, LB 750, § 1; Laws 1986, LB 92, § 1; Laws 1986, LB 311, § 9; Laws 1986, LB 351, § 1; Laws 1986, LB 529, § 17; Laws 1986, LB 811, § 12; Laws 1989, LB 506, § 2; Laws 1991, LB 549, § 15; Laws 1991, LB 732, § 36; Laws 1992, LB 682, § 1; Laws 1994, LB 833, § 12; Laws 1996, LB 700, § 1; Laws 1996, LB 847, § 11; Laws 1996, LB 1076, § 8; Laws 1996, LB 1273, § 19; Laws 1997, LB 624, § 9; Laws 1999, LB 674, § 1; Laws 2000, LB 1192, § 4; Laws 2001, LB 408, § 6; Laws 2003, LB 451, § 14; Laws 2011, LB6, § 1; Laws 2012, LB916, § 14; Laws 2013, LB263, § 10.

Cross References

Spousal Pension Rights Act, see section 42-1101.

24-701.01 Act, how cited.

Sections 24-701 to 24-714 shall be known and may be cited as the Judges Retirement Act.

Source: Laws 1996, LB 847, § 12; Laws 1997, LB 624, § 10; Laws 1998, LB 532, § 1; Laws 1998, LB 1191, § 36; Laws 2001, LB 408, § 7; Laws 2002, LB 407, § 11; Laws 2004, LB 1097, § 10; Laws 2010, LB950, § 8; Laws 2011, LB509, § 9.

24-703 Judges; contributions; payment; funding of system; late fees.

(1) Each original member shall contribute monthly four percent of his or her monthly compensation to the fund until the maximum benefit as limited in subsection (1) of section 24-710 has been earned. It shall be the duty of the Director of Administrative Services in accordance with subsection (10) of this section to make a deduction of four percent on the monthly payroll of each original member who is a judge of the Supreme Court, a judge of the Court of Appeals, a judge of the district court, a judge of a separate juvenile court, a judge of the county court, a clerk magistrate of the county court who was an associate county judge and a member of the fund at the time of his or her appointment as a clerk magistrate, or a judge of the Nebraska Workers' Compensation Court showing the amount to be deducted and its credit to the fund. The Director of Administrative Services and the State Treasurer shall credit the four percent as shown on the payroll and the amounts received from the various counties to the fund and remit the same to the director in charge of the judges retirement system who shall keep an accurate record of the contributions of each judge.

(2)(a) In addition to the contribution required under subdivision (c) of this subsection, beginning on July 1, 2004, each future member who has not elected to make contributions and receive benefits as provided in section 24-703.03 shall contribute monthly six percent of his or her monthly compensation to the fund until the maximum benefit as limited in subsection (2) of section 24-710 has been earned. After the maximum benefit as limited in subsection (2) of section 24-710 has been earned, such future member shall make no further contributions to the fund, except that (i) any time the maximum benefit is changed, a future member who has previously earned the maximum benefit as it existed prior to the change shall contribute monthly six percent of his or her monthly compensation to the fund until the maximum benefit as changed and as limited in subsection (2) of section 24-710 has been earned and (ii) such future member shall continue to make the contribution required under subdivision (c) of this subsection.

(b) In addition to the contribution required under subdivision (c) of this subsection, beginning on July 1, 2004, a judge who first serves as a judge on or after such date or a future member who elects to make contributions and receive benefits as provided in section 24-703.03 shall contribute monthly eight percent of his or her monthly compensation to the fund until the maximum benefit as limited by subsection (2) of section 24-710 has been earned. In addition to the contribution required under subdivision (c) of this subsection, after the maximum benefit as limited in subsection (2) of section 24-710 has been earned, such judge or future member shall contribute monthly four percent of his or her monthly compensation to the fund for the remainder of his or her active service.

(c) Beginning on July 1, 2009, a member or judge described in subdivisions (a) and (b) of this subsection shall contribute monthly an additional one percent of his or her monthly compensation to the fund.

(d) It shall be the duty of the Director of Administrative Services to make a deduction on the monthly payroll of each such future member who is a judge of the Supreme Court, a judge of the Court of Appeals, a judge of the district court, a judge of a separate juvenile court, a judge of the county court, a clerk magistrate of the county court who was an associate county judge and a

member of the fund at the time of his or her appointment as a clerk magistrate, or a judge of the Nebraska Workers' Compensation Court showing the amount to be deducted and its credit to the fund. This shall be done each month. The Director of Administrative Services and the State Treasurer shall credit the amount as shown on the payroll and the amounts received from the various counties to the fund and remit the same to the director in charge of the judges retirement system who shall keep an accurate record of the contributions of each judge.

(3) Except as otherwise provided in this subsection, a Nebraska Retirement Fund for Judges fee of six dollars shall be taxed as costs in each (a) civil cause of action, criminal cause of action, traffic misdemeanor or infraction, and city or village ordinance violation filed in the district courts, the county courts, and the separate juvenile courts, (b) filing in the district court of an order, award, or judgment of the Nebraska Workers' Compensation Court or any judge thereof pursuant to section 48-188, (c) appeal or other proceeding filed in the Court of Appeals, and (d) original action, appeal, or other proceeding filed in the Supreme Court. In county courts a sum shall be charged which is equal to ten percent of each fee provided by sections 33-125, 33-126.02, 33-126.03, and 33-126.06, rounded to the nearest even dollar. No judges retirement fee shall be charged for filing a report pursuant to sections 33-126.02 and 33-126.06. When collected by the clerk of the district or county court, such fees shall be paid and information submitted to the director in charge of the judges retirement system on forms prescribed by the board by the clerk within ten days after the close of each calendar quarter. The board may charge a late administrative processing fee not to exceed twenty-five dollars if the information is not timely received or the money is delinquent. In addition, the board may charge a late fee of thirty-eight thousandths of one percent of the amount required to be submitted pursuant to this section for each day such amount has not been received. Such director shall promptly thereafter remit the same to the State Treasurer for credit to the fund. No Nebraska Retirement Fund for Judges fee which is uncollectible for any reason shall be waived by a county judge as provided in section 29-2709.

(4) All expenditures from the fund shall be authorized by voucher in the manner prescribed in section 24-713. The fund shall be used for the payment of all annuities and other benefits and for the expenses of administration.

(5) The fund shall consist of the total fund as of December 25, 1969, the contributions of members as provided in this section, all supplementary court fees as provided in subsection (3) of this section, and any required contributions of the state.

(6) Not later than January 1 of each year, the State Treasurer shall transfer to the fund the amount certified by the board as being necessary to pay the cost of any benefits accrued during the fiscal year ending the previous June 30 in excess of member contributions for that fiscal year and court fees as provided in subsection (3) of this section and fees pursuant to sections 25-2804, 33-103, 33-103.01, 33-106, 33-106.02, 33-123, 33-125, 33-126.02, 33-126.03, and 33-126.06 and directed to be remitted to the fund, if any, for that fiscal year plus any required contributions of the state as provided in subsection (9) of this section.

(7) Benefits under the retirement system to members or to their beneficiaries shall be paid from the fund.

(8) Any member who is making contributions to the fund on December 25, 1969, may, on or before June 30, 1970, elect to become a future member by delivering written notice of such election to the board.

(9) Not later than January 1 of each year, the State Treasurer shall transfer to the fund an amount, determined on the basis of an actuarial valuation as of the previous June 30 and certified by the board, to fully fund the unfunded accrued liabilities of the retirement system as of June 30, 1988, by level payments up to January 1, 2000. Such valuation shall be on the basis of actuarial assumptions recommended by the actuary, approved by the board, and kept on file with the board. For the fiscal year beginning July 1, 2013, and each fiscal year thereafter, the actuary for the board shall perform an actuarial valuation of the system using the entry age actuarial cost method. Under this method, the actuarially required funding rate is equal to the normal cost rate, plus the contribution rate necessary to amortize the unfunded actuarial accrued liability on a level percentage of salary basis. The normal cost under this method shall be determined for each individual member on a level percentage of salary basis. The normal cost amount is then summed for all members. Beginning July 1, 2006, any existing unfunded liabilities shall be reinitialized and amortized over a thirty-year period, and during each subsequent actuarial valuation, changes in the funded actuarial accrued liability due to changes in benefits, actuarial assumptions, the asset valuation method, or actuarial gains or losses shall be measured and amortized over a thirty-year period beginning on the valuation date of such change. If the unfunded actuarial accrued liability under the entry age actuarial cost method is zero or less than zero on an actuarial valuation date, then all prior unfunded actuarial accrued liabilities shall be considered fully funded and the unfunded actuarial accrued liability shall be reinitialized and amortized over a thirty-year period as of the actuarial valuation date. If the actuarially required contribution rate exceeds the rate of all contributions required pursuant to the Judges Retirement Act, there shall be a supplemental appropriation sufficient to pay for the differences between the actuarially required contribution rate and the rate of all contributions required pursuant to the Judges Retirement Act.

(10) The state or county shall pick up the member contributions required by this section for all compensation paid on or after January 1, 1985, and the contributions so picked up shall be treated as employer contributions pursuant to section 414(h)(2) of the Internal Revenue Code in determining federal tax treatment under the code and shall not be included as gross income of the member until such time as they are distributed or made available. The contributions, although designated as member contributions, shall be paid by the state or county in lieu of member contributions. The state or county shall pay these member contributions from the same source of funds which is used in paying earnings to the member. The state or county shall pick up these contributions by a compensation deduction through a reduction in the compensation of the member. Member contributions picked up shall be treated for all purposes of the Judges Retirement Act in the same manner and to the extent as member contributions made prior to the date picked up.

Source: Laws 1955, c. 83, § 3, p. 246; Laws 1957, c. 79, § 2, p. 321; Laws 1959, c. 95, § 2, p. 411; Laws 1959, c. 189, § 14, p. 689; Laws 1963, c. 137, § 1, p. 513; Laws 1965, c. 115, § 2, p. 442; Laws 1965, c. 116, § 2, p. 446; Laws 1967, c. 140, § 1, p. 428; Laws 1969, c. 178, § 2, p. 957; Laws 1971, LB 987, § 5; Laws 1972, LB

1032, § 121; Laws 1972, LB 1471, § 1; Laws 1973, LB 226, § 11; Laws 1974, LB 228, § 1; Laws 1977, LB 344, § 2; Laws 1977, LB 467, § 1; Laws 1981, LB 459, § 3; Laws 1984, LB 13, § 33; Laws 1984, LB 218, § 2; Laws 1986, LB 92, § 2; Laws 1986, LB 529, § 18; Laws 1989, LB 233, § 1; Laws 1989, LB 506, § 3; Laws 1991, LB 549, § 16; Laws 1991, LB 732, § 37; Laws 1992, LB 672, § 31; Laws 1992, LB 682, § 2; Laws 1994, LB 833, § 14; Laws 1995, LB 574, § 34; Laws 2001, LB 408, § 9; Laws 2002, LB 407, § 13; Laws 2003, LB 320, § 1; Laws 2003, LB 760, § 4; Laws 2004, LB 1097, § 11; Laws 2005, LB 348, § 2; Laws 2005, LB 364, § 7; Laws 2006, LB 1019, § 5; Laws 2009, LB414, § 2; Laws 2013, LB263, § 11; Laws 2013, LB306, § 2; Laws 2013, LB553, § 1.

24-703.01 Participation in retirement system; requirements.

On and after July 1, 2010, no judge shall be authorized to participate in the retirement system provided for in the Judges Retirement Act unless the judge (a) is a United States citizen or (b) is a qualified alien under the federal Immigration and Nationality Act, 8 U.S.C. 1101 et seq., as such act existed on January 1, 2009, and is lawfully present in the United States.

Source: Laws 2010, LB950, § 9.

24-704 Administration of system; Public Employees Retirement Board, Auditor of Public Accounts, and Nebraska Investment Council; duties; employer education program.

(1) The general administration of the retirement system for judges provided for in the Judges Retirement Act, except the investment of funds, is hereby vested in the board. The Auditor of Public Accounts shall make an annual audit of the retirement system and electronically file an annual report of its condition with the Clerk of the Legislature. Each member of the Legislature shall receive an electronic copy of the annual report by making a request for such report to the Auditor of Public Accounts. The board shall adopt and promulgate rules and regulations as may be necessary to carry out the Judges Retirement Act.

(2)(a) The board shall employ a director and such assistants and employees as may be necessary to efficiently discharge the duties imposed by the act. The director shall keep a record of all acts and proceedings taken by the board.

(b) The director shall keep a complete record of all members with respect to name, current address, age, contributions, length of service, compensation, and any other facts as may be necessary in the administration of the act. The information in the records shall be provided by the State Court Administrator in an accurate and verifiable form, as specified by the director. The director shall, from time to time, carry out testing procedures pursuant to section 84-1512 to verify the accuracy of such information. For the purpose of obtaining such facts and information, the director shall have access to the records of the various state departments and agencies and the holder of the records shall comply with a request by the director for access by providing such facts and information to the director in a timely manner. A certified copy of a birth certificate or delayed birth certificate shall be prima facie evidence of the age of the person named in the certificate.

(c) The director shall develop and implement an employer education program using principles generally accepted by public employee retirement systems so that all employers have the knowledge and information necessary to prepare and file reports as the board requires.

(3) Information necessary to determine membership in the retirement system shall be provided by the State Court Administrator.

(4) Any funds of the retirement system available for investment shall be invested by the Nebraska Investment Council pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. Payment for investment services by the council shall be charged directly against the gross investment returns of the funds. Charges so incurred shall not be a part of the board's annual budget request. The amounts of payment for such services, as of December 31 of each year, shall be reported not later than March 31 of the following year to the council, the board, and the Nebraska Retirement Systems Committee of the Legislature. The report submitted to the committee shall be submitted electronically. The state investment officer shall sell any such securities upon request from the director so as to provide money for the payment of benefits or annuities.

Source: Laws 1955, c. 83, § 4, p. 246; Laws 1971, LB 987, § 6; Laws 1979, LB 322, § 6; Laws 1986, LB 311, § 10; Laws 1991, LB 549, § 17; Laws 1994, LB 833, § 15; Laws 1994, LB 1066, § 18; Laws 1995, LB 369, § 4; Laws 1996, LB 847, § 13; Laws 2000, LB 1192, § 5; Laws 2005, LB 503, § 4; Laws 2012, LB782, § 24.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

24-705 Technical and administrative employees; actuary; report; expenses.

The board shall have the power to secure and employ the services of such technical and administrative employees as are necessary to carry out the Judges Retirement Act. Pursuant to subdivision (2)(e) of section 84-1503, the board shall have an annual report prepared by a member of the American Academy of Actuaries showing a complete valuation of the present and prospective assets and liabilities of the fund created by the act. Such valuation shall be on the basis of actuarial assumptions recommended by the actuary, approved by the board, and kept on file with the board. The report shall further include a prospectus of the amount of the appropriation that will be required from the Legislature for the succeeding year. This report shall be furnished electronically to the Clerk of the Legislature at each regular session. Each member of the Legislature shall receive an electronic copy of such report by making a request for it to the director. The employees of the board shall be paid at such rates as the board shall approve. All administrative expenses shall be paid from the retirement fund.

Source: Laws 1955, c. 83, § 5, p. 247; Laws 1971, LB 987, § 7; Laws 1979, LB 322, § 7; Laws 1981, LB 462, § 3; Laws 1994, LB 833, § 18; Laws 1995, LB 502, § 1; Laws 1998, LB 1191, § 37; Laws 2012, LB782, § 25.

24-707 Death of judge; benefits spouse entitled to receive; contributions paid to beneficiary; when; direct transfer to retirement plan; death while performing qualified military service; additional death benefit.

(1) In the event of the death of a judge prior to retirement, if such judge shall have had five or more years of creditable service, the surviving spouse of such judge shall at his or her option, exercised within twelve months after the date of death, be immediately entitled to receive an annuity which shall be equal to the amount that would have accrued to the member had he or she elected to have the retirement annuity paid as a one-hundred-percent joint and survivor annuity payable as long as either the member or the member's spouse should survive and had the member retired (a) on the date of death if his or her age at death is sixty-five years or more or (b) at age sixty-five years if his or her age at death is less than sixty-five years. If such option is not exercised by such surviving spouse within twelve months after the judge's death, if there is no surviving spouse, or if the judge has not served for five years, then the beneficiary, or the estate if the judge has not filed a statement with the board naming a beneficiary, shall be paid a lump sum equal to all contributions to the fund made by such judge plus regular interest.

(2) In the event of the death of a judge subsequent to retirement, if such judge has not filed a statement of intent with the board to elect to receive any other form of annuity which may be provided for by section 24-710 or elected to make contributions and receive benefits as provided in section 24-703.03, the amount of annuities such judge has received under the provisions of the Judges Retirement Act shall be computed and, if such amount shall be less than the contributions to the fund made by such judge, plus regular interest, the difference shall be paid to the beneficiary or estate.

(3) Benefits to which the surviving spouse, beneficiary, or estate of a judge shall be entitled shall commence immediately upon the death of such judge.

(4) A lump-sum death benefit paid to the member's beneficiary, other than the member's estate, that is an eligible distribution may be distributed in the form of a direct transfer to a retirement plan eligible to receive such transfer under the provisions of the Internal Revenue Code.

(5) For any member whose death occurs on or after January 1, 2007, while performing qualified military service as defined in section 414(u) of the Internal Revenue Code, the member's beneficiary shall be entitled to any additional death benefit that would have been provided, other than the accrual of any benefit relating to the period of qualified military service. The additional death benefit shall be determined as if the member had returned to employment with the State of Nebraska and such employment had terminated on the date of the member's death.

Source: Laws 1955, c. 83, § 7, p. 248; Laws 1973, LB 478, § 1; Laws 1974, LB 905, § 5; Laws 1975, LB 298, § 1; Laws 1977, LB 344, § 4; Laws 1983, LB 223, § 2; Laws 1986, LB 92, 4; Laws 1989, LB 506, § 5; Laws 1994, LB 833, § 20; Laws 1996, LB 1273, § 20; Laws 1997, LB 624, § 12; Laws 2000, LB 1192, § 7; Laws 2003, LB 451, § 15; Laws 2004, LB 1097, § 13; Laws 2007, LB508, § 1; Laws 2012, LB916, § 15.

24-710 Judges; retirement annuity; amount; how computed; cost-of-living adjustment.

(1) The retirement annuity of a judge who is an original member, who has not made the election provided for in subsection (8) of section 24-703 or section 24-710.01, and who retires under section 24-708 or 24-709 shall be computed as follows: Each such judge shall be entitled to receive an annuity, each monthly payment of which shall be in an amount equal to three and one-third percent of his or her final average compensation as such judge, multiplied by the number of his or her years of creditable service. The amount stated in this section shall be supplemental to any benefits received by such judge under the Nebraska and federal old age and survivors' insurance acts at the date of retirement, but the monthly combined benefits received thereunder and by the Judges Retirement Act shall not exceed sixty-five percent of the final average compensation such judge was receiving when he or she last served as such judge. The amount of retirement annuity of a judge who retires under section 24-708 or 24-709 shall not be less than twenty-five dollars per month if he or she has four years or more of service credit.

(2) The retirement annuity of a judge who is a future member and who retires after July 1, 1986, under section 24-708 or 24-709 shall be computed as follows: Each such judge shall be entitled to receive an annuity, each monthly payment of which shall be in an amount equal to three and one-half percent of his or her final average compensation as such judge, multiplied by the number of his or her years of creditable service, except that prior to an actuarial factor adjustment for purposes of calculating an optional form of annuity benefits under subsection (3) of this section, the monthly benefits received under this subsection shall not exceed seventy percent of the final average compensation such judge was receiving when he or she last served as such judge.

(3) Except as provided in section 42-1107, any member may, when filing an application as provided by the retirement system, elect to receive, in lieu of the normal form annuity benefits to which the member or his or her beneficiary may otherwise be entitled under the Judges Retirement Act, an optional form of annuity benefits which the board may by rules and regulations provide, the value of which, determined by accepted actuarial methods and on the basis of actuarial assumptions recommended by the actuary, approved by the board, and kept on file in the office of the director, is equal to the value of the benefit replaced. The board shall (a) adopt and promulgate appropriate rules and regulations establishing joint and survivorship annuities, with and without reduction on the death of the first annuitant, and such other forms of annuities as may in its judgment be appropriate and establishing benefits as provided in sections 24-707 and 24-707.01, (b) prescribe appropriate forms for making the election by the members, and (c) provide for the necessary actuarial services to make the required valuations.

(4) A one-time cost-of-living adjustment shall be made for each retired judge and each surviving beneficiary who is receiving a retirement annuity as provided for in this section. The annuity shall be adjusted by the increase in the cost of living or wage levels between the effective date of retirement and June 30, 1992, except that such increases shall not exceed three percent per year of retirement and the total increase shall not exceed two hundred fifty dollars per month.

Source: Laws 1955, c. 83, § 10, p. 249; Laws 1957, c. 79, § 4, p. 323; Laws 1959, c. 95, § 4, p. 413; Laws 1965, c. 116, § 3, p. 448; Laws 1965, c. 117, § 1, p. 489; Laws 1969, c. 178, § 4, p. 766; Laws 1973, LB 478, § 2; Laws 1974, LB 740, § 1; Laws 1975, LB

49, § 1; Laws 1977, LB 467, § 2; Laws 1977, LB 344, § 5; Laws 1981, LB 459, § 4; Laws 1981, LB 462, § 4; Laws 1986, LB 92, § 5; Laws 1986, LB 311, § 13; Laws 1989, LB 506, § 7; Laws 1991, LB 549, § 18; Laws 1992, LB 672, § 32; Laws 1992, LB 682, § 3; Laws 1994, LB 833, § 22; Laws 1996, LB 1273, § 21; Laws 1997, LB 624, § 15; Laws 2004, LB 1097, § 15; Laws 2011, LB509, § 11.

24-710.02 Retirement benefits; exemption from legal process; exception; payment for civil damages; conditions.

(1) Except as provided in subsection (2) of this section, all annuities or benefits which any person shall be entitled to receive under the Judges Retirement Act shall not be subject to garnishment, attachment, levy, the operation of bankruptcy or insolvency laws, or any other process of law whatsoever and shall not be assignable except to the extent that such annuities or benefits are subject to a qualified domestic relations order under the Spousal Pension Rights Act. The payment of any annuities or benefits subject to such order shall take priority over any payment made pursuant to subsection (2) of this section.

(2) If a member of the retirement system is convicted of or pleads no contest to a felony that is defined as assault, sexual assault, kidnapping, child abuse, false imprisonment, or theft by embezzlement and is found liable for civil damages as a result of such felony, following distribution of the member's annuities or benefits from the retirement system, the court may order the payment of the member's annuities or benefits under the retirement system for such civil damages, except that the annuities or benefits to the extent reasonably necessary for the support of the member or any of his or her beneficiaries shall be exempt from such payment. Any order for payment of annuities or benefits shall not be stayed on the filing of any appeal of the conviction. If the conviction is reversed on final judgment, all annuities or benefits paid as civil damages shall be forfeited and returned to the member. The changes made to this section by Laws 2012, LB916, shall apply to persons convicted of or who have pled no contest to such a felony and who have been found liable for civil damages as a result of such felony prior to, on, or after April 7, 2012.

Source: Laws 1986, LB 311, § 12; Laws 1989, LB 506, § 8; Laws 1994, LB 833, § 23; Laws 1995, LB 574, § 37; Laws 1996, LB 1273, § 22; Laws 2004, LB 1097, § 16; Laws 2012, LB916, § 16.

Cross References

Spousal Pension Rights Act, see section 42-1101.

24-710.05 Direct rollover; terms, defined; distributee; powers; board; duties.

(1) For purposes of this section and section 24-710.06:

(a) Distributee means the member, the member's surviving spouse, or the member's former spouse who is an alternate payee under a qualified domestic relations order as defined in section 414(p) of the Internal Revenue Code;

(b) Direct rollover means a payment by the retirement system to the eligible retirement plan or plans specified by the distributee;

(c) Eligible retirement plan means (i) an individual retirement account described in section 408(a) of the Internal Revenue Code, (ii) an individual

retirement annuity described in section 408(b) of the code, except for an endowment contract, (iii) a qualified plan described in section 401(a) of the code, (iv) an annuity plan described in section 403(a) or 403(b) of the code, (v) except for purposes of section 24-710.06, an individual retirement plan described in section 408A of the code, and (vi) a plan described in section 457(b) of the code and maintained by a governmental employer. For eligible rollover distributions to a surviving spouse, an eligible retirement plan means subdivisions (1)(c)(i) through (vi) of this section; and

(d) Eligible rollover distribution means any distribution to a distributee of all or any portion of the balance to the credit of the distributee in the plan, except such term shall not include any distribution which is one of a series of substantially equal periodic payments, not less frequently than annually, made for the life of the distributee or joint lives of the distributee and the distributee's beneficiary or for the specified period of ten years or more and shall not include any distribution to the extent such distribution is required under section 401(a)(9) of the Internal Revenue Code.

(2) For distributions made to a distributee on or after January 1, 1993, a distributee may elect to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee.

(3) A member's surviving spouse or former spouse who is an alternate payee under a qualified domestic relations order and, on or after July 1, 2010, any designated beneficiary of a member who is not a surviving spouse or former spouse who is entitled to receive an eligible rollover distribution from the retirement system may, in accordance with such rules, regulations, and limitations as may be established by the board, elect to have such distribution made in the form of a direct transfer to a retirement plan eligible to receive such transfer under the provisions of the Internal Revenue Code.

(4) An eligible rollover distribution on behalf of a designated beneficiary of a member who is not a surviving spouse or former spouse of the member may be transferred to an individual retirement account or annuity described in section 408(a) or section 408(b) of the Internal Revenue Code that is established for the purpose of receiving the distribution on behalf of the designated beneficiary and that will be treated as an inherited individual retirement account or individual retirement annuity described in section 408(d)(3)(C) of the Internal Revenue Code.

(5) The board shall adopt and promulgate rules and regulations for direct rollover procedures which are consistent with section 401(a)(31) of the Internal Revenue Code and which include, but are not limited to, the form and time of direct rollover distributions.

Source: Laws 1996, LB 847, § 15; Laws 2002, LB 407, § 14; Laws 2012, LB916, § 17.

24-710.07 Repealed. Laws 2011, LB 509, § 55.

24-710.09 Repealed. Laws 2011, LB 509, § 55.

24-710.10 Repealed. Laws 2011, LB 509, § 55.

24-710.11 Repealed. Laws 2011, LB 509, § 55.**24-710.13 Annual benefit adjustment; cost-of-living adjustment calculation method.**

(1) Beginning July 1, 2011, and each July 1 thereafter, the board shall determine the number of retired members or beneficiaries described in subdivision (4)(b) of this section in the retirement system and an annual benefit adjustment shall be made by the board for each retired member or beneficiary under one of the cost-of-living adjustment calculation methods found in subsection (2), (3), or (4) of this section. Each retired member or beneficiary, if eligible, shall receive an annual benefit adjustment under the cost-of-living adjustment calculation method that provides the retired member or beneficiary the greatest annual benefit adjustment increase. No retired member or beneficiary shall receive an annual benefit adjustment under more than one of the cost-of-living adjustment calculation methods provided in this section.

(2) The current benefit paid to a retired member or beneficiary under this subsection shall be adjusted so that the purchasing power of the benefit being paid is not less than seventy-five percent of the purchasing power of the initial benefit. The purchasing power of the initial benefit in any year following the year in which the initial benefit commenced shall be calculated by dividing the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index for Urban Wage Earners and Clerical Workers factor on June 30 of the current year by the Consumer Price Index for Urban Wage Earners and Clerical Workers factor on June 30 of the year in which the benefit commenced. The result shall be multiplied by the product that results when the amount of the initial benefit is multiplied by seventy-five percent. In any year in which applying the adjustment provided in subsection (3) of this section results in a benefit which would be less than seventy-five percent of the purchasing power of the initial benefit as calculated in this subsection, the adjustment shall instead be equal to the percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers factor from the prior year to the current year.

(3) The current benefit paid to a retired member or beneficiary under this subsection shall be increased annually by the lesser of (a) the percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers for the period between June 30 of the prior year to June 30 of the present year or (b) two and one-half percent.

(4)(a) The current benefit paid to a retired member or beneficiary under this subsection shall be calculated by multiplying the retired member's or beneficiary's total monthly benefit by the lesser of (i) the cumulative change in the Consumer Price Index for Urban Wage Earners and Clerical Workers from the last adjustment of the total monthly benefit of each retired member or beneficiary through June 30 of the year for which the annual benefit adjustment is being calculated or (ii) an amount equal to three percent per annum compounded for the period from the last adjustment of the total monthly benefit of each retired member or beneficiary through June 30 of the year for which the annual benefit adjustment is being calculated.

(b) In order for a retired member or beneficiary to receive the cost-of-living adjustment calculation method provided in this subsection, the retired member or beneficiary shall be (i) a retired member or beneficiary who has been receiving a retirement benefit for at least five years if the member had at least

twenty-five years of creditable service, (ii) a member who has been receiving a disability retirement benefit for at least five years pursuant to section 24-709, or (iii) a beneficiary who has been receiving a death benefit pursuant to section 24-707 or 24-707.01 for at least five years, if the member's or beneficiary's monthly accrual rate is less than or equal to the minimum accrual rate as determined by this subsection.

(c) The monthly accrual rate under this subsection is the retired member's or beneficiary's total monthly benefit divided by the number of years of creditable service earned by the retired or deceased member.

(d) The total monthly benefit under this subsection is the total benefit received by a retired member or beneficiary pursuant to the Judges Retirement Act and previous adjustments made pursuant to this section or any other provision of the act that grants a benefit or cost-of-living increase, but the total monthly benefit shall not include sums received by an eligible retired member or eligible beneficiary from federal sources.

(e) Beginning July 1, 2010, the minimum accrual rate under this subsection was forty-six dollars and eighty-five cents. Beginning July 1, 2011, the minimum accrual rate under this subsection was forty-eight dollars and seventy-five cents. Beginning July 1, 2012, the minimum accrual rate under this subsection was forty-nine dollars and fifty-two cents. Beginning July 1, 2013, the board shall annually adjust the minimum accrual rate to reflect the cumulative percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers from the last adjustment of the minimum accrual rate.

(5) Beginning July 1, 2011, and each July 1 thereafter, each retired member or beneficiary shall receive the sum of the annual benefit adjustment and such retiree's total monthly benefit less withholding, which sum shall be the retired member's or beneficiary's adjusted total monthly benefit. Each retired member or beneficiary shall receive the adjusted total monthly benefit until the expiration of the annuity option selected by the member or until the retired member or beneficiary again qualifies for the annual benefit adjustment, whichever occurs first.

(6) The annual benefit adjustment pursuant to this section shall not cause a current benefit to be reduced, and a retired member or beneficiary shall never receive less than the adjusted total monthly benefit until the annuity option selected by the member expires.

(7) The board shall adjust the annual benefit adjustment provided in this section so that the cost-of-living adjustment provided to the retired member or beneficiary at the time of the annual benefit adjustment does not exceed the change in the Consumer Price Index for Urban Wage Earners and Clerical Workers for the period between June 30 of the prior year to June 30 of the present year. If the consumer price index used in this section is discontinued or replaced, a substitute index published by the United States Department of Labor shall be selected by the board which shall be a reasonable representative measurement of the cost-of-living for retired employees.

Source: Laws 2011, LB509, § 10; Laws 2013, LB263, § 12; Laws 2013, LB306, § 3.

(c) RETIRED JUDGES

24-730 Retired judge; temporary duty; compensation.

A retired judge holding court pursuant to sections 24-729 to 24-733 shall receive, in addition to his or her retirement benefits, for each day of temporary duty an amount established by the Supreme Court. In addition, a retired judge who consents to serve a minimum number of temporary duty days annually, as established by the Supreme Court, and is appointed by the Supreme Court for such extended service, may also receive a stipend or an adjusted stipend calculated from the number of days of temporary duty performed by the judge in such annual period in relation to an annual base amount established by the Supreme Court.

Source: Laws 1974, LB 832, § 2; Laws 1983, LB 268, § 1; Laws 2008, LB1014, § 5; Laws 2010, LB727, § 1.

(d) GENERAL POWERS

24-734 Judges; powers; enumerated.

(1) A judge of any court established under the laws of the State of Nebraska shall, in any case in which that judge is authorized to act, have power to exercise the powers conferred upon the judge and court, and specifically to:

(a) Upon the stipulation of the parties to an action, hear and determine any matter, including the trial of an equity case or case at law in which a jury has been waived;

(b) Hear and determine pretrial and posttrial matters in civil cases not involving testimony of witnesses by oral examination;

(c) With the consent of the defendant, receive pleas of guilty and pass sentences in criminal cases;

(d) With the consent of the defendant, hear and determine pretrial and posttrial matters in criminal cases;

(e) Hear and determine cases brought by petition in error or appeal not involving testimony of witnesses by oral examination;

(f) Hear and determine any matter in juvenile cases with the consent of the guardian ad litem or attorney for the minor, the other parties to the proceedings, and the attorneys for those parties, if any; and

(g) Without notice, make any order and perform any act which may lawfully be made or performed by him or her ex parte in any action or proceeding which is on file in any district of this state.

(2) A judgment or order made pursuant to this section shall be deemed effective when the judgment is entered in accordance with the provisions of subsection (3) of section 25-1301.

(3) The judge, in his or her discretion, may in any proceeding authorized by the provisions of this section not involving testimony of witnesses by oral examination, use telephonic, videoconferencing, or similar methods to conduct such proceedings. The court may require the parties to make reimbursement for any charges incurred.

(4) A judge, in any case with the consent of the parties, may permit any witness who is to be examined by oral examination to appear by telephonic, videoconferencing, or similar methods, with any costs thereof to be taxed as costs.

(5) The enumeration of the powers in subsections (1), (2), (3), and (4) of this section shall not be construed to deny the right of a party to trial by jury in the county in which the action was first filed if such right otherwise exists.

(6) Nothing in this section shall be construed to exempt proceedings under this section from the provisions of the Guidelines for Use by Nebraska Courts in Determining When and Under What Conditions a Hearing Before Such Court May Be Closed in Whole or in Part to the Public, adopted by the Supreme Court of the State of Nebraska September 8, 1980, and any amendments to those provisions.

Source: Laws 1879, § 39, p. 90; Laws 1913, c. 209, § 1, p. 635; R.S.1913, § 1176; Laws 1921, c. 177, § 1, p. 676; C.S.1922, § 1099; C.S. 1929, § 27-317; R.S.1943, § 24-317; Laws 1953, c. 64, § 1, p. 208; Laws 1965, c. 111, § 1, p. 435; R.S.1943, (1979), § 24-317; Laws 1983, LB 272, § 1; Laws 1999, LB 43, § 1; Laws 2013, LB103, § 1.

ARTICLE 8

SELECTION AND RETENTION OF JUDGES

(c) TERM OF OFFICE

Section

24-819. Judges; full term; commencement; end.

(c) TERM OF OFFICE

24-819 Judges; full term; commencement; end.

The full term of office of each judge shall commence: (1) On the first Thursday after the first Tuesday in January next succeeding the election referred to in sections 24-813 to 24-818, or (2) if appointed pursuant to Article V of the Constitution of Nebraska, on the date of his or her appointment, as the case may be. For purposes of sections 24-817 and 24-818, the end of the term of office shall be the first Thursday after the first Tuesday in January next succeeding the retention election required by section 24-814.

Source: Laws 1969, c. 178, § 8, p. 768; Laws 2009, LB343, § 1.

ARTICLE 10

COURTS, GENERAL PROVISIONS

Section

24-1007. State Court Administrator; compile judicial workload statistics; how; juveniles in Nebraska's justice system; annual report; contents.

24-1007 State Court Administrator; compile judicial workload statistics; how; juveniles in Nebraska's justice system; annual report; contents.

(1) The State Court Administrator shall compile uniform and accurate statistics which will assist in the evaluation of judicial workloads. The judicial workload statistics shall be based on caseload numbers weighted by category of case. The judicial workload statistics shall be compiled annually for each district, county, and separate juvenile court judicial district in the state.

(2) The State Court Administrator shall develop and provide an annual report to the Legislature and the Governor on juveniles in Nebraska's justice system.

The report to the Legislature shall be provided electronically. For purposes of this section, juvenile has the same meaning as in section 43-245. The report shall include, but not be limited to, geographic and demographic information on the following:

- (a) Juveniles prosecuted in juvenile court under subdivision (1), (2), (3)(b), or (4) of section 43-247, including the total number of filings and adjudications;
- (b) Juveniles prosecuted in adult criminal court for felonies, misdemeanors, and traffic offenses. The information shall include juveniles sentenced to terms in adult jails and prisons and juveniles placed on adult probation;
- (c) The number of motions to transfer and the number of cases transferred to adult court from juvenile court and from adult criminal court to juvenile court;
- (d) Juveniles placed on juvenile probation, the number of juveniles on probation in out-of-home care, the number of juveniles completing probation, the number of motions to revoke probation and probation revocations, and the average length of time on probation;
- (e) Juveniles with and without access to counsel in juvenile and adult court, both appointed and retained; and
- (f) Rates of recidivism.

Source: Laws 1995, LB 189, § 5; Laws 2014, LB464, § 3.
Operative date January 1, 2015.

ARTICLE 12

JUDICIAL RESOURCES COMMISSION

Section

24-1205. Judgeships; annual hearing; recommendations.

24-1206. Commission; basis for determination; report to Legislature; legislative action.

24-1205 Judgeships; annual hearing; recommendations.

By December 15, 1995, and each year thereafter, the Judicial Resources Commission shall hold a hearing to determine whether (1) a new judgeship is appropriate in any judicial district or a reduction in judgeships is appropriate in any judicial district or (2) the judicial district boundaries or the number of judicial districts should be changed for the district or county courts. The commission shall also examine current caseload statistics and make any appropriate recommendations for the more balanced use of existing judicial resources. The State Court Administrator shall provide adequate administrative support and information as requested by the commission. A report of this hearing and any recommendations shall be filed by the commission with the Legislature, the Governor, and the Supreme Court on or before December 31 of each year. The report submitted to the Legislature shall be submitted electronically.

Source: Laws 1995, LB 189, § 7; Laws 2012, LB782, § 26.

24-1206 Commission; basis for determination; report to Legislature; legislative action.

(1) The Judicial Resources Commission's determination of whether a judicial vacancy exists or a new judgeship, a reduction in judgeships, a change in number of judicial districts or boundaries, or the reallocation of a judgeship from a district, county, or separate juvenile court in one judicial district to a

district, county, or separate juvenile court in another judicial district is appropriate pursuant to section 24-1204 or 24-1205 shall be based upon (a) its analysis of judicial workload statistics compiled pursuant to section 24-1007, (b) whether litigants in the judicial district have adequate access to the courts, (c) the population of the judicial district, (d) other judicial duties and travel time involved within the judicial district, and (e) other factors determined by the Supreme Court to be necessary to assure efficiency and maximum service. The State Court Administrator shall provide adequate administrative support and information as requested by the commission.

(2) After making a determination, the commission shall report the results electronically to the Legislature and recommend any legislative changes which are needed. If no changes in existing law are needed and none are recommended by the commission, no legislative action shall be necessary to fill any judicial vacancy determined to exist. The Legislature shall not create a new judgeship unless the commission recommends the creation of a new judgeship in its report. If legislative action is required but none is taken in the first legislative session commencing after receipt of the report by the Legislature, the commission shall hold another hearing on the matter and shall determine whether a judicial vacancy exists or again recommend legislative changes to the Legislature in its report.

Source: Laws 1995, LB 189, § 8; Laws 1997, LB 229, § 5; Laws 2012, LB782, § 27.

CHAPTER 25

COURTS; CIVIL PROCEDURE

Article.

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3. Parties. 25-319.01.
4. Commencement of Actions; Venue.
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29. Dispute Resolution.
 - (a) Dispute Resolution Act. 25-2911 to 25-2921.
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ARTICLE 2

COMMENCEMENT AND LIMITATION OF ACTIONS

Section

25-212. Actions not specified.

25-228. Action by victim of sexual assault of a child; when.

25-212 Actions not specified.

An action for relief not otherwise provided for in Chapter 25 can only be brought within four years after the cause of action shall have accrued.

Source: R.S.1867, Code § 16, p. 396; R.S.1913, § 7574; C.S.1922, § 8517; C.S.1929, § 20-212; R.S.1943, § 25-212; Laws 2011, LB9, § 1.

25-228 Action by victim of sexual assault of a child; when.

Notwithstanding any other provision of law, actions for an injury or injuries suffered by a plaintiff when the plaintiff was a victim of a violation of section 28-319.01 or 28-320.01 can only be brought within twelve years after the plaintiff's twenty-first birthday. Criminal prosecution of a defendant under section 28-319.01 or 28-320.01 is not required to maintain a civil action for violation of such sections.

Source: Laws 2012, LB612, § 1.

ARTICLE 3

PARTIES

Section

25-319.01. Class action litigation; unpaid residue; payment by defendant.

25-319.01 Class action litigation; unpaid residue; payment by defendant.

(1) It is the intent of the Legislature to ensure that the unpaid residuals in class action litigation are distributed, to the extent possible, in a manner designed to promote justice for all citizens of this state. The Legislature finds that the use of funds collected by state courts pursuant to this section for these purposes is in the public interest, is a proper use of the funds, and is consistent with essential public and governmental purposes.

(2) Prior to the entry of any judgment or order approving settlement in a class action described in section 25-319, the court shall determine the total amount that will be payable to all class members if all class members are paid the amount to which they are entitled pursuant to the judgment or settlement. The court shall also set a date when the parties shall report to the court the total amount that was actually paid to the class members. After the report is received, the court, unless it orders otherwise to further the purposes of the underlying cause of action, shall direct the defendant to pay the sum of the unpaid residue to the Legal Aid and Services Fund.

Source: Laws 2014, LB1089, § 1.
Effective date July 18, 2014.

ARTICLE 4

COMMENCEMENT OF ACTIONS; VENUE

(a) GENERAL PROVISIONS

Section

25-410. Transfer of actions; clerk of transferor court; duties; clerk of transferee court; duties; certain support orders; how treated.

(a) GENERAL PROVISIONS

25-410 Transfer of actions; clerk of transferor court; duties; clerk of transferee court; duties; certain support orders; how treated.

(1) For the convenience of the parties and witnesses or in the interest of justice, a district court of any county, the transferor court, may transfer any civil action to the district court of any other county in this state, the transferee court. The transfer may occur before or after the entry of judgment, and there shall be no additional fees required for the transfer.

(2) To transfer a civil action, the transferor court shall order transfer of the action to the specific transferee court requested. The clerk of the transferor court shall file with the transferee court within ten days after the entry of the transfer order: Certification of the proceedings; all original documents of the action; certification of the transcript of docket entries; and certification of the payment records of any judgment in the action maintained by the transferor court.

(3) Upon the filing of such documents by the clerk of the transferor court, the clerk of the transferee court shall enter any judgment in the action on the judgment record of the transferee court. The judgment, once filed and entered on the judgment record of the transferee court, shall be a lien on the property of the debtor in any county in which such judgment is filed. Transfer of the action shall not change the obligations of the parties under any judgment entered in the action regardless of the status of the transfer.

(4) If the transferred civil action involves a support order that has payment records maintained by the Title IV-D Division as defined in section 43-3341, the transferor court order shall notify the division to make the necessary changes in the support payment records. Support payments shall commence in the transferee court on the first day of the month following the order of transfer, payments made prior to such date shall be considered payment on a judgment entered by the transferor court, and payments made on and after such date shall be considered payment on a judgment entered by the transferee court.

Source: R.S.1867, Code § 61, p. 402; G.S.1873, c. 57, § 61, p. 532; R.S.1913, § 7621; C.S.1922, § 8564; C.S.1929, § 20-410; R.S. 1943, § 25-410; Laws 1971, LB 576, § 8; Laws 2010, LB712, § 1.

Cross References

For disqualification of judge, see sections 24-723.01, 24-739, and 24-740.

ARTICLE 5

COMMENCEMENT OF ACTIONS; PROCESS

(b) SERVICE AND RETURN OF SUMMONS

Section

- 25-505.01. Service of summons; methods; State Court Administrator; maintain list.
- 25-506.01. Process; by whom served.
- 25-507.01. Summons; proof of service; return date.
- 25-508.01. Service on individual.
- 25-509.01. Service on corporation.
- 25-510.02. Service on state or political subdivision.
- 25-511.02. Service on dissolved corporation.
- 25-512.01. Service on partnership.
- 25-513.01. Service on unincorporated association.
- 25-514.01. Service on agent.

(d) SERVICE ON AGENT OF DEFENDANT

- 25-529. Personal service upon appointed resident agent; appointment; recording and indexing; fees.

(e) LIS PENDENS

- 25-531. Lis pendens; notice; where filed; contents; recording; cancellation; filing fee.

(b) SERVICE AND RETURN OF SUMMONS

25-505.01 Service of summons; methods; State Court Administrator; maintain list.

(1) Unless otherwise limited by statute or by the court, a plaintiff may elect to have service made by any of the following methods:

(a) Personal service which shall be made by leaving the summons with the individual to be served;

(b) Residence service which shall be made by leaving the summons at the usual place of residence of the individual to be served, with some person of suitable age and discretion residing therein;

(c) Certified mail service which shall be made by (i) within ten days of issuance, sending the summons to the defendant by certified mail with a return receipt requested showing to whom and where delivered and the date of delivery, and (ii) filing with the court proof of service with the signed receipt attached; or

(d) Designated delivery service which shall be made by (i) within ten days of issuance, sending the summons by a designated delivery service to the defendant, (ii) obtaining a signed delivery receipt showing to whom and where delivered and the date of delivery, and (iii) filing with the court proof of service with a copy of the signed delivery receipt attached. As used in this subdivision, a designated delivery service means a delivery service designated as such pursuant to 26 U.S.C. 7502(f) and a signed delivery receipt includes an electronic or facsimile receipt with an image of the recipient's signature.

(2) Failure to make service by the method elected by the plaintiff does not affect the validity of the service.

(3) The State Court Administrator shall maintain on the web site of the Supreme Court a list of designated delivery services.

Source: Laws 1983, LB 447, § 22; Laws 1984, LB 845, § 21; Laws 2009, LB35, § 6; Laws 2011, LB669, § 7.

Cross References

Workers' compensation cases, manner of service, see sections 48-174, 48-175, 48-175.01, and 48-190.

25-506.01 Process; by whom served.

(1) Unless the plaintiff has elected certified mail service or designated delivery service, the summons shall be served by the sheriff of the county where service is made, by a person authorized by section 25-507 or otherwise authorized by law, or by a person, corporation, partnership, or limited liability company not a party to the action specially appointed by the court for that purpose.

(2) Certified mail service or designated delivery service shall be made by the plaintiff or plaintiff's attorney.

Source: Laws 1983, LB 447, § 23; Laws 1994, LB 1224, § 36; Laws 1999, LB 319, § 1; Laws 2009, LB35, § 7; Laws 2011, LB669, § 8.

Cross References

Workers' compensation cases, manner of service, see sections 48-174, 48-175, 48-175.01, and 48-190.

25-507.01 Summons; proof of service; return date.

(1) Within twenty days after the date of issue, the person serving the summons, other than by certified mail service or designated delivery service, shall make proof of service to the court stating the time, place, including the address if applicable, name of the person with whom the summons was left, and method of service, or return the unserved summons to the court with a statement of the reason for the failure to serve.

(2) When service is by certified mail service or designated delivery service, the plaintiff or plaintiff's attorney shall file proof of service within ten days after the signed receipt is received or is available electronically, whichever occurs first.

(3) Failure to make proof of service or delay in doing so does not affect the validity of the service.

Source: Laws 1983, LB 447, § 24; Laws 2009, LB35, § 8; Laws 2011, LB669, § 9.

Cross References

Workers' compensation cases, manner and time of service, see sections 48-174, 48-175, 48-175.01, and 48-190.

25-508.01 Service on individual.

(1) An individual party, other than a person under the age of fourteen years, may be served by personal, residence, certified mail, or designated delivery service.

(2) A party under the age of fourteen years may be served by personal, residence, certified mail, or designated delivery service upon an adult person with whom the minor resides and who is the minor's parent or guardian or the person having care of the minor. If none of these can be found, a party under the age of fourteen years may be served by personal service.

(3) If the person to be served is an incapacitated person for whom a conservator or guardian has been appointed or is confined in any institution, notice of the service shall be given to the conservator or guardian or the

superintendent or similar official of the institution. Failure to give such notice does not affect the validity of the service on the incapacitated person.

Source: Laws 1983, LB 447, § 25; Laws 2011, LB669, § 10.

25-509.01 Service on corporation.

A corporation may be served by personal, residence, certified mail, or designated delivery service upon any officer, director, managing agent, or registered agent, or by leaving the process at the corporation's registered office with a person employed therein, or by certified mail or designated delivery service to the corporation's registered office.

Source: Laws 1983, LB 447, § 26; Laws 2011, LB669, § 11.

Cross References

For process and service on foreign insurance corporation, see sections 44-135, 44-2009 to 44-2013, and 44-5507.
Registered office of corporation, see sections 21-1934, 21-19,152, 21-2031, and 21-20,174.

25-510.02 Service on state or political subdivision.

(1) The State of Nebraska, any state agency as defined in section 81-8,210, and any employee of the state as defined in section 81-8,210 sued in an official capacity may be served by leaving the summons at the office of the Attorney General with the Attorney General, deputy attorney general, or someone designated in writing by the Attorney General, or by certified mail or designated delivery service addressed to the office of the Attorney General.

(2) Any county, city, or village of this state may be served by personal, residence, certified mail, or designated delivery service upon the chief executive officer or clerk.

(3) Any political subdivision of this state, as defined in subdivision (1) of section 13-903, other than a county, city, or village, may be served by personal, residence, certified mail, or designated delivery service upon the chief executive officer, clerk, secretary, or other official whose duty it is to maintain the official records, or any member of the governing board or body, or by certified mail or designated delivery service to the principal office of the political subdivision.

Source: Laws 1983, LB 447, § 27; Laws 2011, LB669, § 12.

25-511.02 Service on dissolved corporation.

A dissolved corporation may be served by personal, residence, certified mail, or designated delivery service upon any appointed receiver. If there is no receiver, a dissolved corporation may be served by personal, residence, certified mail, or designated delivery service upon any person who at the time of dissolution was an officer, director, managing agent, or registered agent, or upon any officer or director designated in the last annual report filed with the Secretary of State.

Source: Laws 1983, LB 447, § 28; Laws 2011, LB669, § 13.

25-512.01 Service on partnership.

A partnership or limited partnership may be served by personal, residence, certified mail, or designated delivery service upon any partner except a limited partner, or by certified mail or designated delivery service at its usual place of

business, or the process may be left at its usual place of business with an employee of the partnership or limited partnership.

Source: Laws 1983, LB 447, § 29; Laws 2011, LB669, § 14.

Cross References

Registration and agent for service of process of foreign limited partnerships, see section 67-281.

25-513.01 Service on unincorporated association.

An unincorporated association may be served by personal, residence, certified mail, or designated delivery service upon an officer or managing agent, or by certified mail or designated delivery service to the association at its usual place of business, or by leaving the process at its usual place of business with an employee of the unincorporated association.

Source: Laws 1983, LB 447, § 30; Laws 2011, LB669, § 15.

25-514.01 Service on agent.

Any party may be served by personal, residence, certified mail, or designated delivery service upon an agent authorized by appointment or by law to receive service of process.

Source: Laws 1983, LB 447, § 31; Laws 2011, LB669, § 16.

(d) SERVICE ON AGENT OF DEFENDANT

25-529 Personal service upon appointed resident agent; appointment; recording and indexing; fees.

The register of deeds of each county shall record such appointment as shall be filed under the provisions of section 25-528 and any revocation thereof in the Miscellaneous Record, shall enter such instruments in the numerical index against the lands described therein, and shall be entitled to demand and receive fees as provided in section 33-109.

Source: Laws 1877, § 2, p. 18; R.S.1913, § 7650; C.S.1922, § 8594; Laws 1927, c. 65, § 2, p. 228; C.S.1929, § 20-529; R.S.1943, § 20-529; Laws 1984, LB 679, § 11; Laws 2012, LB14, § 1.

(e) LIS PENDENS

25-531 Lis pendens; notice; where filed; contents; recording; cancellation; filing fee.

When the summons has been served or publication made, the action is pending so as to charge third persons with notice of pendency. While the action is pending no interest can be acquired by third persons in the subject matter thereof, as against the plaintiff's title. In all actions brought to affect the title to real property, the plaintiff may either at the time of filing his or her complaint or afterwards, file, or in case any defendant sets up an affirmative cause of action and demands relief which shall affect the title to real estate, he or she may, at the time of filing such answer or at any time afterwards, file with the clerk or register of deeds of each county in which the real estate thus to be affected, or any part thereof, is situated, a notice of the pendency of such action. The notice shall contain the names of the parties, the object of the action, and a description of the property in such county sought to be affected

thereby. If the action is for foreclosure of a mortgage, such notice shall contain the date of the mortgage, the parties thereto, and the time and place of recording the same. The clerk or register of deeds of such county shall record the notice thus filed and enter the same upon the numerical index of all lands, any part of which is included in the description in the notice, for which he or she shall be entitled to receive filing fees in accordance with section 33-109, to be paid by the person filing such notice, and which shall be taxed as part of the costs in the action. From the time of filing such notice the pendency of such action shall be constructive notice to any purchaser or encumbrancer to be affected thereby. Every person whose conveyance or encumbrance is subsequently executed or subsequently recorded shall be deemed to be a subsequent purchaser or encumbrancer and shall be bound by all proceedings taken in the action after the filing of such notice to the same extent as if he or she were made a party to the action. The court in which such action was commenced or any judge thereof may at any time thereafter on the application of any person aggrieved, on good cause shown, and on such notice as the court or judge may determine, order the notice to be canceled by the clerk or register of deeds of any county in which the notice may have been filed or recorded by filing a notice of release. In actions in which such notice is filed in a county or counties, other than the county in which the action is pending, the county clerk or the register of deeds of the county in which the action was begun may cancel such notice by executing a written release under his or her hand and seal by reason of the order of the court or judge, and forward such release by mail to the county clerk or register of deeds of the county in which the notice has been filed or recorded, and which certificate such county clerk or register of deeds shall record in the records of his or her office. At any time after such notice of pendency is recorded, the party on whose behalf the same was filed or the party's attorney of record may cause the notice to be canceled in the office of the county clerk or register of deeds of any county in which the notice has been filed or recorded. Such cancellation may be made by written release in the same manner as such cancellations are entered on order of the court. For the service required by this section, the county clerk or register of deeds shall be entitled to charge and receive fees in accordance with section 33-109, to be paid by the party causing the service to be performed.

Source: R.S.1867, Code § 85, p. 407; Laws 1887, c. 92, § 1, p. 643; R.S.1913, § 7651; C.S.1922, § 8595; C.S.1929, § 20-531; R.S. 1943, § 25-531; Laws 1959, c. 140, § 1, p. 544; Laws 1963, c. 140, § 1, p. 517; Laws 1969, c. 181, § 1, p. 772; Laws 1971, LB 90, § 1; Laws 2002, LB 876, § 18; Laws 2012, LB14, § 2.

ARTICLE 10

PROVISIONAL REMEDIES

(a) ATTACHMENT AND GARNISHMENT

Section

25-1011. Garnishment; service upon garnishee; forms; notice; hearing.

(e) REPLEVIN

25-1096. Order for delivery; when returnable.

(a) ATTACHMENT AND GARNISHMENT

25-1011 Garnishment; service upon garnishee; forms; notice; hearing.

(1) The summons and order of garnishment and the interrogatories in duplicate, a notice to judgment debtor form, and a request for hearing form shall be served upon the garnishee in the manner provided for service of a summons in a civil action.

(2) The judgment creditor or his or her agent or attorney shall send to the judgment debtor by certified mail to the last-known address of the judgment debtor a copy of the summons and order of garnishment, a notice to judgment debtor form, and a request for hearing form within seven business days after issuance by the court and shall certify in writing to the court the date of the mailing.

(3) The Supreme Court by rule of court shall promulgate uniform garnishment forms for use in all courts in this state. The forms shall include the summons and order of garnishment, the garnishment interrogatories, a notice to judgment debtor form, and a request for hearing form.

(4) The notice to judgment debtor form shall include the following information:

(a) That certain funds are exempt from garnishment if such funds are from certain government benefits and other sources;

(b) That wages are exempt up to a certain level and the amount that can be garnished varies if the judgment debtor is the head of a family;

(c) That if the judgment debtor believes the court should not allow a garnishment either because the funds sought are exempt or because the amount is not owed on the judgment, the judgment debtor is entitled to a hearing within ten days after a request by the judgment debtor to determine such issues; and

(d) That if the judgment debtor wishes a hearing as prescribed in subdivision (c) of this subsection, the judgment debtor shall make a request by filling out the request for hearing form and file the form with the court within three business days after receipt of the notice to judgment debtor form by the judgment debtor.

(5) If the judgment debtor in a garnishment proceeding requests a hearing, the court shall grant the hearing within ten days of the request.

Source: R.S.1867, Code § 208, p. 427; R.S.1913, § 7742; C.S.1922, § 8686; C.S.1929, § 20-1011; R.S.1943, § 25-1011; Laws 1951, c. 67, § 2, p. 203; Laws 1955, c. 85, § 2, p. 255; Laws 1980, LB 597, § 7; Laws 1983, LB 447, § 39; Laws 1984, LB 845, § 23; Laws 1988, LB 1030, § 14; Laws 2010, LB1085, § 1.

(e) REPLEVIN

25-1096 Order for delivery; when returnable.

The return day for the order of delivery shall be twenty days after its issuance unless a later date is specified in the order of delivery, in which case the return date shall be the date specified in the order of delivery.

Source: R.S.1867, Code § 184, p. 422; R.S.1913, § 7825; C.S.1922, § 8769; C.S.1929, § 20-1096; R.S.1943, § 25-1096; Laws 1973, LB 474, § 7; Laws 2012, LB734, § 1.

ARTICLE 11**TRIAL**

(g) NEW TRIAL

Section

25-1144. New trial; motion; form.

(g) NEW TRIAL

25-1144 New trial; motion; form.

The application for a new trial shall be by motion, upon written grounds, filed at the time of making the motion. It shall be sufficient, however, in assigning the grounds of the motion to assign the same in the language of the statute and without further or other particularity. The causes enumerated in subdivisions (2), (3), and (7) of section 25-1142 shall be sustained by affidavits showing their truth and may be controverted by affidavits.

Source: R.S.1867, Code § 317, p. 477; R.S.1913, § 7885; C.S.1922, § 8827; C.S.1929, § 20-1144; R.S.1943, § 25-1144; Laws 2009, LB35, § 9.

ARTICLE 13**JUDGMENTS**

(e) MANNER OF ENTERING JUDGMENT

Section

25-1319. Complete record; duty of clerk.
 25-1320. Complete record; when made; judge to sign.
 25-1321. Complete record; contents.
 25-1323. Repealed. Laws 2011, LB 17, § 8.
 25-1324. Repealed. Laws 2011, LB 17, § 8.
 25-1325. Repealed. Laws 2011, LB 17, § 8.

(f) CONVEYANCE BY COMMISSIONERS

25-1326. Judicial sale; conveyance of land by master commissioner; when allowed; postponement of sale; notice.
 25-1327. Judicial sale; sheriff as master commissioner.

(e) MANNER OF ENTERING JUDGMENT

25-1319 Complete record; duty of clerk.

The clerk shall make a complete record of every civil, criminal, and appeal case filed in the court as soon as it is finally determined.

Source: R.S.1867, Code § 444, p. 467; R.S.1913, § 8012; C.S.1922, § 8953; C.S.1929, § 20-1319; R.S.1943, § 25-1319; Laws 2011, LB17, § 1.

25-1320 Complete record; when made; judge to sign.

The clerk shall make up the complete record required under section 25-1319 in the vacation next after the term at which the same was determined, and the presiding judge of such court shall, at its next term thereafter, subscribe the same.

Source: R.S.1867, Code § 445, p. 467; R.S.1913, § 8013; C.S.1922, § 8954; C.S.1929, § 20-1320; R.S.1943, § 25-1320; Laws 2011, LB17, § 2.

25-1321 Complete record; contents.

The complete record shall include the complaint, the process, the return, the pleadings subsequent thereto, reports, verdicts, orders, judgments, and all material acts and proceedings of the court maintained in the state's electronic case management system and either in paper form or on microfilm. All journal entries and all such filings as are required to be entered in full in the register of actions shall, by reference, be made a part of the complete record for all purposes, including the taxing of fees and costs. Evidence introduced at any proceeding is not part of the complete record of the cause.

Source: R.S.1867, Code § 446, p. 467; R.S.1913, § 8014; C.S.1922, § 8955; C.S.1929, § 20-1321; Laws 1941, c. 33, § 1, p. 143; C.S.Supp.,1941, § 20-1321; R.S.1943, § 25-1321; Laws 2002, LB 876, § 25; Laws 2011, LB17, § 3.

25-1323 Repealed. Laws 2011, LB 17, § 8.

25-1324 Repealed. Laws 2011, LB 17, § 8.

25-1325 Repealed. Laws 2011, LB 17, § 8.

(f) CONVEYANCE BY COMMISSIONERS

25-1326 Judicial sale; conveyance of land by master commissioner; when allowed; postponement of sale; notice.

(1) Real property may be conveyed by a master commissioner when (a) by an order or judgment in an action or a proceeding a party is ordered to convey such property to another and he or she neglects or refuses to comply with such order or judgment or (b) specific real property is required to be sold under an order or judgment of the court.

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

Source: R.S.1867, Code § 451, p. 468; R.S.1913, § 8019; C.S.1922, § 8960; C.S.1929, § 20-1326; R.S.1943, § 25-1326; Laws 2010, LB732, § 1.

25-1327 Judicial sale; sheriff as master commissioner.

A sheriff may act as a master commissioner under subdivision (1)(b) of section 25-1326. Sales made under such subdivision shall conform in all respects to the laws regulating sales of land upon execution.

Source: R.S.1867, Code § 452, p. 468; R.S.1913, § 8020; C.S.1922, § 8961; C.S.1929, § 20-1327; R.S.1943, § 25-1327; Laws 2010, LB732, § 2.

ARTICLE 15
EXECUTIONS AND EXEMPTIONS

(a) EXECUTIONS

Section

25-1501.01. District court judgment; execution issued to any county in state; procedure; lien on real estate; procedure.

(a) EXECUTIONS

25-1501.01 District court judgment; execution issued to any county in state; procedure; lien on real estate; procedure.

Any person having a judgment rendered by a district court may request the clerk of such court to issue execution on the judgment in the same manner as execution is issued upon other judgments rendered in the district court and direct the execution on the judgment to any county in the state. Such person may request that garnishment, attachment, or any other aid to execution for personal property or wages be directed to any county without the necessity of filing a transcript of the judgment in the receiving county, and any hearing or proceeding with regard to such execution or aid in execution shall be heard in the court in which the judgment was originally rendered. Such execution shall not serve as a lien on real estate in a county other than the county where the judgment was rendered unless a transcript of the judgment is filed with the clerk of the district court in the county in which the real estate is located.

Source: Laws 2011, LB15, § 1.

ARTICLE 16
JURY

Section

25-1625. Jury commissioner; designation; salary; expenses; duties.

25-1628. Jury list; how made up.

25-1625 Jury commissioner; designation; salary; expenses; duties.

(1) In each county of the State of Nebraska there shall be a jury commissioner.

(2) In counties having a population of not more than seventy-five thousand inhabitants, the clerk of the district court shall be jury commissioner ex officio.

(3) In counties having a population of more than seventy-five thousand, and not more than two hundred thousand inhabitants, the jury commissioner shall be a separate office in the county government or the duties may be performed, when authorized by the judges of the district court within such counties, by the election commissioner. The jury commissioner shall receive an annual salary of not less than twelve hundred dollars.

(4) In counties having a population in excess of two hundred thousand inhabitants, the judges of the district court within such counties shall determine whether the clerk of the district court will perform the duties of jury commissioner without additional compensation or the election commissioner will be jury commissioner ex officio.

(5) In all counties the necessary expenses incurred in the performance of the duties of jury commissioner shall be paid by the county board of the county out

of the general fund, upon proper claims approved by one of the district judges in the judicial district and duly filed with the county board.

(6) In all counties the jury commissioner shall prepare and file the annual inventory statement with the county board of the county of all county personal property in his or her custody or possession, as provided in sections 23-346 to 23-350.

Source: Laws 1915, c. 248, § 1, p. 568; C.S.1922, § 9095; C.S.1929, § 20-1625; Laws 1931, c. 65, § 5, p. 178; Laws 1939, c. 28, § 20, p. 159; C.S.Supp.,1941, § 20-1625; R.S.1943, § 25-1625; Laws 1947, c. 62, § 9, p. 202; Laws 1953, c. 72, § 6, p. 227; Laws 1961, c. 113, § 1, p. 352; Laws 1971, LB 547, § 1; Laws 1975, LB 527, § 1; Laws 1979, LB 234, § 6; Laws 2003, LB 19, § 4; Laws 2010, LB712, § 2; Laws 2013, LB169, § 1.

Cross References

For designation of election commissioner in counties having a population in excess of one hundred thousand inhabitants, see section 32-207.

For designation of election commissioner in counties having a population of twenty thousand to one hundred thousand inhabitants, see section 32-211.

25-1628 Jury list; how made up.

(1) At least once each calendar year, the officer having charge of the election records shall furnish to the jury commissioner a complete list of the names, dates of birth, addresses, and motor vehicle operator license numbers or state identification card numbers of all registered electors nineteen years of age or older in the county. The Department of Motor Vehicles shall make available to each jury commissioner each December a list in magnetic, optical, digital, or other electronic format mutually agreed to by the jury commissioner and the department containing the names, dates of birth, addresses, and motor vehicle operator license numbers or state identification card numbers of all licensed motor vehicle operators and state identification card holders nineteen years of age or older in the county. The jury commissioner may request such a list of licensed motor vehicle operators and state identification card holders from the county treasurer if the county treasurer has an automated procedure for developing such lists. If a jury commissioner requests similar lists at other times from the department, the cost of processing such lists shall be paid by the county which the requesting jury commissioner serves.

(2) Upon receipt of both lists described in subsection (1) of this section, the jury commissioner shall combine the separate lists and attempt to reduce duplication to the best of his or her ability to produce a master list. In counties having a population of seven thousand inhabitants or more, the jury commissioner shall produce a master list at least once each calendar year. In counties having a population of three thousand inhabitants but less than seven thousand inhabitants, the jury commissioner shall produce a master list at least once every two calendar years. In counties having a population of less than three thousand inhabitants, the jury commissioner shall produce a master list at least once every five calendar years.

(3) The proposed juror list shall be derived by selecting from the master list the name of the person whose numerical order on such list corresponds with the key number and each successive tenth name thereafter. The jury commissioner shall certify that the proposed juror list has been made in accordance with sections 25-1625 to 25-1637.

(4) Any duplication of names on a master list shall not be grounds for quashing any panel pursuant to section 25-1637 or for the disqualification of any juror.

Source: Laws 1915, c. 248, § 4, p. 569; C.S.1922, § 9098; C.S.1929, § 20-1628; R.S.1943, § 25-1628; Laws 1957, c. 88, § 1, p. 337; Laws 1971, LB 11, § 1; Laws 1985, LB 113, § 2; Laws 1988, LB 111, § 1; Laws 1989, LB 82, § 1; Laws 2003, LB 19, § 5; Laws 2005, LB 402, § 1; Laws 2009, LB35, § 10; Laws 2010, LB712, § 3.

ARTICLE 17

COSTS

Section

25-1708. Plaintiff's costs; when allowed.

25-1708 Plaintiff's costs; when allowed.

Where it is not otherwise provided by this and other statutes, costs shall be allowed of course to the plaintiff, except as waived or released in writing by the plaintiff, upon a voluntary payment to the plaintiff after the action is filed but before judgment, or upon a judgment in favor of the plaintiff, in actions for the recovery of money only or for the recovery of specific real or personal property.

Source: R.S.1867, Code § 620, p. 504; R.S.1913, § 8167; C.S.1922, § 9118; C.S.1929, § 20-1708; R.S.1943, § 25-1708; Laws 2009, LB35, § 11.

Cross References

Agreement to pay costs as part of settlement, authorized, see section 25-2240.

ARTICLE 18

EXPENSES AND ATTORNEY'S FEES

Section

25-1801. Claims of four thousand dollars or less; recovery; costs; interest; attorney's fees.

25-1809. Legal Services Fund; created; use; transfers.

25-1801 Claims of four thousand dollars or less; recovery; costs; interest; attorney's fees.

Any person, partnership, limited liability company, association, or corporation in this state having a claim which amounts to four thousand dollars or less against any person, partnership, limited liability company, association, or corporation doing business in this state for (1) services rendered, (2) labor done, (3) material furnished, (4) overcharges made and collected, (5) lost or damaged personal property, (6) damage resulting from delay in transmission or transportation, (7) livestock killed or injured in transit, or (8) charges covering articles and service affecting the life and well-being of the debtor which are adjudged by the court to be necessities of life may present the same to such person, partnership, limited liability company, association, or corporation, or to any agent thereof, for payment in any county where suit may be instituted for the collection of the same. If, at the expiration of ninety days after the presentation of such claim, the same has not been paid or satisfied, he, she, or

it may institute suit thereon in the proper court. If payment is made to the plaintiff by or on behalf of the defendant after the filing of the suit but before judgment is taken, except as otherwise agreed in writing by the plaintiff, the plaintiff shall be entitled to receive the costs of suit whether by voluntary payment or judgment. If he, she, or it establishes the claim and secures judgment thereon, he, she, or it shall be entitled to recover the full amount of such judgment and all costs of suit thereon, and, in addition thereto, interest on the amount of the claim at the rate of six percent per annum from the date of presentation thereof, and, if he, she, or it has an attorney employed in the case, an amount for attorney's fees as provided in this section. If the cause is taken to an appellate court and plaintiff shall recover judgment thereon, the appellate court shall tax as costs in the action, to be paid to the plaintiff, an additional amount for attorney's fees in such appellate court as provided in this section, except that if the party in interest fails to recover a judgment in excess of the amount that may have been tendered by any person, partnership, limited liability company, association, or corporation liable under this section, then such party in interest shall not recover the attorney's fees provided by this section. Attorney's fees shall be assessed by the court in a reasonable amount but shall in no event be less than ten dollars when the judgment is fifty dollars or less and when the judgment is over fifty dollars up to four thousand dollars the attorney's fee shall be ten dollars plus ten percent of the judgment in excess of fifty dollars.

Source: Laws 1919, c. 191, § 1, p. 865; C.S.1922, § 9126; C.S.1929, § 20-1801; R.S.1943, § 25-1801; Laws 1951, c. 70, § 1, p. 225; Laws 1955, c. 92, § 1, p. 269; Laws 1967, c. 150, § 1, p. 446; Laws 1993, LB 121, § 171; Laws 2009, LB35, § 13.

Cross References

For interest on unsettled accounts, see section 45-104.

25-1809 Legal Services Fund; created; use; transfers.

There is hereby created the Legal Services Fund to be administered by the Director of Administrative Services. All money received by the Attorney General or directed to be deposited in the fund by any state agency, board, commission, or constitutional officer or the Legislature pursuant to section 25-1808 shall be deposited into the fund. At the end of each fiscal year, the director shall transfer from the fund into the budget of the appropriate state agency, board, commission, or constitutional office or the Legislature those fees and expenses that have been awarded by the court. In those instances when the Attorney General has billed a state agency, board, commission, or constitutional officer or the Legislature, the money awarded shall be appropriated to the budget of the Attorney General. The director shall electronically submit a summary of such transfers to the Legislature at the end of each fiscal year.

Source: Laws 1993, LB 781, § 2; Laws 2012, LB782, § 28.

ARTICLE 21

ACTIONS AND PROCEEDINGS IN PARTICULAR CASES

(e) FORECLOSURE OF MORTGAGES

Section

25-2144.

Sale of premises; by whom made; liability and compensation of sheriff; postponement of sale; notice.

Section

25-2154. Satisfaction or payment; certificate; delivery to register of deeds; duties of clerk of district court; fee of register of deeds.

(j) DECLARATORY JUDGMENTS

25-21,149. Declaratory judgments; courts of record; jurisdiction.

(y) MOTOR VEHICLE GUEST STATUTE

25-21,237. Repealed. Laws 2010, LB 216, § 1.

25-21,238. Repealed. Laws 2010, LB 216, § 1.

(gg) COMPUTER DATE FAILURES

25-21,265. Repealed. Laws 2012, LB 705, § 1.

25-21,266. Repealed. Laws 2012, LB 705, § 1.

25-21,267. Repealed. Laws 2012, LB 705, § 1.

25-21,268. Repealed. Laws 2012, LB 705, § 1.

25-21,269. Repealed. Laws 2012, LB 705, § 1.

(hh) CHANGE OF NAME

25-21,271. Change of name; persons; procedure; clerk of the district court; duty.

(oo) SUCCESSOR ASBESTOS-RELATED LIABILITY ACT

25-21,283. Act, how cited.

25-21,284. Terms, defined.

25-21,285. Cumulative successor asbestos-related liabilities of successor corporation; limitations; applicability.

25-21,286. Successor corporation; liability; limitation.

25-21,287. Successor corporation; limitations; fair market value of total gross assets.

25-21,288. Fair market value of total gross assets; adjustment.

25-21,289. Act, how construed; applicability of act.

(pp) EXPLOITED CHILDREN'S CIVIL REMEDY ACT

25-21,290. Act, how cited.

25-21,291. Terms, defined.

25-21,292. Civil action authorized; recovery; attorney's fees and costs; injunctive relief.

25-21,293. Time for bringing action; limitation.

25-21,294. Use of pseudonym.

25-21,295. Defendant; defenses not available.

25-21,296. Attorney General; powers.

(e) FORECLOSURE OF MORTGAGES

25-2144 Sale of premises; by whom made; liability and compensation of sheriff; postponement of sale; notice.

(1) All sales of mortgaged premises under a decree shall be made by a sheriff or some other person authorized by the court in the county where the premises or some part of them are situated. In all cases where the sheriff makes such sale, he or she shall act in his or her official capacity, shall be liable on his or her official bond for all his or her acts therein, and shall receive the same compensation as is provided by law for like services upon sales under execution.

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

the notice of sale, in which event notice thereof shall be given in the same manner as the original notice of sale is required to be given.

Source: R.S.1867, Code § 852, p. 543; Laws 1875, § 1, p. 42; Laws 1899, c. 90, § 1, p. 345; R.S.1913, § 8261; C.S.1922, § 9214; C.S.1929, § 20-2146; R.S.1943, § 25-2144; Laws 2010, LB732, § 3.

25-2154 Satisfaction or payment; certificate; delivery to register of deeds; duties of clerk of district court; fee of register of deeds.

In all cases of foreclosure of mortgages in the several counties in the state, it shall be the duty of the clerk of the district court, on the satisfaction or payment of the amount of the decree, to forward to the register of deeds a certificate setting forth the names of parties, plaintiff and defendant, descriptions of the premises mentioned in the decree, and the book and page where the mortgage foreclosed is recorded. For such certificate the clerk of the district court shall collect, until January 1, 2018, the fee required pursuant to section 33-109 for recording the certificate or, on and after January 1, 2018, a fee of three dollars. Such amount shall be taxed as part of the costs in the case, and such sum shall be paid to the register of deeds as the fee for recording the certificate.

Source: Laws 1887, c. 63, § 1, p. 564; R.S.1913, § 5614; C.S.1922, § 4933; C.S.1929, § 26-1010; R.S.1943, § 25-2154; Laws 1951, c. 106, § 1, p. 512; Laws 1959, c. 140, § 3, p. 546; Laws 1971, LB 495, § 1; Laws 2012, LB14, § 3.

(j) DECLARATORY JUDGMENTS

25-21,149 Declaratory judgments; courts of record; jurisdiction.

Courts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect, and such declarations shall have the force and effect of a final judgment or decree. Any action or proceeding seeking a declaratory judgment that any tax, penalty, or part thereof is unconstitutional shall be brought within twelve months after such tax or penalty was levied or assessed.

Source: Laws 1929, c. 75, § 1, p. 257; C.S.1929, § 20-21,140; R.S.1943, § 25-21,149; Laws 1949, c. 59, § 1, p. 170; Laws 1991, LB 829, § 4; Laws 2014, LB558, § 1.
Effective date July 18, 2014.

Cross References

Rules and regulations, declaratory judgment, see section 84-911.

Submitting controversy, see sections 25-903 to 25-905.

(y) MOTOR VEHICLE GUEST STATUTE

25-21,237 Repealed. Laws 2010, LB 216, § 1.

25-21,238 Repealed. Laws 2010, LB 216, § 1.

(gg) COMPUTER DATE FAILURES

25-21,265 Repealed. Laws 2012, LB 705, § 1.

25-21,266 Repealed. Laws 2012, LB 705, § 1.

25-21,267 Repealed. Laws 2012, LB 705, § 1.

25-21,268 Repealed. Laws 2012, LB 705, § 1.

25-21,269 Repealed. Laws 2012, LB 705, § 1.

(hh) CHANGE OF NAME

25-21,271 Change of name; persons; procedure; clerk of the district court; duty.

(1) Any person desiring to change his or her name shall file a petition in the district court of the county in which such person may be a resident, setting forth (a) that the petitioner has been a bona fide citizen of such county for at least one year prior to the filing of the petition, (b) the address of the petitioner, (c) the date of birth of the petitioner, (d) the cause for which the change of petitioner's name is sought, and (e) the name asked for.

(2) Notice of the filing of the petition shall be published in a newspaper in the county, and if no newspaper is printed in the county, then in a newspaper of general circulation therein. The notice shall be published (a) once a week for four consecutive weeks if the petitioner is nineteen years of age or older at the time the action is filed and (b) once a week for two consecutive weeks if the petitioner is under nineteen years of age at the time the action is filed. In an action involving a petitioner under nineteen years of age who has a noncustodial parent, notice of the filing of the petition shall be sent by certified mail within five days after publication to the noncustodial parent at the address provided to the clerk of the district court pursuant to subsection (1) of section 42-364.13 for the noncustodial parent if he or she has provided an address. The clerk of the district court shall provide the petitioner with the address upon request.

(3) It shall be the duty of the district court, upon being duly satisfied by proof in open court of the truth of the allegations set forth in the petition, that there exists proper and reasonable cause for changing the name of the petitioner, and that notice of the filing of the petition has been given as required by this section, to order and direct a change of name of such petitioner and that an order for the purpose be made in the journals of the court.

(4) The clerk of the district court shall deliver a copy by hard copy or electronic means of any name-change order issued by the court pursuant to this section to the Department of Health and Human Services for use pursuant to sections 28-376 and 28-718 and to the sex offender registration and community notification division of the Nebraska State Patrol for use pursuant to section 29-4004.

Source: Laws 1871, p. 62; R.S.1913, § 5316; C.S.1922, § 4609; C.S.1929, § 61-102; R.S.1943, § 61-102; Laws 1963, c. 367, § 1, p. 1184; Laws 1994, LB 892, § 1; Laws 1995, LB 161, § 1; R.S.1943, (1996), § 61-102; Laws 2010, LB147, § 1.

(oo) SUCCESSOR ASBESTOS-RELATED LIABILITY ACT

25-21,283 Act, how cited.

Sections 25-21,283 to 25-21,289 shall be known and may be cited as the Successor Asbestos-Related Liability Act.

Source: Laws 2010, LB763, § 1.

25-21,284 Terms, defined.

For purposes of the Successor Asbestos-Related Liability Act:

(1) Asbestos claim means any claim, wherever or whenever made, for damages, losses, indemnification, contribution, or other relief arising out of, based on, or in any way related to asbestos, including:

(a) Any claim involving the health effects of exposure to asbestos, including a claim for personal injury or death, mental or emotional injury, risk of disease or other injury, or the costs of medical monitoring or surveillance;

(b) Any claim made by or on behalf of any person exposed to asbestos, or a representative, spouse, parent, child, or other relative of the person; and

(c) Any claim for damage or loss caused by the installation, presence, or removal of asbestos;

(2) Corporation means a corporation for profit, including a domestic corporation organized under the laws of this state or a foreign corporation organized under laws other than the laws of this state;

(3) Successor asbestos-related liabilities means liabilities, whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due, that are related to asbestos claims and were assumed or incurred by a corporation as a result of or in connection with a merger or consolidation, or the plan of merger or consolidation related to the merger or consolidation with or into another corporation, or that are related in any way to asbestos claims based on the exercise of control or the ownership of stock of the corporation before the merger or consolidation. Successor asbestos-related liabilities includes liabilities that, after the time of the merger or consolidation for which the fair market value of total gross assets is determined under section 25-21,287, were or are paid or otherwise discharged, or committed to be paid or otherwise discharged, by or on behalf of the corporation, or by a successor corporation, or by or on behalf of a transferor, in connection with settlements, judgments, or other discharges in this state or another jurisdiction;

(4) Successor corporation means a corporation that assumes or incurs or has assumed or incurred successor asbestos-related liabilities that is a successor and became a successor before January 1, 1972, or is any of that successor corporation's successors; and

(5) Transferor means a corporation from which successor asbestos-related liabilities are or were assumed or incurred.

Source: Laws 2010, LB763, § 2.

25-21,285 Cumulative successor asbestos-related liabilities of successor corporation; limitations; applicability.

(1) The limitations in section 25-21,286 shall apply to any successor corporation.

(2) The limitations in section 25-21,286 shall not apply to:

(a) Workers' compensation benefits paid by or on behalf of an employer to an employee under the Nebraska Workers' Compensation Act or a comparable workers' compensation law of another jurisdiction;

(b) Any claim against a successor corporation that does not constitute a successor asbestos-related liability;

(c) Any obligation under the National Labor Relations Act, 29 U.S.C. 151, et seq., as amended, or under any collective-bargaining agreement; or

(d) A successor corporation that, after a merger or consolidation, continued in the business of mining asbestos or in the business of selling or distributing asbestos fibers or in the business of manufacturing, distributing, removing, or installing asbestos-containing products which were the same or substantially the same as those products previously manufactured, distributed, removed, or installed by the transferor.

Source: Laws 2010, LB763, § 3.

Cross References

Nebraska Workers' Compensation Act, see section 48-1,110.

25-21,286 Successor corporation; liability; limitation.

(1) Except as further limited in subsection (2) of this section, the cumulative successor asbestos-related liabilities of a successor corporation are limited to the fair market value of the total gross assets of the transferor determined as of the time of the merger or consolidation. The successor corporation does not have responsibility for successor asbestos-related liabilities in excess of this limitation.

(2) If the transferor had assumed or incurred successor asbestos-related liabilities in connection with a prior merger or consolidation with a prior transferor, then the fair market value of the total gross assets of the prior transferor determined as of the time of the earlier merger or consolidation shall be substituted for the limitation in subsection (1) of this section for purposes of determining the limitation of liability of a successor corporation.

Source: Laws 2010, LB763, § 4.

25-21,287 Successor corporation; limitations; fair market value of total gross assets.

(1) A successor corporation may establish the fair market value of total gross assets for the purpose of the limitations under section 25-21,286 through any method reasonable under the circumstances, including:

(a) By reference to the going concern value of the assets or to the purchase price attributable to or paid for the assets in an arms-length transaction; or

(b) In the absence of other readily available information from which the fair market value can be determined, by reference to the value of the assets recorded on a balance sheet.

(2) Total gross assets include intangible assets.

(3) To the extent total gross assets include any liability insurance that was issued to the transferor whose assets are being valued for purposes of this section, the applicability, terms, conditions, and limits of such insurance shall not be affected by this section, nor shall this section otherwise affect the rights and obligations of an insurer, transferor, or successor corporation under any insurance contract or any related agreements, including, without limitation, preenactment settlements resolving coverage-related disputes and the rights of an insurer to seek payment for applicable deductibles, retrospective premiums, or self-insured retentions or to seek contribution from a successor corporation for uninsured or self-insured periods or periods when insurance is uncollectible or otherwise unavailable. Without limiting the foregoing, to the extent total gross assets include such liability insurance, a settlement of a dispute concerning any such liability insurance coverage entered into by a transferor or successor corporation with the insurers of the transferor before July 15, 2010, shall be determinative of the total coverage of such liability insurance to be included in the calculation of the transferor's total gross assets.

Source: Laws 2010, LB763, § 5.

25-21,288 Fair market value of total gross assets; adjustment.

(1) Except as provided in subsections (2) through (4) of this section, the fair market value of total gross assets at the time of the merger or consolidation shall increase annually at a rate equal to the sum of:

(a) The prime rate as listed in the first edition of the Wall Street Journal published for each calendar year since the merger or consolidation, unless the prime rate is not published in that edition of the Wall Street Journal, in which case any reasonable determination of the prime rate on the first day of the year may be used; and

(b) One percent.

(2) The rate found in subsection (1) of this section shall not be compounded.

(3) The adjustment of the fair market value of total gross assets shall continue as provided in subsection (1) of this section until the date the adjusted value is first exceeded by the cumulative amounts of successor asbestos-related liabilities paid or committed to be paid by or on behalf of the successor corporation or a predecessor or by or on behalf of a transferor after the time of the merger or consolidation for which the fair market value of total gross assets is being determined.

(4) No adjustment of the fair market value of total gross assets shall be applied to any liability insurance that is included in total gross assets under subsection (3) of section 25-21,287.

Source: Laws 2010, LB763, § 6.

25-21,289 Act, how construed; applicability of act.

(1) The courts of this state shall construe the provisions of the Successor Asbestos-Related Liability Act liberally with regard to successor corporations.

(2) The act shall apply to all asbestos claims filed against a successor corporation on or after July 15, 2010. The act also shall apply to any pending asbestos claims against a successor corporation in which trial has not com-

menced as of July 15, 2010, except that any provisions of the act which would be unconstitutional if applied retroactively shall be applied prospectively only.

Source: Laws 2010, LB763, § 7.

(pp) EXPLOITED CHILDREN'S CIVIL REMEDY ACT

25-21,290 Act, how cited.

Sections 25-21,290 to 25-21,296 shall be known and may be cited as the Exploited Children's Civil Remedy Act.

Source: Laws 2010, LB728, § 1.

25-21,291 Terms, defined.

For purposes of the Exploited Children's Civil Remedy Act:

(1) Access software provider means a provider of software, including client or server software, or enabling tools that do any one or more of the following: (a) Filter, screen, allow, or disallow content; (b) pick, choose, analyze, or digest content; or (c) transmit, receive, display, forward, cache, search, subset, organize, reorganize, or translate content;

(2) Aid or assist another with the creation, distribution, or active acquisition of child pornography means help a principal in some appreciable manner with the creation, distribution, or active acquisition of a visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers. The term also includes knowingly employing, forcing, authorizing, inducing, or otherwise causing a child to engage in any visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers. No parent, stepparent, legal guardian, or person with custody and control of a child, knowing the content thereof, may consent to such child engaging in any visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers;

(3) Cable operator means any person or group of persons (a) who provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system or (b) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system;

(4) Child has the same meaning as in section 28-1463.02;

(5) Create means to knowingly create, make, manufacture, direct, publish, finance, or in any manner generate;

(6) Distribute means the actual, constructive, or attempted transfer from one person, source, or location to another person, source, or location. The term includes, but is not limited to, renting, selling, delivering, displaying, advertising, trading, mailing, procuring, circulating, lending, exhibiting, transmitting, transmuting, transferring, disseminating, presenting, or providing any visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers;

(7) Interactive computer service means any information service system or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions;

(8) Participant means a child who appears in any visual depiction of sexually explicit conduct and is portrayed or actively engaged in acts of sexually explicit conduct appearing therein;

(9) Portrayed observer means a child who appears in any visual depiction where sexually explicit conduct is likewise portrayed or occurring within the child's presence or in the child's proximity;

(10) Sexually explicit conduct has the same meaning as in section 28-1463.02;

(11) Telecommunications service means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used; and

(12) Visual depiction has the same meaning as in section 28-1463.02.

Source: Laws 2010, LB728, § 2.

25-21,292 Civil action authorized; recovery; attorney's fees and costs; injunctive relief.

(1) Any participant or portrayed observer in a visual depiction of sexually explicit conduct or his or her parent or legal guardian who suffered or continues to suffer personal or psychological injury as a result of such participation or portrayed observation may bring a civil action against any person who knowingly and willfully (a) created, distributed, or actively acquired such visual depiction while in this state or (b) aided or assisted with the creation, distribution, or active acquisition of such visual depiction while such person or the person aided or assisted was in this state.

(2) A plaintiff who prevails in a civil action brought pursuant to the Exploited Children's Civil Remedy Act may recover his or her actual damages, which are deemed to be a minimum of one hundred fifty thousand dollars, plus any and all attorney's fees and costs reasonably associated with the civil action. In addition to all other remedies available under the act, the court may also award temporary, preliminary, and permanent injunctive relief as the court deems necessary and appropriate.

(3) This section does not create a cause of action if the participant was sixteen years of age or older at the time the visual depiction was created and the participant willfully and voluntarily participated in the creation of the visual depiction.

(4) No law enforcement officer engaged in his or her law enforcement duties, governmental entity, provider of interactive computer service, provider of telecommunications service, or cable operator is subject to a civil action under the Exploited Children's Civil Remedy Act.

Source: Laws 2010, LB728, § 3.

25-21,293 Time for bringing action; limitation.

Notwithstanding any other provisions of law, any action to recover damages under the Exploited Children's Civil Remedy Act shall be filed within three years after the later of:

(1) The conclusion of any related criminal prosecution against the person or persons from whom recovery is sought;

(2) The receipt of actual or constructive notice sent or given to the participant or portrayed observer or his or her parent or legal guardian by a member of a law enforcement entity informing the participant or portrayed observer or his or her parent or legal guardian that the entity has identified the person:

(a) Who created, distributed, or actively acquired the visual depiction of sexually explicit conduct containing the participant or portrayed observer; or

(b) Who aided or assisted another person with the creation, distribution, or active acquisition of the visual depiction of sexually explicit conduct containing the participant or portrayed observer; or

(3) The participant or portrayed observer reaching the age of eighteen years.

Source: Laws 2010, LB728, § 4.

25-21,294 Use of pseudonym.

In any action brought pursuant to the Exploited Children's Civil Remedy Act, a plaintiff may request to use a pseudonym instead of his or her legal name in all court proceedings and records. Upon finding that the use of a pseudonym is proper, the court shall ensure that the pseudonym is used in all court proceedings and records.

Source: Laws 2010, LB728, § 5.

25-21,295 Defendant; defenses not available.

It is not a defense to a cause of action brought pursuant to the Exploited Children's Civil Remedy Act that the defendant:

(1) Did not know the participant or portrayed observer appearing in the visual depiction of sexually explicit conduct;

(2) Did not appear in the visual depiction of sexually explicit conduct containing the participant or portrayed observer; or

(3) Did not commit, assist with the commission of, or personally observe the commission of acts of sexually explicit conduct portrayed in the visual depiction containing the participant or portrayed observer.

Source: Laws 2010, LB728, § 6.

25-21,296 Attorney General; powers.

To prevent ongoing and further exploitation of any person who was a participant or portrayed observer or his or her parent or legal guardian, the Attorney General, upon request, may pursue cases on behalf of any participant or portrayed observer or his or her parent or legal guardian who has a bona fide cause of action under the Exploited Children's Civil Remedy Act. All damages obtained shall go to the plaintiff or plaintiffs. For his or her role in pursuing a civil action under the act, the Attorney General may seek all of his or her reasonable attorney's fees and costs associated with the civil action.

Source: Laws 2010, LB728, § 7.

ARTICLE 22

GENERAL PROVISIONS

(b) CLERKS OF COURTS; DUTIES

Section

25-2209. Clerk of district court; required records enumerated; compilation and filing; methods authorized.

(d) MISCELLANEOUS

25-2221. Time; how computed; offices may be closed, when; federal holiday schedule observed; exceptions.

(f) SETTLEMENTS

25-2240. Civil action; settlement; payment of costs.

(b) CLERKS OF COURTS; DUTIES

25-2209 Clerk of district court; required records enumerated; compilation and filing; methods authorized.

The clerk of the district court shall keep records to be called the appearance docket, the trial docket, the journal, the complete record, the execution docket, the fee book, the general index, and the judgment record. Such records may be compiled, filed, and maintained on a computer system. Effective not later than October 1, 1992, provision for dockets and records of the district courts shall be established by rule of the Supreme Court. The journal may be compiled and filed on microfilm. The recording of all instruments by the roll form of microfilm may be substituted for the method of recording instruments in books. If this method of recording instruments on microfilm is used, a security copy on silver negative microfilm in roll form must be maintained and filed off premises under safe conditions to insure the protection of the records. The internal reference copies or work copies of the instruments recorded on microfilm may be in any photographic form to provide the necessary information as may be determined by the official in charge, and shall meet the microfilm standards as prescribed by the State Records Administrator.

Source: R.S.1867, Code § 321, p. 448; G.S.1873, c. 57, § 321, p. 579; R.S.1913, § 8557; C.S.1922, § 9508; C.S.1929, § 20-2209; R.S. 1943, § 25-2209; Laws 1971, LB 128, § 1; Laws 1992, LB 1059, § 13; Laws 2011, LB17, § 4.

(d) MISCELLANEOUS

25-2221 Time; how computed; offices may be closed, when; federal holiday schedule observed; exceptions.

Except as may be otherwise more specifically provided, the period of time within which an act is to be done in any action or proceeding shall be computed by excluding the day of the act, event, or default after which the designated period of time begins to run. The last day of the period so computed shall be included unless it is a Saturday, a Sunday, or a day during which the offices of courts of record may be legally closed as provided in this section, in which event the period shall run until the end of the next day on which the office will be open.

All courts and their offices may be closed on Saturdays, Sundays, days on which a specifically designated court is closed by order of the Chief Justice of

the Supreme Court, and these holidays: New Year's Day, January 1; Birthday of Martin Luther King, Jr., the third Monday in January; President's Day, the third Monday in February; Arbor Day, the last Friday in April; Memorial Day, the last Monday in May; Independence Day, July 4; Labor Day, the first Monday in September; Columbus Day, the second Monday in October; Veterans Day, November 11; Thanksgiving Day, the fourth Thursday in November; the day after Thanksgiving; Christmas Day, December 25; and all days declared by law or proclamation of the Governor to be holidays. Such days shall be designated as nonjudicial days. If any such holiday falls on Sunday, the following Monday shall be a holiday. If any such holiday falls on Saturday, the preceding Friday shall be a holiday. Court services shall be available on all other days. If the date designated by the state for observance of any legal holiday pursuant to this section, except Veterans Day, is different from the date of observance of such holiday pursuant to a federal holiday schedule, the federal holiday schedule shall be observed.

Source: R.S.1867, Code § 895, p. 549; R.S.1913, § 8570; C.S.1922, § 9521; C.S.1929, § 20-2222; R.S.1943, § 25-2221; Laws 1959, c. 108, § 1, p. 437; Laws 1967, c. 151, § 1, p. 448; Laws 1969, c. 844, § 1, p. 3179; Laws 1973, LB 34, § 1; Laws 1975, LB 218, § 1; Laws 1978, LB 855, § 1; Laws 1988, LB 821, § 1; Laws 1988, LB 909, § 1; Laws 2002, LB 876, § 55; Laws 2003, LB 760, § 6; Laws 2011, LB669, § 17.

(f) SETTLEMENTS

25-2240 Civil action; settlement; payment of costs.

The parties to a civil action may, as part of a settlement of the action, agree to the payment of costs of the action.

Source: Laws 2009, LB35, § 12.

ARTICLE 24 INTERPRETERS

Section

25-2405. Interpreters; oath.

25-2406. Interpreters; fees and expenses.

25-2405 Interpreters; oath.

Every interpreter, except those certified under the rules of the Supreme Court and who have taken the prescribed oath of office, appointed pursuant to sections 25-2401 to 25-2407, before entering upon his or her duties as such, shall take an oath that he or she will, to the best of his or her skill and judgment, make a true interpretation to such person unable to communicate the English language of all the proceedings in a language which such person understands and that he or she will, in the English language, repeat the statements of such person to the court, jury, or officials before whom such proceeding takes place.

Source: Laws 1973, LB 116, § 5; Laws 1987, LB 376, § 15; Laws 2002, LB 22, § 11; Laws 2009, LB35, § 14.

25-2406 Interpreters; fees and expenses.

The fees and expenses of an interpreter shall be fixed and ordered paid by the judge before whom such proceeding takes place, in accordance with a fee schedule established by the Supreme Court, and be paid out of the General Fund with funds appropriated to the Supreme Court for that purpose or from other funds, including grant money, made available to the Supreme Court for such purpose.

Source: Laws 1973, LB 116, § 6; Laws 1999, LB 54, § 3; Laws 2011, LB669, § 18.

ARTICLE 26 ARBITRATION

Section
25-2602.01. Validity of arbitration agreement.

25-2602.01 Validity of arbitration agreement.

(a) A written agreement to submit any existing controversy to arbitration is valid, enforceable, and irrevocable except upon such grounds as exist at law or in equity for the revocation of any contract.

(b) A provision in a written contract to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable, and irrevocable, except upon such grounds as exist at law or in equity for the revocation of any contract, if the provision is entered into voluntarily and willingly.

(c) The Uniform Arbitration Act applies to arbitration agreements between employers and employees or between their respective representatives.

(d) Contract provisions agreed to by the parties to a contract control over contrary provisions of the act other than subsections (e) and (f) of this section.

(e) Subsections (a) and (b) of this section do not apply to a claim for workers' compensation.

(f) Subsection (b) of this section does not apply to:

- (1) A claim arising out of personal injury based on tort;
- (2) A claim under the Nebraska Fair Employment Practice Act;
- (3) Any agreement between parties covered by the Motor Vehicle Industry Regulation Act; and
- (4) Except as provided in section 44-811, any agreement concerning or relating to an insurance policy other than a contract between insurance companies including a reinsurance contract.

(g) When a conflict exists, the Uniform Arbitration Act shall not apply to the Uniform Act on Interstate Arbitration and Compromise of Death Taxes and sections 44-811, 44-4824, 54-404 to 54-406, 60-2701 to 60-2709, and 70-1301 to 70-1329.

Source: Laws 1997, LB 151, § 2; Laws 2002, LB 1105, § 426; Laws 2005, LB 645, § 8; Laws 2010, LB816, § 1.

Cross References

Motor Vehicle Industry Regulation Act, see section 60-1401.

Nebraska Fair Employment Practice Act, see section 48-1125.

Uniform Act on Interstate Arbitration and Compromise of Death Taxes, see section 77-3315.

ARTICLE 27

PROVISIONS APPLICABLE TO COUNTY COURTS

(a) MISCELLANEOUS PROCEDURAL PROVISIONS

Section

- 25-2701. Rules of procedure; county court power to seal records.
 25-2705. Trial by jury; demand for; exceptions; time; laws applicable.
 25-2708. Estates, guardianships, conservatorships, and trusts; real estate; certificate of pending proceeding; filing; county judge; duties; guardian or conservator; filing required.

(d) JUDGMENTS

- 25-2720.01. Power to set aside, vacate, or modify judgments or orders.
 25-2721. Judgment; execution; lien on real estate; conditions.

(f) APPEALS

- 25-2728. Appeals; parties; applicability of sections.

(a) MISCELLANEOUS PROCEDURAL PROVISIONS

25-2701 Rules of procedure; county court power to seal records.

(1) All provisions in the codes of criminal and civil procedure governing actions and proceedings in the district court not in conflict with statutes specifically governing procedure in county courts and related to matters for which no specific provisions have been made for county courts shall govern and apply to all actions and proceedings in the county court.

(2) County courts may seal records of a person as provided under sections 43-2,108.01 to 43-2,108.05.

Source: Laws 1972, LB 1032, § 28; R.S.1943, (1985), § 24-528; Laws 2010, LB800, § 2.

25-2705 Trial by jury; demand for; exceptions; time; laws applicable.

(1) Either party to any case in county court, except criminal cases arising under city or village ordinances, traffic infractions, other infractions, and any matter arising under the Nebraska Probate Code or the Nebraska Uniform Trust Code, may demand a trial by jury. In civil cases, the demand shall be in writing and shall be filed with the court:

- (a) By a plaintiff on the date the complaint is filed with the court;
- (b) By a defendant on or before the date the answer is filed with the court;
- (c) By a counterclaimant on the date the counterclaim is filed with the court;
- (d) By a counterclaim defendant on or before the date the reply to the counterclaim is filed with the court;
- (e) By a third-party plaintiff on the date the third-party complaint is filed with the court;
- (f) By a third-party defendant on or before the date the answer to the third-party complaint is filed with the court;
- (g) By a cross-claimant on the date the cross-claim is filed with the court; and
- (h) By a cross-claim defendant on or before the date the answer to the cross-claim is filed with the court.

(2) All provisions of law relating to juries in the district courts shall apply to juries in the county courts, and the district court jury list shall be used, except that juries in the county courts shall consist of six persons.

Source: Laws 1972, LB 1032, § 36; Laws 1973, LB 6, § 1; Laws 1973, LB 548, § 1; Laws 1975, LB 481, § 5; Laws 1979, LB 534, § 6; Laws 1984, LB 13, § 18; Laws 1987, LB 77, § 4; R.S.Supp.,1988, § 24-536; Laws 2003, LB 130, § 116; Laws 2011, LB669, § 19.

Cross References

Nebraska Probate Code, see section 30-2201.
Nebraska Uniform Trust Code, see section 30-3801.

25-2708 Estates, guardianships, conservatorships, and trusts; real estate; certificate of pending proceeding; filing; county judge; duties; guardian or conservator; filing required.

In any proceeding in the county court involving (1) the probate of wills, (2) the administration of estates, (3) the determination of heirs, (4) the determination of inheritance tax, (5) guardianships, (6) conservatorships, where real estate is any part of the assets of the estate or proceeding, or (7) trusts, where real estate is specifically described as an asset of the trust, the county judge before whom the proceeding is pending shall issue a certificate which shall be filed with the register of deeds of the county in which the real estate is located within ten days after the description of the real estate is filed in the proceeding. A guardian or conservator shall file a copy of his or her letters with the register of deeds in every county in which the ward has real property or an interest in real property. The certificate shall be in the following form:

This is to certify that there is pending in the county court of
County, a proceeding

(describe proceeding and name of person involved)

in which the following described real estate is involved, to wit:

.....
(describe real estate)

.....
County Judge

Source: Laws 1969, c. 240, § 1, p. 885; Laws 1971, LB 41, § 1; R.S.Supp.,1971, § 24-562.01; Laws 1972, LB 1032, § 59; Laws 1975, LB 481, § 7; Laws 1980, LB 694, § 1; R.S.1943, (1985), § 24-559; Laws 2003, LB 130, § 117; Laws 2011, LB157, § 1.

(d) JUDGMENTS

25-2720.01 Power to set aside, vacate, or modify judgments or orders.

The county court, including the Small Claims Court and the county court when sitting as a juvenile court, shall have the power to set aside default judgments and to vacate or modify its own judgments or orders during or after the term at which such judgments or orders were made in the same manner as provided for actions filed in the district court.

Source: Laws 1998, LB 234, § 10; Laws 2006, LB 1115, § 18; Laws 2010, LB712, § 4.

25-2721 Judgment; execution; lien on real estate; conditions.

(1) Any person having a judgment rendered by a county court may request the clerk of such court to issue execution on the judgment in the same manner as execution is issued upon other judgments rendered in the county court and direct the execution on the judgment to any county in the state. Such person may request that garnishment, attachment, or any other aid to execution be directed to any county without the necessity of filing a transcript of the judgment in the receiving county, and any hearing or proceeding with regard to such execution or aid in execution shall be heard in the court in which the judgment was originally rendered.

(2) Any person having a judgment rendered by a county court may cause a transcript thereof to be filed in the office of the clerk of the district court in any county of this state. When the transcript is so filed and entered upon the judgment record, such judgment shall be a lien on real estate in the county where the transcript is filed, and when the transcript is so filed and entered upon such judgment record, the clerk of such court may issue execution thereupon in like manner as execution is issued upon judgments rendered in the district court.

Source: G.S.1873, c. 14, § 18, p. 267; R.S.1913, § 1221; C.S.1922, § 1144; C.S.1929, § 27-532; R.S.1943, § 24-532; Laws 1972, LB 1032, § 39; R.S.1943, (1985), § 24-539; Laws 1991, LB 422, § 3; Laws 2009, LB35, § 15.

(f) APPEALS

25-2728 Appeals; parties; applicability of sections.

(1) Any party in a civil case and any defendant in a criminal case may appeal from the final judgment or final order of the county court to the district court of the county where the county court is located. In a criminal case, a prosecuting attorney may obtain review by exception proceedings pursuant to sections 29-2317 to 29-2319.

(2) Sections 25-2728 to 25-2738 shall not apply to:

(a) Appeals in eminent domain proceedings as provided in sections 76-715 to 76-723;

(b) Appeals in proceedings in the county court sitting as a juvenile court as provided in sections 43-2,106 and 43-2,106.01;

(c) Appeals in matters arising under the Nebraska Probate Code as provided in section 30-1601;

(d) Appeals in matters arising under the Nebraska Uniform Trust Code;

(e) Appeals in adoption proceedings as provided in section 43-112;

(f) Appeals in inheritance tax proceedings as provided in section 77-2023; and

(g) Appeals in domestic relations matters as provided in section 25-2739.

Source: Laws 1981, LB 42, § 1; Laws 1984, LB 13, § 19; Laws 1986, LB 529, § 11; Laws 1989, LB 182, § 8; R.S.Supp.,1989, § 24-541.01; Laws 1991, LB 732, § 69; Laws 1994, LB 1106, § 2; Laws 1995, LB 538, § 2; Laws 2000, LB 921, § 25; Laws 2003, LB 130, § 118; Laws 2010, LB800, § 3.

Cross References

Nebraska Probate Code, see section 30-2201.

Nebraska Uniform Trust Code, see section 30-3801.

ARTICLE 28

SMALL CLAIMS COURT

Section

- 25-2802. Jurisdiction.
- 25-2803. Parties; representation.
- 25-2804. Actions; how commenced; fee; hearing; notice; setoff or counterclaim; limitations; default judgment; actions authorized.
- 25-2805. Trial without jury; transfer to county court; fee; jury demand; timeframe.

25-2802 Jurisdiction.

(1) The Small Claims Court shall have subject matter jurisdiction in all civil actions of any type when the amount of money or damages or the value of the personal property claimed does not exceed the jurisdictional amount specified in subsection (4) of this section, exclusive of interest and costs.

(2) The Small Claims Court shall have subject matter jurisdiction in civil matters when the plaintiff seeks to disaffirm, avoid, or rescind a contract or agreement for the purchase of goods or services not in excess of the jurisdictional amount specified in subsection (4) of this section, exclusive of interest and costs.

(3) The Small Claims Court shall have jurisdiction when the party defendant or his or her agent resides or is doing business within the county or when the cause of action arose within the county.

(4) The jurisdictional amount is three thousand five hundred dollars from July 1, 2010, through June 30, 2015.

The Supreme Court shall continue to adjust the jurisdictional limit for the Small Claims Court every fifth year commencing July 1, 2015. The adjusted jurisdictional amount shall be equal to the then current jurisdictional amount adjusted by the average percentage change in the unadjusted Consumer Price Index for All Urban Consumers published by the Federal Bureau of Labor Statistics for the five-year period preceding the adjustment date. The jurisdictional amount shall be rounded to the nearest one-hundred-dollar amount.

Source: Laws 1972, LB 1032, § 22; Laws 1976, LB 629, § 1; Laws 1979, LB 117, § 1; Laws 1985, LB 373, § 2; R.S.1943, (1985), § 24-522; Laws 1997, LB 3, § 1; Laws 2001, LB 9, § 1; Laws 2010, LB695, § 1.

25-2803 Parties; representation.

(1) Parties in the Small Claims Court may be individuals, partnerships, limited liability companies, corporations, unions, associations, or any other kind of organization or entity.

(2) No party shall be represented by an attorney in the Small Claims Court except as provided in sections 25-2804 and 25-2805.

(3) An individual shall represent himself or herself in the Small Claims Court. A partnership shall be represented by a partner or one of its employees. A limited liability company shall be represented by a member, a manager, or one

of its employees. A union shall be represented by a union member or union employee. A corporation shall be represented by one of its employees. An association shall be represented by one of its members or by an employee of the association. Any other kind of organization or entity shall be represented by one of its members or employees.

(4) Only a party, natural or otherwise, who has been a party to the transaction with the defendant for which the claim is brought may file and prosecute a claim in the Small Claims Court.

(5) No party may file an assigned claim in the Small Claims Court.

(6) No party shall file more than two claims within any calendar week nor more than ten claims in any calendar year in the Small Claims Court. This subsection shall not apply to actions brought pursuant to section 25-21,194.

(7) Notwithstanding any other provision of this section, a personal representative of a decedent's estate, a guardian, or a conservator may be a party in the Small Claims Court.

Source: Laws 1972, LB 1032, § 23; Laws 1987, LB 77, § 1; Laws 1987, LB 536, § 2; R.S.Supp.,1988, § 24-523; Laws 1993, LB 121, § 174; Laws 2010, LB712, § 5.

25-2804 Actions; how commenced; fee; hearing; notice; setoff or counterclaim; limitations; default judgment; actions authorized.

(1) Actions in the Small Claims Court shall be commenced by the filing of a claim, personally or by mail, by the plaintiff on a form provided by the clerk of a county court. The claim form shall be executed by the plaintiff in the presence of a judge, a clerk or deputy or assistant clerk of a county court, or a notary public or other person authorized by law to take acknowledgments. If not filed in person, the claim form and appropriate fees shall be mailed by the plaintiff to the court of proper jurisdiction.

(2) At the time of the filing of the claim, the plaintiff shall pay a fee of six dollars and twenty-five cents to the clerk. One dollar and twenty-five cents of such fee shall be remitted to the State Treasurer for credit to the Nebraska Retirement Fund for Judges.

(3) Upon filing of a claim in the Small Claims Court, the court shall set a time for hearing and shall cause notice to be served upon the defendant. Notice shall be served not less than five days before the time set for hearing. Notice shall consist of a copy of the complaint and a summons directing the defendant to appear at the time set for hearing and informing the defendant that if he or she fails to appear, judgment will be entered against him or her. Notice shall be served in the manner provided for service of a summons in a civil action. If the notice is to be served by certified mail, the clerk shall provide the plaintiff with written instructions, prepared and provided by the State Court Administrator, regarding the proper procedure for service by certified mail. The cost of service shall be paid by the plaintiff, but such cost and filing fee shall be added to any judgment given the plaintiff.

(4) The defendant may file a setoff or counterclaim. Any setoff or counterclaim shall be filed and a copy delivered to the plaintiff at least two days prior to the time of trial. If the setoff or counterclaim exceeds the jurisdictional limits of the Small Claims Court as established pursuant to section 25-2802, the court

shall cause the entire matter to be transferred to the regular county court docket and set for trial.

(5) No prejudgment actions for attachment, garnishment, replevin, or other provisional remedy may be filed in the Small Claims Court.

(6) All forms required by this section shall be prescribed by the Supreme Court. The claim form shall provide for the names and addresses of the plaintiff and defendant, a concise statement of the nature, amount, and time and place of accruing of the claim, and an acknowledgment for use by the person in whose presence the claim form is executed and shall also contain a brief explanation of the Small Claims Court procedure and methods of appeal therefrom.

(7) For a default judgment rendered by a Small Claims Court (a) the default judgment may be appealed as provided in section 25-2807, (b) if a motion for a new trial, by the procedure provided in sections 25-1142, 25-1144, and 25-1144.01, is filed ten days or less after entry of the default judgment, the court may act upon the motion without a hearing, or (c) if more than ten days have passed since the entry of the default judgment, the court may set aside, vacate, or modify the default judgment as provided in section 25-2720.01. Parties may be represented by attorneys for the purpose of filing a motion for a new trial or to set aside, vacate, or modify a default judgment.

Source: Laws 1972, LB 1032, § 24; Laws 1973, LB 226, § 7; Laws 1975, LB 283, § 1; Laws 1979, LB 117, § 2; Laws 1980, LB 892, § 1; Laws 1982, LB 928, § 17; Laws 1983, LB 447, § 14; Laws 1984, LB 13, § 14; Laws 1985, LB 373, § 3; Laws 1986, LB 125, § 1; Laws 1987, LB 77, § 2; R.S.Supp.,1988, § 24-524; Laws 2000, LB 921, § 28; Laws 2005, LB 348, § 4; Laws 2010, LB712, § 6.

25-2805 Trial without jury; transfer to county court; fee; jury demand; timeframe.

All matters in the Small Claims Court shall be tried to the court without a jury. Except as provided in section 25-2618.01, any defendant in an action or such defendant's attorney may transfer the case to the regular docket of the county court by giving notice to the court at least two days prior to the time set for the hearing. Upon such notice the case shall be transferred to the regular docket of the county court. The party causing the transfer of a case from the Small Claims Court to the regular docket shall pay as a fee the difference between the fee for filing a claim in Small Claims Court and the fee for filing a claim on the regular docket.

In any action transferred to the regular docket, there shall be no motions challenging pleadings unless ordered by the court upon a showing that any such procedure is necessary to the prompt and just determination of the action. In any action transferred to the regular docket, a defendant shall file an answer. Any jury demand in cases transferred from the Small Claims Court to county court shall be made within the timeframes provided in section 25-2705.

Source: Laws 1972, LB 1032, § 25; Laws 1975, LB 283, § 2; Laws 1980, LB 892, § 2; Laws 1981, LB 42, § 11; Laws 1984, LB 13, § 15; Laws 1987, LB 77, § 3; R.S.Supp.,1988, § 24-525; Laws 1997, LB 151, § 10; Laws 2002, LB 876, § 58; Laws 2011, LB669, § 20.

ARTICLE 29

DISPUTE RESOLUTION

(a) DISPUTE RESOLUTION ACT

Section

25-2911. Dispute resolution; types of cases; referral of cases.

25-2920. Director; report.

25-2921. Dispute Resolution Cash Fund; created; use; investment.

(b) SETTLEMENT ESCROW

25-2922. Repealed. Laws 2009, LB 1, § 1.

25-2923. Repealed. Laws 2009, LB 1, § 1.

25-2924. Repealed. Laws 2009, LB 1, § 1.

25-2925. Repealed. Laws 2009, LB 1, § 1.

25-2926. Repealed. Laws 2009, LB 1, § 1.

25-2927. Repealed. Laws 2009, LB 1, § 1.

25-2928. Repealed. Laws 2009, LB 1, § 1.

25-2929. Repealed. Laws 2009, LB 1, § 1.

(d) REFERRAL OF CIVIL CASES

25-2943. Referral of civil cases to mediation or alternative dispute resolution; rules of practice.

(a) DISPUTE RESOLUTION ACT

25-2911 Dispute resolution; types of cases; referral of cases.

(1) The following types of cases may be accepted for dispute resolution at an approved center:

(a) Civil claims and disputes, including, but not limited to, consumer and commercial complaints, disputes between neighbors, disputes between business associates, disputes between landlords and tenants, and disputes within communities;

(b) Disputes concerning child custody, parenting time, visitation, or other access and other areas of domestic relations;

(c) Juvenile offenses and disputes involving juveniles; and

(d) Contested guardianship and contested conservatorship proceedings.

(2) An approved center may accept cases referred by a court, an attorney, a law enforcement officer, a social service agency, a school, or any other interested person or agency or upon the request of the parties involved. A case may be referred prior to the commencement of formal judicial proceedings or may be referred as a pending court case. In order for a referral to be effective, all parties involved must consent to such referral. If a court refers a case to an approved center, the center shall provide information to the court as to whether an agreement was reached. If the court requests a copy of the agreement, the center shall provide it.

Source: Laws 1991, LB 90, § 11; Laws 2007, LB554, § 25; Laws 2011, LB157, § 2.

25-2920 Director; report.

The director shall report annually to the Chief Justice, the Governor, and the Legislature on the implementation of the Dispute Resolution Act. The report submitted to the Legislature shall be submitted electronically. The report shall include the number and types of disputes received, the disposition of the

disputes, any problems encountered, any recommendations to address problems, and a comparison of the cost of mediation and litigation.

Source: Laws 1991, LB 90, § 20; Laws 2012, LB782, § 29.

25-2921 Dispute Resolution Cash Fund; created; use; investment.

The Dispute Resolution Cash Fund is created. The State Court Administrator shall administer the fund. The fund shall consist of proceeds received pursuant to subdivision (10) of section 25-2908 and section 33-155. Except as otherwise directed by the Supreme Court during the period from November 21, 2009, until June 30, 2013, the fund shall be used to supplement the administration of the office and the support of the approved centers. It is the intent of the Legislature that any General Fund money supplanted by the Dispute Resolution Cash Fund may be used for the support and maintenance of the State Library. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1996, LB 922, § 2; Laws 2003, LB 760, § 8; Laws 2009, First Spec. Sess., LB3, § 12; Laws 2011, LB378, § 18.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

(b) SETTLEMENT ESCROW

25-2922 Repealed. Laws 2009, LB 1, § 1.

25-2923 Repealed. Laws 2009, LB 1, § 1.

25-2924 Repealed. Laws 2009, LB 1, § 1.

25-2925 Repealed. Laws 2009, LB 1, § 1.

25-2926 Repealed. Laws 2009, LB 1, § 1.

25-2927 Repealed. Laws 2009, LB 1, § 1.

25-2928 Repealed. Laws 2009, LB 1, § 1.

25-2929 Repealed. Laws 2009, LB 1, § 1.

(d) REFERRAL OF CIVIL CASES

25-2943 Referral of civil cases to mediation or alternative dispute resolution; rules of practice.

A court may refer a civil case, including a contested guardianship or contested conservatorship proceeding, to mediation or another form of alternative dispute resolution and, unless otherwise ordered following a hearing upon a motion to object to such referral, may state a date for the case to return to court. Such date shall be no longer than ninety days after the date the order was signed unless the court grants an extension upon request of the parties. Any agreement or resolution made in mediation or another form of alternative dispute resolution shall be voluntarily entered into by the parties. An individual

trial court, an appellate court, or the Supreme Court on its own initiative may adopt rules of practice governing the procedures for referral of cases to mediation and other forms of dispute resolution. Such services may be provided by approved centers on a sliding scale of fees under the Dispute Resolution Act.

Source: Laws 2008, LB1014, § 9; Laws 2011, LB157, § 3.

Cross References

Dispute Resolution Act, see section 25-2901.

ARTICLE 30

CIVIL LEGAL SERVICES FOR LOW-INCOME PERSONS

(b) CIVIL LEGAL SERVICES PROGRAM

Section

25-3007. Civil Legal Services Program; created; use of appropriations; Commission on Public Advocacy; duties.

25-3008. Grant recipients; requirements; application; audit.

(b) CIVIL LEGAL SERVICES PROGRAM

25-3007 Civil Legal Services Program; created; use of appropriations; Commission on Public Advocacy; duties.

The Civil Legal Services Program is created. Appropriations to the program and money in the Civil Legal Services Fund shall be used to provide grants for civil legal services to eligible low-income persons. The Commission on Public Advocacy shall distribute grants pursuant to section 25-3008.

Source: Laws 2006, LB 746, § 3; Laws 2009, LB35, § 16.

25-3008 Grant recipients; requirements; application; audit.

(1) The Commission on Public Advocacy shall establish guidelines for submission of applications for grants to provide civil legal services to eligible low-income persons. To be eligible for a grant under this section, a civil legal services provider shall:

- (a) Be a nonprofit organization chartered in Nebraska;
- (b) Employ or contract with attorneys admitted to practice before the Nebraska Supreme Court and the United States District Courts;
- (c) Have offices located throughout the state;
- (d) Have as its principal purpose and mission the delivery of civil legal services to eligible low-income persons who are residents of Nebraska;
- (e) Distribute its resources equitably throughout the state;
- (f) Be a recipient of financial assistance for the delivery of civil legal services from the Legal Services Corporation established by the federal Legal Services Corporation Act, 42 U.S.C. 2996 et seq.; and
- (g) Certify that any grant funds received pursuant to this section will be used to supplement any existing funds used by the applicant and that such funds will not replace other funds appropriated or awarded by a state agency to provide civil legal services to any eligible low-income person.

(2) A civil legal services provider seeking a grant under this section shall file an application with the commission on forms provided by the commission. The

application shall include a place for the provider to certify to the commission that it will provide free civil legal services to eligible low-income persons upon receipt of a grant under this section.

(3) The commission shall review the applications and determine which civil legal services providers shall receive grants under this section and the amount of the grants. Grant recipients shall use the grant funds to provide free civil legal services to eligible low-income persons.

(4) An independent certified public accountant shall annually audit the books and accounts of each grant recipient. The grant recipients shall provide the results of such audit to the commission.

Source: Laws 2006, LB 746, § 4; Laws 2009, LB35, § 17.

ARTICLE 33

NONRECOURSE CIVIL LITIGATION ACT

Section

25-3301. Act, how cited.

25-3302. Terms, defined.

25-3303. Contracts for nonrecourse civil litigation funding; right to cancel; notice; statements required.

25-3304. Civil litigation funding company; prohibited acts.

25-3305. Assessment of fees; restrictions; calculations.

25-3306. Effect of communication on privileges.

25-3307. Civil litigation funding company; registration required; application; form; renewal.

25-3308. Registration fee; renewal fee.

25-3309. Secretary of State; issue certificate of registration or renewal of registration; refusal to issue; grounds; suspend, revoke, or refuse renewal; temporary certificate; submission of data; contents; report.

25-3301 Act, how cited.

Sections 25-3301 to 25-3309 shall be known and may be cited as the Nonrecourse Civil Litigation Act.

Source: Laws 2010, LB1094, § 1.

25-3302 Terms, defined.

For purposes of the Nonrecourse Civil Litigation Act:

(1) Civil litigation funding company means a person or entity that enters into a nonrecourse civil litigation funding transaction with a consumer;

(2) Consumer means a person residing or domiciled in Nebraska or who elects to enter into a transaction under the act, whether it be in person, over the Internet, by facsimile, or by any other electronic means, and who has a pending legal claim and is represented by an attorney at the time he or she receives the nonrecourse civil litigation funding;

(3) Legal claim means a civil claim or action; and

(4) Nonrecourse civil litigation funding means a transaction in which a civil litigation funding company purchases and a consumer assigns the contingent right to receive an amount of the potential proceeds of the consumer's legal claim to the civil litigation funding company out of the proceeds of any realized settlement, judgment, award, or verdict the consumer may receive in the legal claim.

Source: Laws 2010, LB1094, § 2.

25-3303 Contracts for nonrecourse civil litigation funding; right to cancel; notice; statements required.

(1) All contracts for nonrecourse civil litigation funding shall comply with the following requirements:

(a) The contract shall be completely filled in and contain on the front page, appropriately headed and in at least twelve-point bold type, the following disclosures:

(i) The total dollar amount to be funded to the consumer;

(ii) An itemization of one-time fees;

(iii) The total dollar amount to be repaid by the consumer, in six-month intervals for thirty-six months, and including all fees;

(iv) The total dollar amount in broker fees that are involved in the transaction; and

(v) The annual percentage rate of return, calculated as of the last day of each six-month interval, including frequency of compounding;

(b) The contract shall provide that the consumer may cancel the contract within five business days following the consumer's receipt of funds without penalty or further obligation. The contract shall contain the following notice written in a clear and conspicuous manner: "CONSUMER'S RIGHT TO CANCELLATION: YOU MAY CANCEL THIS CONTRACT WITHOUT PENALTY OR FURTHER OBLIGATION WITHIN FIVE BUSINESS DAYS FROM THE DATE YOU RECEIVE FUNDING FROM (insert name of civil litigation funding company)." The contract also shall specify that in order for the cancellation to be effective, the consumer shall either return the full amount of disbursed funds to the civil litigation funding company by delivering the civil litigation funding company's uncashed check to the civil litigation funding company's offices in person, within five business days after the disbursement of funds, or mail a notice of cancellation and include in that mailing a return of the full amount of disbursed funds in the form of the civil litigation funding company's uncashed check or a registered or certified check or money order, by insured, registered, or certified United States mail, postmarked within five business days after receiving funds from the civil litigation funding company, to the address specified in the contract for the cancellation;

(c) The contract shall contain the following statement in at least twelve-point boldface type: "THE CIVIL LITIGATION FUNDING COMPANY AGREES THAT IT SHALL HAVE NO RIGHT TO AND WILL NOT MAKE ANY DECISIONS WITH RESPECT TO THE CONDUCT OF THE UNDERLYING LEGAL CLAIM OR ANY SETTLEMENT OR RESOLUTION THEREOF AND THAT THE RIGHT TO MAKE THOSE DECISIONS REMAINS SOLELY WITH YOU AND YOUR ATTORNEY IN THE LEGAL CLAIM.";

(d) The contract shall contain an acknowledgment by the consumer that such consumer has reviewed the contract in its entirety;

(e) The contract shall contain the following statement in at least twelve-point boldface type located immediately above the place on the contract where the consumer's signature is required: "DO NOT SIGN THIS CONTRACT BEFORE YOU READ IT COMPLETELY OR IF IT CONTAINS ANY BLANK SPACES. YOU ARE ENTITLED TO A COMPLETELY FILLED IN COPY OF THIS CONTRACT. BEFORE YOU SIGN THIS CONTRACT YOU SHOULD OBTAIN THE ADVICE OF AN ATTORNEY. DEPENDING ON THE CIRCUMSTANCES,

YOU MAY WANT TO CONSULT A TAX, PUBLIC OR PRIVATE BENEFIT PLANNING, OR FINANCIAL PROFESSIONAL. YOU ACKNOWLEDGE THAT YOUR ATTORNEY IN THE LEGAL CLAIM HAS PROVIDED NO TAX, PUBLIC OR PRIVATE BENEFIT PLANNING, OR FINANCIAL ADVICE REGARDING THIS TRANSACTION.”;

(f) The contract shall contain a written acknowledgment by the attorney representing the consumer in the legal claim that states all of the following:

(i) The attorney representing the consumer in the legal claim has reviewed the contract and all costs and fees have been disclosed including the annualized rate of return applied to calculate the amount to be paid by the consumer;

(ii) The attorney representing the consumer in the legal claim is being paid on a contingency basis per a written fee agreement;

(iii) All proceeds of the civil litigation will be disbursed via the trust account of the attorney representing the consumer in the legal claim or a settlement fund established to receive the proceeds of the civil litigation from the defendant on behalf of the consumer;

(iv) The attorney representing the consumer in the legal claim is following the written instructions of the consumer with regard to the nonrecourse civil litigation funding;

(v) The attorney representing the consumer in the legal claim shall not be paid or offered to be paid commissions or referral fees; and

(vi) Whether the attorney representing the consumer in the legal claim does or does not have a financial interest in the civil litigation funding company; and

(g) All contracts to the consumer shall have in plain language, in a box with bold fifteen-point font stating the following in capitalized letters: “IF THERE IS NO RECOVERY OF ANY MONEY FROM YOUR LEGAL CLAIM OR IF THERE IS NOT ENOUGH MONEY TO PAY THE CIVIL LITIGATION FUNDING COMPANY BACK IN FULL, YOU WILL NOT OWE THE CIVIL LITIGATION FUNDING COMPANY ANYTHING IN EXCESS OF YOUR RECOVERY UNLESS YOU HAVE VIOLATED THIS PURCHASE AGREEMENT.”.

(2) If a dispute arises between the consumer and the civil litigation funding company concerning the contract for nonrecourse civil litigation funding, the responsibilities of the attorney representing the consumer in the legal claim shall be no greater than the attorney’s responsibilities under the Nebraska Rules of Professional Conduct.

Source: Laws 2010, LB1094, § 3.

25-3304 Civil litigation funding company; prohibited acts.

(1) The civil litigation funding company shall not pay or offer to pay commissions or referral fees to any attorney or employee of a law firm or to any medical provider, chiropractor, or physical therapist or their employees for referring a consumer to the civil litigation funding company.

(2) The civil litigation funding company shall not accept any commissions, referral fees, or rebates from any attorney or employee of a law firm or any medical provider, chiropractor, or physical therapist or their employees.

(3) The civil litigation funding company shall not advertise false or intentionally misleading information regarding such company’s product or services.

(4) The civil litigation funding company shall not knowingly provide nonrecourse civil litigation funding to a consumer who has previously sold and assigned an amount of such consumer's potential proceeds from the legal claim to another civil litigation funding company without first buying out that civil litigation funding company's entire accrued balance unless otherwise agreed in writing by the civil litigation funding companies and the consumer.

Source: Laws 2010, LB1094, § 4.

25-3305 Assessment of fees; restrictions; calculations.

(1) A civil litigation funding company may not assess fees for any period exceeding thirty-six months from the date of the contract with the consumer.

(2) Fees assessed by the civil litigation funding company shall compound at least semiannually but shall not compound based on any lesser time period.

(3) In calculating the annual percentage fee or rate of return, a civil litigation funding company shall include all charges payable directly or indirectly by the consumer and shall compute the rate based only on amounts actually received and retained by a consumer.

Source: Laws 2010, LB1094, § 5.

25-3306 Effect of communication on privileges.

No communication between the attorney and the civil litigation funding company as it pertains to the nonrecourse civil litigation funding contract shall limit, waive, or abrogate the scope or nature of any statutory or common-law privilege, including the work-product doctrine and the attorney-client privilege.

Source: Laws 2010, LB1094, § 6.

25-3307 Civil litigation funding company; registration required; application; form; renewal.

(1) Unless a civil litigation funding company has first registered pursuant to the Nonrecourse Civil Litigation Act, the civil litigation funding company cannot engage in the business of nonrecourse civil litigation funding.

(2) A civil litigation funding company shall submit an application of registration to the Secretary of State in a form prescribed by the Secretary of State. An application filed under this subsection is a public record and shall contain information that allows the Secretary of State to make an evaluation of the character, fitness, and financial responsibility of the company such that the Secretary of State may determine that the business will be operated honestly or fairly within the purposes of the act. For purposes of determining a civil litigation funding company's character, fitness, and financial responsibility, the Secretary of State shall request a company to submit: A copy of the company's articles of incorporation, articles of organization, certificate of limited partnership, or other organizational documents; proof of registration with a Nebraska registered agent; and proof of a surety bond or irrevocable letter of credit issued and confirmed by a financial institution authorized by law to transact business in the State of Nebraska that is equal to double the amount of the largest funding in the past calendar year or fifty thousand dollars, whichever is greater.

(3) A civil litigation funding company may apply to renew a registration by submitting an application for renewal in a form prescribed by the Secretary of

State. An application filed under this subsection is a public record. The registration shall contain current information on all matters required in an original registration.

Source: Laws 2010, LB1094, § 7.

25-3308 Registration fee; renewal fee.

(1) An application for registration or renewal of registration under section 25-3307 shall be accompanied by either an application for registration fee or a renewal of registration fee, as applicable.

(2) The Secretary of State may, by rule and regulation, establish fees for applications for registration and renewals of registration at rates sufficient to cover the costs of administering the Nonrecourse Civil Litigation Act, in the event any such fees are required. Such fees shall be collected by the Secretary of State and remitted to the State Treasurer for credit to the Secretary of State Administration Cash Fund.

Source: Laws 2010, LB1094, § 8.

25-3309 Secretary of State; issue certificate of registration or renewal of registration; refusal to issue; grounds; suspend, revoke, or refuse renewal; temporary certificate; submission of data; contents; report.

(1) The Secretary of State shall issue a certificate of registration to a civil litigation funding company who complies with subsection (2) of section 25-3307 or a renewal of registration under subsection (3) of section 25-3307.

(2) The Secretary of State may refuse to issue a certificate of registration if the Secretary of State determines that the character, fitness, or financial responsibility of the civil litigation funding company are such as to warrant belief that the business will not be operated honestly or fairly within the purposes of the Nonrecourse Civil Litigation Act.

(3) The Secretary of State may suspend, revoke, or refuse to renew a certificate of registration for conduct that would have justified denial of registration under subsection (2) of section 25-3307 or for violating section 25-3304.

(4) The Secretary of State may deny, suspend, revoke, or refuse to renew a certificate of registration only after proper notice and an opportunity for a hearing. The Administrative Procedure Act applies to the Nonrecourse Civil Litigation Act.

(5) The Secretary of State may issue a temporary certificate of registration while an application for registration or renewal of registration is pending.

(6) The Secretary of State shall require a civil litigation funding company registered pursuant to the act to annually submit certain data, in a form prescribed by the Secretary of State that contains:

- (a) The number of nonrecourse civil litigation fundings;
- (b) The amount of nonrecourse civil litigation fundings;
- (c) The number of nonrecourse civil litigation fundings required to be repaid by the consumer;
- (d) The amount charged to the consumer, including, but not limited to, the annual percentage fee charged to the consumer and the itemized fees charged to the consumer; and

(e) The dollar amount and number of cases in which the realization to the civil litigation funding company was less than contracted.

(7) The Secretary of State shall annually prepare and electronically submit a report to the Clerk of the Legislature and to the Judiciary Committee of the Legislature on the status of nonrecourse civil litigation funding activities in the state. The report shall include aggregate information reported by registered civil litigation funding companies.

Source: Laws 2010, LB1094, § 9; Laws 2012, LB782, § 30.

Cross References

Administrative Procedure Act, see section 84-920.

ARTICLE 34
PRISONER LITIGATION

Section

25-3401. Prisoner; civil actions; in forma pauperis litigation; limitation; finding by court that action was frivolous.

25-3401 Prisoner; civil actions; in forma pauperis litigation; limitation; finding by court that action was frivolous.

(1) For purposes of this section:

(a) Civil action means a legal action seeking monetary damages, injunctive relief, declaratory relief, or any appeal filed in any court in this state that relates to or involves a prisoner's conditions of confinement. Civil action does not include a motion for postconviction relief or petition for habeas corpus relief;

(b) Conditions of confinement means any circumstance, situation, or event that involves a prisoner's custody, transportation, incarceration, or supervision;

(c) Correctional institution means any state or local facility that incarcerates or detains any adult accused of, charged with, convicted of, or sentenced for any crime;

(d) Frivolous means the law and evidence supporting a litigant's position is wholly without merit or rational argument; and

(e) Prisoner means any person who is incarcerated, imprisoned, or otherwise detained in a correctional institution.

(2)(a) A prisoner who has filed three or more civil actions, commenced after July 19, 2012, that have been found to be frivolous by a court of this state or a federal court for a case originating in this state shall not be permitted to proceed in forma pauperis for any further civil actions without leave of court. A court shall permit the prisoner to proceed in forma pauperis if the court determines that the person is in danger of serious bodily injury.

(b) A court may include in its final order or judgment in any civil action a finding that the action was frivolous.

(c) A finding under subdivision (2)(b) of this section shall be reflected in the docket entries of the case.

(d) This subsection does not apply to judicial review of disciplinary procedures in adult institutions administered by the Department of Correctional Services governed by sections 83-4,109 to 83-4,123.

Source: Laws 2012, LB793, § 1.

CHAPTER 27

COURTS; RULES OF EVIDENCE

Article.

4. Relevancy and Its Limits. 27-404 to 27-415.
8. Hearsay. 27-803.
11. Miscellaneous Rules. 27-1103.
12. Inadmissibility of Certain Conduct as Evidence. 27-1201.
13. Evidence of Visual Depiction of Sexually Explicit Conduct. 27-1301.

ARTICLE 4

RELEVANCY AND ITS LIMITS

Section

- 27-404. Rule 404. Character evidence; not admissible to prove conduct; exceptions; evidence of other crimes, wrongs, or acts; standard of proof; sexual assault; provisions applicable.
- 27-412. Sex offense cases; relevance of alleged victim's past sexual behavior or alleged sexual predisposition.
- 27-413. Offense of sexual assault, defined.
- 27-414. Criminal use; evidence of similar crimes in sexual assault cases.
- 27-415. Civil case; evidence of crimes in sexual assault cases.

27-404 Rule 404. Character evidence; not admissible to prove conduct; exceptions; evidence of other crimes, wrongs, or acts; standard of proof; sexual assault; provisions applicable.

(1) Evidence of a person's character or a trait of his or her character is not admissible for the purpose of proving that he or she acted in conformity therewith on a particular occasion, except:

(a) Evidence of a pertinent trait of his or her character offered by an accused, or by the prosecution to rebut the same;

(b) Evidence of a pertinent trait of character of the victim of the crime offered by an accused or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the first aggressor. In a sexual assault case, reputation, opinion, or other evidence of past sexual behavior of the victim is governed by section 27-412; or

(c) Evidence of the character of a witness as provided in sections 27-607 to 27-609.

(2) Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he or she acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

(3) When such evidence is admissible pursuant to this section, in criminal cases evidence of other crimes, wrongs, or acts of the accused may be offered in evidence by the prosecution if the prosecution proves to the court by clear and

convincing evidence that the accused committed the crime, wrong, or act. Such proof shall first be made outside the presence of any jury.

(4) Regarding the admissibility in a civil or criminal action of evidence of a person's commission of another offense or offenses of sexual assault under sections 28-319 to 28-322.04, see sections 27-413 to 27-415.

Source: Laws 1975, LB 279, § 14; Laws 1984, LB 79, § 2; Laws 1993, LB 598, § 1; Laws 2009, LB97, § 7.

27-412 Sex offense cases; relevance of alleged victim's past sexual behavior or alleged sexual predisposition.

(1) The following evidence is not admissible in any civil or criminal proceeding involving alleged sexual misconduct except as provided in subsections (2) and (3) of this section:

(a) Evidence offered to prove that any victim engaged in other sexual behavior; and

(b) Evidence offered to prove any victim's sexual predisposition.

(2)(a) In a criminal case, the following evidence is admissible, if otherwise admissible under the Nebraska Evidence Rules:

(i) Evidence of specific instances of sexual behavior by the victim offered to prove that a person other than the accused was the source of semen, injury, or other physical evidence;

(ii) Evidence of specific instances of sexual behavior of the victim with respect to the accused offered by the accused to prove consent of the victim if it is first established to the court that such behavior is similar to the behavior involved in the case and tends to establish a pattern of behavior of the victim relevant to the issue of consent; and

(iii) Evidence, the exclusion of which would violate the constitutional rights of the accused.

(b) In a civil case, evidence offered to prove the sexual behavior or sexual predisposition of any victim is admissible if it is otherwise admissible under the Nebraska Evidence Rules and its probative value substantially outweighs the danger of harm to any victim and of unfair prejudice to any party. Evidence of a victim's reputation is admissible only if it has been placed in controversy by the victim.

(3)(a) A party intending to offer evidence under subsection (2) of this section shall:

(i) File a written motion at least fifteen days before trial specifically describing the evidence and stating the purpose for which it is offered unless the court, for good cause, requires a different time for filing or permits filing during trial; and

(ii) Serve the motion on all parties and notify the victim or, when appropriate, the victim's guardian or representative.

(b) Before admitting evidence under this section, the court shall conduct a hearing in camera outside the presence of any jury.

Source: Laws 2009, LB97, § 3.

27-413 Offense of sexual assault, defined.

For purposes of sections 27-414 and 27-415, offense of sexual assault means sexual assault under section 28-319 or 28-320, sexual assault of a child under section 28-319.01 or 28-320.01, sexual assault by use of an electronic communication device under section 28-320.02, sexual abuse of an inmate or parolee under sections 28-322.01 to 28-322.03, and sexual abuse of a protected individual under section 28-322.04.

Source: Laws 2009, LB97, § 4.

27-414 Criminal use; evidence of similar crimes in sexual assault cases.

(1) In a criminal case in which the accused is accused of an offense of sexual assault, evidence of the accused's commission of another offense or offenses of sexual assault is admissible if there is clear and convincing evidence otherwise admissible under the Nebraska Evidence Rules that the accused committed the other offense or offenses. If admissible, such evidence may be considered for its bearing on any matter to which it is relevant.

(2) In a case in which the prosecution intends to offer evidence under this section, the prosecuting attorney shall disclose the evidence to the accused, including statements of witnesses or a summary of the substance of any testimony that is expected to be offered, at least fifteen days before the scheduled date of trial or at such later time as the court may allow for good cause.

(3) Before admitting evidence of the accused's commission of another offense or offenses of sexual assault under this section, the court shall conduct a hearing outside the presence of any jury. At the hearing, the rules of evidence shall apply and the court shall apply a section 27-403 balancing and admit the evidence unless the risk of prejudice substantially outweighs the probative value of the evidence. In assessing the balancing, the court may consider any relevant factor such as (a) the probability that the other offense occurred, (b) the proximity in time and intervening circumstances of the other offenses, and (c) the similarity of the other acts to the crime charged.

(4) This section shall not be construed to limit the admission or consideration of evidence under any other section of the Nebraska Evidence Rules.

Source: Laws 2009, LB97, § 5.

27-415 Civil case; evidence of crimes in sexual assault cases.

(1) In a civil case in which a claim for damages or other relief is predicated on a party's alleged commission of conduct constituting an offense of sexual assault, evidence of that party's commission of another offense or offenses of sexual assault is admissible if there is clear and convincing evidence otherwise admissible under the Nebraska Evidence Rules that the party committed the other offense or offenses. If admissible, such evidence may be considered for its bearing on any matter to which it is relevant.

(2) A party who intends to offer evidence under this section shall disclose the evidence to the party against whom it will be offered, including statements of witnesses or a summary of the substance of any testimony that is expected to be offered, at least fifteen days before the scheduled date of trial or at such later time as the court may allow for good cause.

(3) Before admitting evidence of a party's commission of another offense or offenses of sexual assault under this section, the court shall conduct a hearing

outside the presence of any jury. At the hearing, the rules of evidence shall apply and the court shall apply a section 27-403 balancing and admit the evidence unless the risk of prejudice substantially outweighs the probative value of the evidence. In assessing the balancing, the court may consider any relevant factor such as (a) the probability that the other offense occurred, (b) the proximity in time and intervening circumstances of the other offenses, and (c) the similarity of the other acts to the crime charged.

(4) This section shall not be construed to limit the admission or consideration of evidence under any other section of the Nebraska Evidence Rules.

Source: Laws 2009, LB97, § 6.

ARTICLE 8

HEARSAY

Section

27-803. Rule 803. Hearsay exceptions; enumerated; availability of declarant immaterial.

27-803 Rule 803. Hearsay exceptions; enumerated; availability of declarant immaterial.

Subject to the provisions of section 27-403, the following are not excluded by the hearsay rule, even though the declarant is available as a witness:

(1) A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition;

(2) A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant's will;

(3) Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment;

(4) A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable him or her to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in his or her memory and to reflect that knowledge correctly. If admitted, the memorandum or record may be read into evidence but may not itself be received as an exhibit unless offered by an adverse party;

(5)(a) A memorandum, report, record, or data compilation, in any form, of acts, events, or conditions, other than opinions or diagnoses, made at or near the time of such acts, events, or conditions, in the course of a regularly conducted activity, if it was the regular course of such activity to make such memorandum, report, record, or data compilation at the time of such act, event, or condition, or within a reasonable time thereafter, as shown by the testimony of the custodian or other qualified witness unless the source of information or method or circumstances of preparation indicate lack of trustworthiness. The circumstances of the making of such memorandum, report,

record, or data compilation, including lack of personal knowledge by the entrant or maker, may be shown to affect its weight.

(b) A memorandum, report, record, or data compilation, in any form, of acts, events, or conditions, other than opinions or diagnoses, that was received or acquired in the regular course of business by an entity from another entity and has been incorporated into and kept in the regular course of business of the receiving or acquiring entity; that the receiving or acquiring entity typically relies upon the accuracy of the contents of the memorandum, report, record, or data compilation; and that the circumstances otherwise indicate the trustworthiness of the memorandum, report, record, or data compilation, as shown by the testimony of the custodian or other qualified witness. Subdivision (5)(b) of this section shall not apply in any criminal proceeding;

(6) Evidence that a matter is not included in the memoranda, reports, records, or data compilations, in any form, kept in accordance with the provisions of subdivision (5) of this section to prove the nonoccurrence or nonexistence of the matter, if the matter was of a kind of which a memorandum, report, record, or data compilation was regularly made and preserved, unless the sources of information or other circumstances indicate a lack of trustworthiness;

(7) Upon reasonable notice to the opposing party prior to trial, records, reports, statements, or data compilations made by a public official or agency of facts required to be observed and recorded pursuant to a duty imposed by law, unless the sources of information or the method or circumstances of the investigation are shown by the opposing party to indicate a lack of trustworthiness;

(8) Records or data compilations, in any form, of births, fetal deaths, deaths, or marriages, if the report thereof was made to a public office pursuant to requirements of law;

(9) To prove the absence of a record, report, statement, or data compilation, in any form, or the nonoccurrence or nonexistence of a matter of which a record, report, statement, or data compilation, in any form, was regularly made and preserved by a public office or agency, evidence in the form of a certification in accordance with section 27-902, or testimony, that diligent search failed to disclose the record, report, statement, or data compilation or entry;

(10) Statements of births, marriages, divorces, deaths, legitimacy, ancestry, relationship by blood or marriage, or other similar facts of personal or family history, contained in a regularly kept record of a religious organization;

(11) Statements of fact contained in a certificate that the maker performed a marriage or other ceremony or administered a sacrament, made by a member of the clergy, public official, or other person authorized by the rules or practices of a religious organization or by law to perform the act certified, and purporting to have been issued at the time of the act or within a reasonable time thereafter;

(12) Statements of births, marriages, divorces, deaths, legitimacy, ancestry, relationship by blood or marriage, or other similar facts of personal or family history contained in family Bibles, genealogies, charts, engravings on rings, inscriptions on family portraits, engravings on urns, crypts, or tombstones or the like;

(13) The record of a document purporting to establish or affect an interest in property, as proof of the content of the original recorded document and its execution and delivery by each person by whom it purports to have been executed, if the record is a record of a public office and an applicable statute authorized the recording of documents of that kind in that office;

(14) A statement contained in a document purporting to establish or affect an interest in property if the matter stated was relevant to the purpose of the document, unless dealings with the property since the document was made have been inconsistent with the truth of the statement or the purport of the document;

(15) Statements in a document in existence thirty years or more whose authenticity is established;

(16) Market quotations, tabulations, lists, directories, or other published compilations, generally used and relied upon by the public or by persons in particular occupations;

(17) Statements contained in published treatises, periodicals, or pamphlets on a subject of history, medicine, or other science or art, established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice, to the extent called to the attention of an expert witness upon cross-examination or relied upon by the expert witness in direct examination. If admitted, the statements may be read into evidence but may not be received as exhibits;

(18) Reputation among members of his or her family by blood, adoption, or marriage, or among his or her associates, or in the community, concerning a person's birth, adoption, marriage, divorce, death, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of his or her personal or family history;

(19) Reputation in a community, arising before the controversy, as to boundaries of or customs affecting lands in the community, and reputation as to events of general history important to the community or state or nation in which located;

(20) Reputation of a person's character among his or her associates or in the community;

(21) Evidence of a final judgment, entered after a trial or upon a plea of guilty (but not upon a plea of nolo contendere), adjudging a person guilty of a crime punishable by death or imprisonment in excess of one year, to prove any fact essential to sustain the judgment, but not including, when offered by the government in a criminal prosecution for purposes other than impeachment, judgments against a person other than the accused. The pendency of an appeal may be shown but does not affect admissibility;

(22) Judgments as proof of matters of personal, family, or general history, or boundaries, essential to the judgment, if the same would be provable by evidence of reputation; and

(23) A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that (a) the statement is offered as evidence of a material fact, (b) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts, and (c) the general purposes of these rules and the interests of justice will best

be served by admission of the statement into evidence. A statement may not be admitted under this exception unless the proponent of it makes known to the adverse party, sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, his or her intention to offer the statement and the particulars of it, including the name and address of the declarant.

Source: Laws 1975, LB 279, § 57; Laws 1999, LB 64, § 1; Laws 2014, LB788, § 7.
Effective date July 18, 2014.

ARTICLE 11 MISCELLANEOUS RULES

Section
27-1103. Rule 1103. Act, how cited.

27-1103 Rule 1103. Act, how cited.

These rules and sections 27-412 to 27-415 may be known and cited as the Nebraska Evidence Rules.

Source: Laws 1975, LB 279, § 73; Laws 2009, LB97, § 8.

ARTICLE 12 INADMISSIBILITY OF CERTAIN CONDUCT AS EVIDENCE

Section
27-1201. Unanticipated outcome of medical care; civil action; health care provider or employee; use of certain statements and conduct; limitations.

27-1201 Unanticipated outcome of medical care; civil action; health care provider or employee; use of certain statements and conduct; limitations.

(1) In any civil action brought by an alleged victim of an unanticipated outcome of medical care, or in any arbitration proceeding related to such civil action, any and all statements, affirmations, gestures, or conduct expressing apology, sympathy, commiseration, condolence, compassion, or a general sense of benevolence which are made by a health care provider or an employee of a health care provider to the alleged victim, a relative of the alleged victim, or a representative of the alleged victim and which relate to the discomfort, pain, suffering, injury, or death of the alleged victim as a result of the unanticipated outcome of medical care shall be inadmissible as evidence of an admission of liability or as evidence of an admission against interest. A statement of fault which is otherwise admissible and is part of or in addition to any such communication shall be admissible.

(2) For purposes of this section, unless the context otherwise requires:

(a) Health care provider means any person licensed or certified by the State of Nebraska to deliver health care under the Uniform Credentialing Act and any health care facility licensed under the Health Care Facility Licensure Act. Health care provider includes any professional corporation or other professional entity comprised of such health care providers;

(b) Relative means a patient's spouse, parent, grandparent, stepfather, stepmother, child, grandchild, brother, sister, stepbrother, stepsister, half brother, half sister, or spouse's parents. Relative includes persons related to the patient

through adoptive relationships. Relative also includes any person who has a family-type relationship with the patient;

(c) Representative means a legal guardian, attorney, person designated to make health care decisions on behalf of a patient under a power of attorney, or any person recognized in law or custom as a patient's agent; and

(d) Unanticipated outcome means the outcome of a medical treatment or procedure that differs from the expected result.

Source: Laws 2007, LB373, § 1; Laws 2009, LB35, § 18.

Cross References

Health Care Facility Licensure Act, see section 71-401.

Uniform Credentialing Act, see section 38-101.

ARTICLE 13

EVIDENCE OF VISUAL DEPICTION OF SEXUALLY EXPLICIT CONDUCT

Section

27-1301. Evidence of visual depiction of sexually explicit conduct; restrictions on care, custody, and control; Supreme Court; duties.

27-1301 Evidence of visual depiction of sexually explicit conduct; restrictions on care, custody, and control; Supreme Court; duties.

(1) In any judicial or administrative proceeding, any property or material that constitutes a visual depiction of sexually explicit conduct, as defined in section 28-1463.02, and which has a child, as defined in such section, as one of its participants or portrayed observers, shall remain constantly and continuously in the care, custody, and control of law enforcement, the prosecuting attorney, or the court having properly received it into evidence, except as provided in subsection (3) of this section.

(2) All courts and administrative agencies shall unequivocally deny any request by the defendant, his or her attorney, or any other person, agency, or organization, regardless of whether such defendant, attorney, or other person, agency, or organization is a party in interest or not, to acquire possession of, copy, photograph, duplicate, or otherwise reproduce any property or material that constitutes a visual depiction of sexually explicit conduct, as defined in section 28-1463.02, and which has a child, as defined in such section, as one of its participants or portrayed observers, so long as the state makes the property or material reasonably available to the defendant in a criminal proceeding. Nothing in this section shall be deemed to prohibit the review of the proscribed materials or property by a federal court when considering a habeas corpus claim.

(3)(a) For purposes of this section, property or material are deemed to be reasonably available to a defendant if the state provides ample opportunity for inspection, viewing, examination, and analysis of the property or material, at a law enforcement or state-operated facility, to the defendant, his or her attorney, and any individual the defendant seeks to use for the purpose of furnishing expert testimony.

(b) Notwithstanding the provisions of this subsection, a court may order a copy of the property or material to be delivered to a person identified as a defense expert for the purpose of evaluating the evidence, subject to the same

restrictions placed upon law enforcement. The defense expert shall return all copies and materials to law enforcement upon completion of the evaluation.

(4) On or before July 1, 2009, the Supreme Court shall adopt and promulgate rules and regulations regarding the proper control, care, custody, transfer, and disposition of property or material that constitutes a visual depiction of sexually explicit conduct, as defined in section 28-1463.02, and which has a child, as defined in such section, as one of its participants or portrayed observers, that has been received into evidence at any judicial or administrative proceeding. Among the issues addressed by these rules and regulations, the Supreme Court should devise procedures regarding the preparation and delivery of bills of exception containing evidence as described in this section, as well as procedures for storing, accessing, and disposing of such bills of exception after preparation and receipt.

Source: Laws 2009, LB97, § 22.



CRIMES AND PUNISHMENTS

CHAPTER 28 CRIMES AND PUNISHMENTS

Article.

1. Provisions Applicable to Offenses Generally.
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2. Inchoate Offenses. 28-201.
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 - (a) General Provisions. 28-306 to 28-340.
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 - (e) Pain-Capable Unborn Child Protection Act. 28-3,102 to 28-3,111.
4. Drugs and Narcotics. 28-401 to 28-462.
5. Offenses against Property. 28-502 to 28-524.
6. Offenses Involving Fraud. 28-603 to 28-640.
7. Offenses Involving the Family Relation. 28-707 to 28-733.
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9. Offenses Involving Integrity and Effectiveness of Government Operation. 28-906 to 28-935.
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 - (g) Locks and Keys. 28-1316.
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 - (b) Justification for Use of Force. 28-1416.
 - (c) Tobacco, Vapor Products, or Alternative Nicotine Products. 28-1418 to 28-1429.03.
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 - (k) Child Pornography Prevention Act. 28-1463.02 to 28-1463.05.
15. Nebraska Justice Reinvestment Working Group. 28-1501.

ARTICLE 1

PROVISIONS APPLICABLE TO OFFENSES GENERALLY

(a) GENERAL PROVISIONS

Section

- | | |
|------------|---|
| 28-101. | Code, how cited. |
| 28-105. | Felonies; classification of penalties; sentences; where served; eligibility for probation. |
| 28-105.01. | Death penalty imposition; restriction on person under eighteen years; restriction on person with intellectual disability; sentencing procedure. |
| 28-105.02. | Class IA felony; person under eighteen years; maximum sentence; court consider mitigating factors. |
| 28-106. | Misdemeanors; classification of penalties; sentences; where served. |

(b) DISCRIMINATION-BASED OFFENSES

- | | |
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| 28-111. | Enhanced penalty; enumerated offenses. |
| 28-115. | Criminal offense against a pregnant woman; enhanced penalty. |

(a) GENERAL PROVISIONS

28-101 Code, how cited.

Sections 28-101 to 28-1357, 28-1418.01, and 28-1429.03 shall be known and may be cited as the Nebraska Criminal Code.

Source: Laws 1977, LB 38, § 1; Laws 1980, LB 991, § 8; Laws 1982, LB 465, § 1; Laws 1985, LB 371, § 1; Laws 1985, LB 406, § 1; Laws 1986, LB 956, § 12; Laws 1986, LB 969, § 1; Laws 1987, LB 451, § 1; Laws 1988, LB 170, § 1; Laws 1988, LB 463, § 41; Laws 1989, LB 372, § 1; Laws 1990, LB 50, § 10; Laws 1990, LB 571, § 2; Laws 1990, LB 1018, § 1; Laws 1991, LB 135, § 1; Laws 1991, LB 477, § 2; Laws 1992, LB 1098, § 5; Laws 1992, LB 1184, § 8; Laws 1994, LB 988, § 1; Laws 1994, LB 1035, § 1; Laws 1994, LB 1129, § 1; Laws 1995, LB 371, § 1; Laws 1995, LB 385, § 11; Laws 1996, LB 908, § 2; Laws 1997, LB 90, § 1; Laws 1997, LB 814, § 6; Laws 1998, LB 218, § 2; Laws 1999, LB 6, § 1; Laws 1999, LB 49, § 1; Laws 1999, LB 163, § 1; Laws 1999, LB 511, § 1; Laws 2002, LB 276, § 1; Laws 2002, LB 824, § 1; Laws 2003, LB 17, § 1; Laws 2003, LB 43, § 8; Laws 2003, LB 273, § 2; Laws 2004, LB 943, § 1; Laws 2006, LB 57, § 1; Laws 2006, LB 287, § 4; Laws 2006, LB 1086, § 6; Laws 2006, LB 1199, § 1; Laws 2007, LB142, § 1; Laws 2008, LB764, § 1; Laws 2008, LB1055, § 1; Laws 2009, LB63, § 2; Laws 2009, LB97, § 9; Laws 2009, LB155, § 1; Laws 2010, LB252, § 1; Laws 2010, LB594, § 1; Laws 2010, LB894, § 1; Laws 2010, LB1103, § 11; Laws 2011, LB20, § 1; Laws 2011, LB226, § 1; Laws 2011, LB667, § 1; Laws 2013, LB3, § 1; Laws 2013, LB44 § 1; Laws 2014, LB403, § 1; Laws 2014, LB863, § 15.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB403, section 1, with LB863, section 15, to reflect all amendments.

Note: Changes made by LB863 became effective April 10, 2014. Changes made by LB403 became effective July 18, 2014.

28-105 Felonies; classification of penalties; sentences; where served; eligibility for probation.

(1) For purposes of the Nebraska Criminal Code and any statute passed by the Legislature after the date of passage of the code, felonies are divided into nine classes which are distinguished from one another by the following penalties which are authorized upon conviction:

Class I felony	Death
Class IA felony	Life imprisonment
Class IB felony	Maximum—life imprisonment
	Minimum—twenty years imprisonment
Class IC felony	Maximum—fifty years imprisonment
	Mandatory minimum—five years imprisonment
Class ID felony	Maximum—fifty years imprisonment
	Mandatory minimum—three years imprisonment
Class II felony	Maximum—fifty years imprisonment
	Minimum—one year imprisonment
Class III felony	Maximum—twenty years imprisonment, or twenty-five thousand dollars fine, or both

Class IIIA felony	Minimum—one year imprisonment Maximum—five years imprisonment, or ten thousand dollars fine, or both Minimum—none
Class IV felony	Maximum—five years imprisonment, or ten thousand dollars fine, or both Minimum—none

(2) All sentences of imprisonment for Class IA, IB, IC, ID, II, and III felonies and sentences of one year or more for Class IIIA and IV felonies shall be served in institutions under the jurisdiction of the Department of Correctional Services. Sentences of less than one year shall be served in the county jail except as provided in this subsection. If the department certifies that it has programs and facilities available for persons sentenced to terms of less than one year, the court may order that any sentence of six months or more be served in any institution under the jurisdiction of the department. Any such certification shall be given by the department to the State Court Administrator, who shall forward copies thereof to each judge having jurisdiction to sentence in felony cases.

(3) Nothing in this section shall limit the authority granted in sections 29-2221 and 29-2222 to increase sentences for habitual criminals.

(4) A person convicted of a felony for which a mandatory minimum sentence is prescribed shall not be eligible for probation.

Source: Laws 1977, LB 38, § 5; Laws 1989, LB 592, § 1; Laws 1995, LB 371, § 2; Laws 1997, LB 364, § 1; Laws 1998, LB 900, § 1; Laws 1998, LB 1266, § 1; Laws 2002, Third Spec. Sess., LB 1, § 1; Laws 2011, LB12, § 1.

28-105.01 Death penalty imposition; restriction on person under eighteen years; restriction on person with intellectual disability; sentencing procedure.

(1) Notwithstanding any other provision of law, the death penalty shall not be imposed upon any person who was under the age of eighteen years at the time of the commission of the crime.

(2) Notwithstanding any other provision of law, the death penalty shall not be imposed upon any person with an intellectual disability.

(3) As used in subsection (2) of this section, intellectual disability means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior. An intelligence quotient of seventy or below on a reliably administered intelligence quotient test shall be presumptive evidence of intellectual disability.

(4) If (a) a jury renders a verdict finding the existence of one or more aggravating circumstances as provided in section 29-2520 or (b)(i) the information contains a notice of aggravation as provided in section 29-1603 and (ii) the defendant waives his or her right to a jury determination of the alleged aggravating circumstances, the court shall hold a hearing prior to any sentencing determination proceeding as provided in section 29-2521 upon a verified motion of the defense requesting a ruling that the penalty of death be precluded under subsection (2) of this section. If the court finds, by a preponderance of the evidence, that the defendant is a person with an intellectual disability, the death sentence shall not be imposed. A ruling by the court that the evidence of diminished intelligence introduced by the defendant does not preclude the death penalty under subsection (2) of this section shall not restrict the defen-

dant’s opportunity to introduce such evidence at the sentencing determination proceeding as provided in section 29-2521 or to argue that such evidence should be given mitigating significance.

Source: Laws 1982, LB 787, § 23; Laws 1998, LB 1266, § 2; Laws 2002, Third Spec. Sess., LB 1, § 2; Laws 2013, LB23, § 3.

28-105.02 Class IA felony; person under eighteen years; maximum sentence; court consider mitigating factors.

(1) Notwithstanding any other provision of law, the penalty for any person convicted of a Class IA felony for an offense committed when such person was under the age of eighteen years shall be a maximum sentence of not greater than life imprisonment and a minimum sentence of not less than forty years’ imprisonment.

(2) In determining the sentence of a convicted person under subsection (1) of this section, the court shall consider mitigating factors which led to the commission of the offense. The convicted person may submit mitigating factors to the court, including, but not limited to:

- (a) The convicted person’s age at the time of the offense;
- (b) The impetuosity of the convicted person;
- (c) The convicted person’s family and community environment;
- (d) The convicted person’s ability to appreciate the risks and consequences of the conduct;
- (e) The convicted person’s intellectual capacity; and
- (f) The outcome of a comprehensive mental health evaluation of the convicted person conducted by an adolescent mental health professional licensed in this state. The evaluation shall include, but not be limited to, interviews with the convicted person’s family in order to learn about the convicted person’s prenatal history, developmental history, medical history, substance abuse treatment history, if any, social history, and psychological history.

Source: Laws 2013, LB44, § 2.

28-106 Misdemeanors; classification of penalties; sentences; where served.

(1) For purposes of the Nebraska Criminal Code and any statute passed by the Legislature after the date of passage of the code, misdemeanors are divided into seven classes which are distinguished from one another by the following penalties which are authorized upon conviction:

Class I misdemeanor	Maximum—not more than one year imprisonment, or one thousand dollars fine, or both Minimum—none
Class II misdemeanor	Maximum—six months imprisonment, or one thousand dollars fine, or both Minimum—none
Class III misdemeanor	Maximum—three months imprisonment, or five hundred dollars fine, or both Minimum—none
Class IIIA misdemeanor	Maximum—seven days imprisonment, five hundred dollars fine, or both Minimum—none

Class IV misdemeanor	Maximum—no imprisonment, five hundred dollars fine Minimum—one hundred dollars fine
Class V misdemeanor	Maximum—no imprisonment, one hundred dollars fine Minimum—none
Class W misdemeanor	Driving under the influence or implied consent First conviction Maximum—sixty days imprisonment and five hundred dollars fine Mandatory minimum—seven days imprisonment and five hundred dollars fine Second conviction Maximum—six months imprisonment and five hundred dollars fine Mandatory minimum—thirty days imprisonment and five hundred dollars fine Third conviction Maximum—one year imprisonment and one thousand dollars fine Mandatory minimum—ninety days imprisonment and one thousand dollars fine

(2) Sentences of imprisonment in misdemeanor cases shall be served in the county jail, except that in the following circumstances the court may, in its discretion, order that such sentences be served in institutions under the jurisdiction of the Department of Correctional Services:

- (a) If the sentence is for a term of one year upon conviction of a Class I misdemeanor;
- (b) If the sentence is to be served concurrently or consecutively with a term for conviction of a felony; or
- (c) If the Department of Correctional Services has certified as provided in section 28-105 as to the availability of facilities and programs for short-term prisoners and the sentence is for a term of six months or more.

Source: Laws 1977, LB 38, § 6; Laws 1982, LB 568, § 1; Laws 1986, LB 153, § 1; Laws 1992, LB 291, § 1; Laws 1998, LB 309, § 1; Laws 2002, LB 82, § 3; Laws 2005, LB 594, § 1; Laws 2011, LB675, § 1.

(b) DISCRIMINATION-BASED OFFENSES

28-111 Enhanced penalty; enumerated offenses.

Any person who commits one or more of the following criminal offenses against a person or a person’s property because of the person’s race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of the person’s association with a person of a certain race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability shall be punished by the imposition of the next higher penalty classification than the penalty classification prescribed for the criminal offense, unless such criminal offense is already punishable as a Class IB felony or higher classification: Manslaughter, section 28-305; assault in the first degree, section 28-308; assault in the second degree, section 28-309; assault in the third degree, section 28-310; terroristic threats, section 28-311.01; stalking, section 28-311.03; kid-

napping, section 28-313; false imprisonment in the first degree, section 28-314; false imprisonment in the second degree, section 28-315; sexual assault in the first degree, section 28-319; sexual assault in the second or third degree, section 28-320; sexual assault of a child, sections 28-319.01 and 28-320.01; arson in the first degree, section 28-502; arson in the second degree, section 28-503; arson in the third degree, section 28-504; criminal mischief, section 28-519; unauthorized application of graffiti, section 28-524; criminal trespass in the first degree, section 28-520; or criminal trespass in the second degree, section 28-521.

Source: Laws 1997, LB 90, § 3; Laws 2006, LB 1199, § 2; Laws 2009, LB63, § 3.

28-115 Criminal offense against a pregnant woman; enhanced penalty.

(1) Any person who commits any of the following criminal offenses against a pregnant woman shall be punished by the imposition of the next higher penalty classification than the penalty classification prescribed for the criminal offense, unless such criminal offense is already punishable as a Class IB felony or higher classification: Assault in the first degree, section 28-308; assault in the second degree, section 28-309; assault in the third degree, section 28-310; sexual assault in the first degree, section 28-319; sexual assault in the second or third degree, section 28-320; sexual assault of a child in the second or third degree, section 28-320.01; sexual abuse of an inmate or parolee in the first degree, section 28-322.02; sexual abuse of an inmate or parolee in the second degree, section 28-322.03; sexual abuse of a protected individual in the first or second degree, section 28-322.04; domestic assault in the first, second, or third degree, section 28-323; assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional in the first degree, section 28-929; assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional in the second degree, section 28-930; assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional in the third degree, section 28-931; assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional using a motor vehicle, section 28-931.01; assault by a confined person, section 28-932; confined person committing offenses against another person, section 28-933; proximately causing serious bodily injury while operating a motor vehicle, section 60-6,198; and sexual assault of a child in the first degree, section 28-319.01.

(2) The prosecution shall allege and prove beyond a reasonable doubt that the victim was pregnant at the time of the offense.

Source: Laws 2006, LB 57, § 9; Laws 2010, LB771, § 1; Laws 2014, LB811, § 1.

Effective date July 18, 2014.

ARTICLE 2

INCHOATE OFFENSES

Section

28-201. Criminal attempt; conduct; penalties.

28-201 Criminal attempt; conduct; penalties.

(1) A person shall be guilty of an attempt to commit a crime if he or she:

(a) Intentionally engages in conduct which would constitute the crime if the attendant circumstances were as he or she believes them to be; or

(b) Intentionally engages in conduct which, under the circumstances as he or she believes them to be, constitutes a substantial step in a course of conduct intended to culminate in his or her commission of the crime.

(2) When causing a particular result is an element of the crime, a person shall be guilty of an attempt to commit the crime if, acting with the state of mind required to establish liability with respect to the attendant circumstances specified in the definition of the crime, he or she intentionally engages in conduct which is a substantial step in a course of conduct intended or known to cause such a result.

(3) Conduct shall not be considered a substantial step under this section unless it is strongly corroborative of the defendant's criminal intent.

(4) Criminal attempt is:

(a) A Class II felony when the crime attempted is a Class I, IA, IB, IC, or ID felony;

(b) A Class III felony when the crime attempted is a Class II felony;

(c) A Class IIIA felony when the crime attempted is sexual assault in the second degree under section 28-320, a violation of subdivision (2)(b) of section 28-416, incest under section 28-703, or assault by a confined person with a deadly or dangerous weapon under section 28-932;

(d) A Class IV felony when the crime attempted is a Class III felony not listed in subdivision (4)(c) of this section;

(e) A Class I misdemeanor when the crime attempted is a Class IIIA or Class IV felony;

(f) A Class II misdemeanor when the crime attempted is a Class I misdemeanor; and

(g) A Class III misdemeanor when the crime attempted is a Class II misdemeanor.

Source: Laws 1977, LB 38, § 10; Laws 1997, LB 364, § 2; Laws 1998, LB 1266, § 3; Laws 2010, LB712, § 7; Laws 2010, LB771, § 2; Laws 2012, LB799, § 1.

ARTICLE 3**OFFENSES AGAINST THE PERSON****(a) GENERAL PROVISIONS**

Section

- 28-306. Motor vehicle homicide; penalty.
 28-308. Assault in the first degree; penalty.
 28-309. Assault in the second degree; penalty.
 28-311. Criminal child enticement; attempt; penalties.
 28-311.08. Unlawful intrusion; photograph, film, record, or live broadcast of intimate area; penalty; court; duties; registration under Sex Offender Registration Act; statute of limitations.
 28-311.09. Harassment protection order; violation; penalty; procedure; costs; enforcement.
 28-318. Terms, defined.

CRIMES AND PUNISHMENTS

Section

- 28-319.01. Sexual assault of a child; first degree; penalty.
- 28-320.02. Sexual assault; use of electronic communication device; prohibited acts; penalties.
- 28-321. Repealed. Laws 2009, LB 97, § 36.
- 28-322.05. Unlawful use of the Internet by a prohibited sex offender; penalties.
- 28-323. Domestic assault; penalties.
- 28-325. Abortion; declaration of purpose.
- 28-326. Terms, defined.
- 28-327. Abortion; voluntary and informed consent required; exception.
- 28-327.01. Department of Health and Human Services; printed materials; duties; availability; Internet web site information.
- 28-327.03. Civil liability; limitation.
- 28-327.04. Civil cause of action; authorized; evidence of professional negligence; attorney's fee.
- 28-327.06. Waiver of evaluations and notices; void and unenforceable.
- 28-327.07. Damages.
- 28-327.08. Action for civil remedies.
- 28-327.09. Minor; burden of proof.
- 28-327.10. Time requirement.
- 28-327.11. Civil action; rebuttable presumption; noneconomic damages; expert witness; physician deemed transacting business; affirmative defense; additional remedies.
- 28-327.12. Statute of limitations; tolled; section, how construed; violations; how treated.
- 28-335. Abortion by other than licensed physician; penalty; physical presence; violation; penalty.
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(b) ADULT PROTECTIVE SERVICES ACT

- 28-348. Act, how cited.
- 28-349. Legislative intent.
- 28-350. Definitions, where found.
- 28-351. Abuse, defined.
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- 28-358. Exploitation, defined.
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- 28-367.01. Sexual exploitation, defined.
- 28-370. Unreasonable confinement, defined.
- 28-372. Report of abuse, neglect, or exploitation; required; contents; notification; toll-free number established.
- 28-373. Report of abuse, neglect, or exploitation; law enforcement agency; duties.
- 28-374. Alleged abuse, neglect, or exploitation; department; duties.
- 28-374.01. Alleged abuse, neglect, or exploitation; completion of investigation; decision regarding entry into registry; notice; contents; right to amend or expunge information.
- 28-376. Adult Protective Services Central Registry; established; access; name-change order; treatment.
- 28-386. Knowing and intentional abuse, neglect, or exploitation of a vulnerable adult; penalty.
- 28-387. Short-term protective services; temporary placement; authorized; when; procedure.

(c) HOMICIDE OF THE UNBORN CHILD ACT

- 28-394. Motor vehicle homicide of an unborn child; penalty.

(e) PAIN-CAPABLE UNBORN CHILD PROTECTION ACT

- 28-3,102. Act, how cited.
- 28-3,103. Terms, defined.
- 28-3,104. Legislative findings.

Section

- 28-3,105. Determination of probable postfertilization age of unborn child; physician; duties.
- 28-3,106. Abortion; performance; restrictions.
- 28-3,107. Report to Department of Health and Human Services; contents; department; issue public report; failure to file report; late fee; prohibited acts; penalty.
- 28-3,108. Prohibited abortion; penalty.
- 28-3,109. Action for damages; action for injunctive relief; attorney's fees.
- 28-3,110. Anonymity; court orders authorized.
- 28-3,111. Severability.

(a) GENERAL PROVISIONS

28-306 Motor vehicle homicide; penalty.

(1) A person who causes the death of another unintentionally while engaged in the operation of a motor vehicle in violation of the law of the State of Nebraska or in violation of any city or village ordinance commits motor vehicle homicide.

(2) Except as provided in subsection (3) of this section, motor vehicle homicide is a Class I misdemeanor.

(3)(a) If the proximate cause of the death of another is the operation of a motor vehicle in violation of section 60-6,213 or 60-6,214, motor vehicle homicide is a Class IIIA felony.

(b) If the proximate cause of the death of another is the operation of a motor vehicle in violation of section 60-6,196 or 60-6,197.06, motor vehicle homicide is a Class III felony. 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 one year and not more than fifteen years and shall order that the operator's license of such person be revoked for the same period.

(c) If the proximate cause of the death of another is the operation of a motor vehicle in violation of section 60-6,196 or 60-6,197.06, motor vehicle homicide is a Class II felony if the defendant has a prior conviction for a violation of section 60-6,196 or 60-6,197.06, under a city or village ordinance enacted in conformance with section 60-6,196, or 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 defendant was convicted would have been a violation of section 60-6,196. 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 fifteen years and shall order that the operator's license of such person be revoked for the same period.

(d) An order of the court described in subdivision (b) or (c) of this subsection shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

(4) The crime punishable under this section shall be treated as a separate and distinct offense from any other offense arising out of acts alleged to have been committed while the person was in violation of this section.

Source: Laws 1977, LB 38, § 21; Laws 1979, LB 1, § 1; Laws 1992, LB 291, § 2; Laws 1993, LB 370, § 9; Laws 1993, LB 575, § 3; Laws 1997, LB 364, § 3; Laws 2001, LB 38, § 1; Laws 2004, LB 208, § 1; Laws 2006, LB 925, § 1; Laws 2011, LB667, § 3.

Cross References

Operator's license, assessment of points and revocation, see sections 60-496 to 60-497.01, 60-498 to 60-498.04, 60-499, and 60-4,182 et seq.

28-308 Assault in the first degree; penalty.

(1) A person commits the offense of assault in the first degree if he or she intentionally or knowingly causes serious bodily injury to another person.

(2) Assault in the first degree shall be a Class II felony.

Source: Laws 1977, LB 38, § 23; Laws 2009, LB63, § 4.

28-309 Assault in the second degree; penalty.

(1) A person commits the offense of assault in the second degree if he or she:

(a) Intentionally or knowingly causes bodily injury to another person with a dangerous instrument;

(b) Recklessly causes serious bodily injury to another person with a dangerous instrument; or

(c) Unlawfully strikes or wounds another (i) while legally confined in a jail or an adult correctional or penal institution, (ii) while otherwise in legal custody of the Department of Correctional Services, or (iii) while committed as a dangerous sex offender under the Sex Offender Commitment Act.

(2) Assault in the second degree shall be a Class III felony.

Source: Laws 1977, LB 38, § 24; Laws 1982, LB 347, § 7; Laws 1997, LB 364, § 4; Laws 2009, LB63, § 5; Laws 2010, LB771, § 3.

Cross References

Sex Offender Commitment Act, see section 71-1201.

28-311 Criminal child enticement; attempt; penalties.

(1)(a) No person, by any means and without privilege to do so, shall knowingly solicit, coax, entice, or lure or attempt to solicit, coax, entice, or lure any child under the age of fourteen years to enter into any vehicle, whether or not the person knows the age of the child.

(b) No person, by any means and without privilege to do so, shall solicit, coax, entice, or lure or attempt to solicit, coax, entice, or lure any child under the age of fourteen years to enter into any place with the intent to seclude the child from his or her parent, guardian, or other legal custodian or the general public, whether or not the person knows the age of the child. For purposes of this subdivision, seclude means to take, remove, hide, secrete, conceal, isolate, or otherwise unlawfully separate.

(2) It is an affirmative defense to a charge under this section that:

(a) The person had the express or implied permission of the parent, guardian, or other legal custodian of the child in undertaking the activity;

(b)(i) The person is a law enforcement officer, emergency services provider as defined in section 71-507, firefighter, or other person who regularly provides emergency services, is the operator of a bookmobile or other such vehicle operated by the state or a political subdivision and used for informing, educating, organizing, or transporting children, is a paid employee of, or a volunteer for, a nonprofit or religious organization which provides activities for children, or is an employee or agent of or a volunteer acting under the direction of any

board of education and (ii) the person listed in subdivision (2)(b)(i) of this section was, at the time the person undertook the activity, acting within the scope of his or her lawful duties in that capacity; or

(c) The person undertook the activity in response to a bona fide emergency situation or the person undertook the activity in response to a reasonable belief that it was necessary to preserve the health, safety, or welfare of the child.

(3) Any person who violates this section commits criminal child enticement and is guilty of a Class IIIA felony. If such person has previously been convicted of (a) criminal child enticement under this section, (b) sexual assault of a child in the first degree under section 28-319.01, (c) sexual assault of a child in the second or third degree under section 28-320.01, (d) child enticement by means of an electronic communication device under section 28-320.02, or (e) assault under section 28-308, 28-309, or 28-310, kidnapping under section 28-313, or false imprisonment under section 28-314 or 28-315 when the victim was under eighteen years of age when such person violates this section, such person is guilty of a Class III felony.

Source: Laws 1999, LB 49, § 2; Laws 2006, LB 1199, § 3; Laws 2009, LB97, § 10; Laws 2011, LB665, § 1.

Cross References

Registration of sex offenders, see sections 29-4001 to 29-4014.

28-311.08 Unlawful intrusion; photograph, film, record, or live broadcast of intimate area; penalty; court; duties; registration under Sex Offender Registration Act; statute of limitations.

(1) It shall be unlawful for any person to knowingly intrude upon any other person without his or her consent or knowledge in a place of solitude or seclusion.

(2) It shall be unlawful for any person to knowingly photograph, film, record, or live broadcast an image of the intimate area of any other person without his or her knowledge and consent when his or her intimate area would not be generally visible to the public regardless of whether such other person is located in a public or private place.

(3) For purposes of this section:

(a) Intimate area means the naked or undergarment-clad genitalia, pubic area, buttocks, or female breast of an individual;

(b) Intrude means either the:

(i) Viewing of another person in a state of undress as it is occurring; or

(ii) Recording by video, photographic, digital, or other electronic means of another person in a state of undress; and

(c) Place of solitude or seclusion means a place where a person would intend to be in a state of undress and have a reasonable expectation of privacy, including, but not limited to, any facility, public or private, used as a restroom, tanning booth, locker room, shower room, fitting room, or dressing room.

(4)(a) Violation of this section involving an intrusion as defined in subdivision (3)(b)(i) of this section or violation under subsection (2) of this section is a Class I misdemeanor.

(b) Subsequent violation of this section involving an intrusion as defined in subdivision (3)(b)(i) of this section, subsequent violation under subsection (2) of

this section, or violation of this section involving an intrusion as defined in subdivision (3)(b)(ii) of this section is a Class IV felony.

(c) Violation of this section is a Class III felony if video or an image recorded in violation of this section is distributed to another person or otherwise made public in any manner which would enable it to be viewed by another person.

(5) As part of sentencing following a conviction for a violation of this section, the court shall make a finding as to the ages of the defendant and the victim at the time the offense occurred. If the defendant is found to have been nineteen years of age or older and the victim is found to have been less than eighteen years of age at such time, then the defendant shall be required to register under the Sex Offender Registration Act.

(6) No person shall be prosecuted pursuant to subdivision (4)(b) or (c) of this section unless the indictment for such offense is found by a grand jury or a complaint filed before a magistrate within three years after the later of:

(a) The commission of the crime;

(b) Law enforcement's or a victim's receipt of actual or constructive notice of either the existence of a video or other electronic recording made in violation of this section or the distribution of images, video, or other electronic recording made in violation of this section; or

(c) The youngest victim of a violation of this section reaching the age of twenty-one years.

Source: Laws 1996, LB 908, § 1; Laws 2011, LB61, § 1; Laws 2014, LB998, § 2.

Effective date April 10, 2014.

Cross References

Sex Offender Registration Act, see section 29-4001.

28-311.09 Harassment protection order; violation; penalty; procedure; costs; enforcement.

(1) Any victim who has been harassed as defined by section 28-311.02 may file a petition and affidavit for a harassment protection order as provided in subsection (3) of this section. Upon the filing of such a petition and affidavit in support thereof, the court may issue a harassment protection order without bond enjoining the respondent from (a) imposing any restraint upon the person or liberty of the petitioner, (b) harassing, threatening, assaulting, molesting, attacking, or otherwise disturbing the peace of the petitioner, or (c) telephoning, contacting, or otherwise communicating with the petitioner.

(2) The petition for a harassment protection order shall state the events and dates of acts constituting the alleged harassment.

(3) A petition for a harassment protection order shall be filed with the clerk of the district court, and the proceeding may be heard by the county court or the district court as provided in section 25-2740.

(4) A petition for a harassment protection order filed pursuant to subsection (1) of this section may not be withdrawn except upon order of the court. An order issued pursuant to subsection (1) of this section shall specify that it is effective for a period of one year unless otherwise dismissed or modified by the court. Any person who knowingly violates an order issued pursuant to subsec-

tion (1) of this section after service or notice as described in subdivision (8)(b) of this section shall be guilty of a Class II misdemeanor.

(5)(a) Fees to cover costs associated with the filing of a petition for a harassment protection order or the issuance or service of a harassment protection order seeking only the relief provided by this section shall not be charged, except that a court may assess such fees and costs if the court finds, by clear and convincing evidence, that the statements contained in the petition were false and that the harassment protection order was sought in bad faith.

(b) A court may also assess costs associated with the filing of a petition for a harassment protection order or the issuance or service of a harassment protection order seeking only the relief provided by this section against the respondent.

(6) The clerk of the district court shall make available standard application and affidavit forms for a harassment protection order with instructions for completion to be used by a petitioner. The clerk and his or her employees shall not provide assistance in completing the forms. The State Court Administrator shall adopt and promulgate the standard application and affidavit forms provided for in this section as well as the standard temporary and final harassment protection order forms and provide a copy of such forms to all clerks of the district courts in this state. These standard temporary and final harassment protection order forms shall be the only such forms used in this state.

(7) Any order issued under subsection (1) of this section may be issued ex parte without notice to the respondent if it reasonably appears from the specific facts shown by affidavit of the petitioner that irreparable harm, loss, or damage will result before the matter can be heard on notice. If the specific facts included in the affidavit (a) do not show that the petitioner will suffer irreparable harm, loss, or damage or (b) show that, for any other compelling reason, an ex parte order should not be issued, the court may forthwith cause notice of the application to be given to the respondent stating that he or she may show cause, not more than fourteen days after service, why such order should not be entered. If such ex parte order is issued without notice to the respondent, the court shall forthwith cause notice of the petition and order and a form with which to request a show-cause hearing to be given the respondent stating that, upon service on the respondent, the order shall remain in effect for a period of one year unless the respondent shows cause why the order should not remain in effect for a period of one year. If the respondent wishes to appear and show cause why the order should not remain in effect for a period of one year, he or she shall affix his or her current address, telephone number, and signature to the form and return it to the clerk of the district court within five days after service upon him or her. Upon receipt of the request for a show-cause hearing, the court shall immediately schedule a show-cause hearing to be held within thirty days after the receipt of the request for a show-cause hearing and shall notify the petitioner and respondent of the hearing date.

(8)(a) Upon the issuance of any harassment protection order, the clerk of the court shall forthwith provide the petitioner, without charge, with two certified copies of such order. The clerk of the court shall also forthwith provide the local police department or local law enforcement agency and the local sheriff's office, without charge, with one copy each of such order and one copy each of the sheriff's return thereon. The clerk of the court shall also forthwith provide a copy of the harassment protection order to the sheriff's office in the county

where the respondent may be personally served together with instructions for service. Upon receipt of the order and instructions for service, such sheriff's office shall forthwith serve the harassment protection order upon the respondent and file its return thereon with the clerk of the court which issued the harassment protection order within fourteen days of the issuance of the harassment protection order. If any harassment protection order is dismissed or modified by the court, the clerk of the court shall forthwith provide the local police department or local law enforcement agency and the local sheriff's office, without charge, with one copy each of the order of dismissal or modification.

(b) If the respondent is present at a hearing convened pursuant to this section and the harassment protection order is not dismissed, such respondent shall be deemed to have notice by the court at such hearing that the protection order will be granted and remain in effect and further service of such notice described in this subsection shall not be required for purposes of prosecution under this section. If the respondent has been properly served with the ex parte order and fails to appear at the hearing, the temporary order shall be deemed to be granted and remain in effect and the service of the ex parte order will serve as notice required under this section.

(9) A peace officer may, with or without a warrant, arrest a person if (a) the officer has probable cause to believe that the person has committed a violation of a harassment protection order issued pursuant to this section or a violation of a valid foreign harassment protection order recognized pursuant to section 28-311.10 and (b) a petitioner under this section provides the peace officer with a copy of a harassment protection order or the peace officer determines that such an order exists after communicating with the local law enforcement agency or a person protected under a valid foreign harassment protection order recognized pursuant to section 28-311.10 provides the peace officer with a copy of such order.

(10) A peace officer making an arrest pursuant to subsection (9) of this section shall take such person into custody and take such person before the county court or the court which issued the harassment protection order within a reasonable time. At such time the court shall establish the conditions of such person's release from custody, including the determination of bond or recognizance, as the case may be. The court shall issue an order directing that such person shall have no contact with the alleged victim of the harassment.

Source: Laws 1998, LB 218, § 6; Laws 2012, LB310, § 1.

28-318 Terms, defined.

As used in sections 28-317 to 28-322.04, unless the context otherwise requires:

- (1) Actor means a person accused of sexual assault;
- (2) Intimate parts means the genital area, groin, inner thighs, buttocks, or breasts;
- (3) Past sexual behavior means sexual behavior other than the sexual behavior upon which the sexual assault is alleged;
- (4) Serious personal injury means great bodily injury or disfigurement, extreme mental anguish or mental trauma, pregnancy, disease, or loss or impairment of a sexual or reproductive organ;

(5) Sexual contact means the intentional touching of the victim's sexual or intimate parts or the intentional touching of the victim's clothing covering the immediate area of the victim's sexual or intimate parts. Sexual contact shall also mean the touching by the victim of the actor's sexual or intimate parts or the clothing covering the immediate area of the actor's sexual or intimate parts when such touching is intentionally caused by the actor. Sexual contact shall include only such conduct which can be reasonably construed as being for the purpose of sexual arousal or gratification of either party. Sexual contact shall also include the touching of a child with the actor's sexual or intimate parts on any part of the child's body for purposes of sexual assault of a child under sections 28-319.01 and 28-320.01;

(6) Sexual penetration means sexual intercourse in its ordinary meaning, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of the actor's or victim's body or any object manipulated by the actor into the genital or anal openings of the victim's body which can be reasonably construed as being for nonmedical or nonhealth purposes. Sexual penetration shall not require emission of semen;

(7) Victim means the person alleging to have been sexually assaulted;

(8) Without consent means:

(a)(i) The victim was compelled to submit due to the use of force or threat of force or coercion, or (ii) the victim expressed a lack of consent through words, or (iii) the victim expressed a lack of consent through conduct, or (iv) the consent, if any was actually given, was the result of the actor's deception as to the identity of the actor or the nature or purpose of the act on the part of the actor;

(b) The victim need only resist, either verbally or physically, so as to make the victim's refusal to consent genuine and real and so as to reasonably make known to the actor the victim's refusal to consent; and

(c) A victim need not resist verbally or physically where it would be useless or futile to do so; and

(9) Force or threat of force means (a) the use of physical force which overcomes the victim's resistance or (b) the threat of physical force, express or implied, against the victim or a third person that places the victim in fear of death or in fear of serious personal injury to the victim or a third person where the victim reasonably believes that the actor has the present or future ability to execute the threat.

Source: Laws 1977, LB 38, § 33; Laws 1978, LB 701, § 1; Laws 1984, LB 79, § 3; Laws 1985, LB 2, § 2; Laws 1995, LB 371, § 3; Laws 2004, LB 943, § 4; Laws 2006, LB 1199, § 4; Laws 2009, LB97, § 11.

28-319.01 Sexual assault of a child; first degree; penalty.

(1) A person commits sexual assault of a child in the first degree:

(a) When he or she subjects another person under twelve years of age to sexual penetration and the actor is at least nineteen years of age or older; or

(b) When he or she subjects another person who is at least twelve years of age but less than sixteen years of age to sexual penetration and the actor is twenty-five years of age or older.

(2) Sexual assault of a child in the first degree is a Class IB felony with a mandatory minimum sentence of fifteen years in prison for the first offense.

(3) Any person who is found guilty of sexual assault of a child in the first degree under this section and who has previously been convicted (a) under this section, (b) under section 28-319 of first degree or attempted first degree sexual assault, (c) under section 28-320.01 before July 14, 2006, of sexual assault of a child or attempted sexual assault of a child, (d) under section 28-320.01 on or after July 14, 2006, of sexual assault of a child in the second or third degree or attempted sexual assault of a child in the second or third degree, or (e) in any other state or federal court under laws with essentially the same elements as this section, section 28-319, or section 28-320.01 as it existed before, on, or after July 14, 2006, shall be guilty of a Class IB felony with a mandatory minimum sentence of twenty-five years in prison.

(4) In any prosecution under this section, the age of the actor shall be an essential element of the offense that must be proved beyond a reasonable doubt.

Source: Laws 2006, LB 1199, § 6; Laws 2009, LB97, § 12.

28-320.02 Sexual assault; use of electronic communication device; prohibited acts; penalties.

(1) No person shall knowingly solicit, coax, entice, or lure (a) a child sixteen years of age or younger or (b) a peace officer who is believed by such person to be a child sixteen years of age or younger, by means of an electronic communication device as that term is defined in section 28-833, to engage in an act which would be in violation of section 28-319, 28-319.01, or 28-320.01 or subsection (1) or (2) of section 28-320. A person shall not be convicted of both a violation of this subsection and a violation of section 28-319, 28-319.01, or 28-320.01 or subsection (1) or (2) of section 28-320 if the violations arise out of the same set of facts or pattern of conduct and the individual solicited, coaxed, enticed, or lured under this subsection is also the victim of the sexual assault under section 28-319, 28-319.01, or 28-320.01 or subsection (1) or (2) of section 28-320.

(2) A person who violates this section is guilty of a Class ID felony. If a person who violates this section has previously been convicted of a violation of this section or section 28-308, 28-309, 28-310, 28-311, 28-313, 28-314, 28-315, 28-319, 28-319.01, 28-320.01, 28-813.01, 28-833, 28-1463.03, or 28-1463.05 or subsection (1) or (2) of section 28-320, the person is guilty of a Class IC felony.

Source: Laws 2004, LB 943, § 3; Laws 2006, LB 1199, § 8; Laws 2009, LB97, § 13.

28-321 Repealed. Laws 2009, LB 97, § 36.

28-322.05 Unlawful use of the Internet by a prohibited sex offender; penalties.

(1) Any person required to register under the Sex Offender Registration Act who is required to register because of a conviction for one or more of the following offenses, including any substantially equivalent offense committed in another state, territory, commonwealth, or other jurisdiction of the United States, and who knowingly and intentionally uses a social networking web site, instant messaging, or chat room service that allows a person who is less than eighteen years of age to access or use its social networking web site, instant

messaging, or chat room service, commits the offense of unlawful use of the Internet by a prohibited sex offender:

- (a) Kidnapping of a minor pursuant to section 28-313;
- (b) Sexual assault of a child in the first degree pursuant to section 28-319.01;
- (c) Sexual assault of a child in the second or third degree pursuant to section 28-320.01;
- (d) Incest of a minor pursuant to section 28-703;
- (e) Pandering of a minor pursuant to section 28-802;
- (f) Visual depiction of sexually explicit conduct of a child pursuant to section 28-1463.03 or 28-1463.05;
- (g) Possessing any visual depiction of sexually explicit conduct pursuant to section 28-813.01;
- (h) Criminal child enticement pursuant to section 28-311;
- (i) Child enticement by means of an electronic communication device pursuant to section 28-320.02;
- (j) Enticement by electronic communication device pursuant to section 28-833; or
- (k) An attempt or conspiracy to commit an offense listed in subdivisions (1)(a) through (1)(j) of this section.

(2) Unlawful use of the Internet by a prohibited sex offender is a Class I misdemeanor for a first offense. Any second or subsequent conviction under this section is a Class IIIA felony.

Source: Laws 2009, LB97, § 14; Laws 2009, LB285, § 1.

Cross References

Sex Offender Registration Act, see section 29-4001.

28-323 Domestic assault; penalties.

(1) A person commits the offense of domestic assault in the third degree if he or she:

- (a) Intentionally and knowingly causes bodily injury to his or her intimate partner;
- (b) Threatens an intimate partner with imminent bodily injury; or
- (c) Threatens an intimate partner in a menacing manner.

(2) A person commits the offense of domestic assault in the second degree if he or she intentionally and knowingly causes bodily injury to his or her intimate partner with a dangerous instrument.

(3) A person commits the offense of domestic assault in the first degree if he or she intentionally and knowingly causes serious bodily injury to his or her intimate partner.

(4) Violation of subdivision (1)(a) or (b) of this section is a Class I misdemeanor, except that for any subsequent violation of subdivision (1)(a) or (b) of this section, any person so offending is guilty of a Class IV felony.

(5) Violation of subdivision (1)(c) of this section is a Class I misdemeanor.

(6) Violation of subsection (2) of this section is a Class IIIA felony, except that for any second or subsequent violation of such subsection, any person so offending is guilty of a Class III felony.

(7) Violation of subsection (3) of this section is a Class III felony, except that for any second or subsequent violation under such subsection, any person so offending is guilty of a Class II felony.

(8) For purposes of this section, intimate partner means a spouse; a former spouse; persons who have a child in common whether or not they have been married or lived together at any time; and persons who are or were involved in a dating relationship. For purposes of this subsection, dating relationship means frequent, intimate associations primarily characterized by the expectation of affectional or sexual involvement, but does not include a casual relationship or an ordinary association between persons in a business or social context.

Source: Laws 2004, LB 613, § 5; Laws 2010, LB507, § 2.

28-325 Abortion; declaration of purpose.

The Legislature hereby finds and declares:

(1) That the following provisions were motivated by the legislative intrusion of the United States Supreme Court by virtue of its decision removing the protection afforded the unborn. Sections 28-325 to 28-345 are in no way to be construed as legislatively encouraging abortions at any stage of unborn human development, but are rather an expression of the will of the people of the State of Nebraska and the members of the Legislature to provide protection for the life of the unborn child whenever possible;

(2) That the members of the Legislature expressly deplore the destruction of the unborn human lives which has and will occur in Nebraska as a consequence of the United States Supreme Court's decision on abortion of January 22, 1973;

(3) That it is in the interest of the people of the State of Nebraska that every precaution be taken to insure the protection of every viable unborn child being aborted, and every precaution be taken to provide life-supportive procedures to insure the unborn child its continued life after its abortion;

(4) That currently this state is prevented from providing adequate legal remedies to protect the life, health, and welfare of pregnant women and unborn human life;

(5) That it is in the interest of the people of the State of Nebraska to maintain accurate statistical data to aid in providing proper maternal health regulations and education;

(6) That the existing standard of care for preabortion screening and counseling is not always adequate to protect the health needs of women;

(7) That clarifying the minimum standard of care for preabortion screening and counseling in statute is a practical means of protecting the well-being of women and may better ensure that abortion doctors are sufficiently aware of each patient's risk profile so they may give each patient a well-informed medical opinion regarding her unique case; and

(8) That providing right to redress against nonphysicians who perform illegal abortions or encourage self-abortions is an important means of protecting women's health.

Source: Laws 1977, LB 38, § 40; Laws 1997, LB 23, § 1; Laws 2010, LB594, § 2.

28-326 Terms, defined.

For purposes of sections 28-325 to 28-345, unless the context otherwise requires:

(1) Abortion means the use or prescription of any instrument, medicine, drug, or other substance or device intentionally to terminate the pregnancy of a woman known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead unborn child, and which causes the premature termination of the pregnancy;

(2) Complications associated with abortion means any adverse physical, psychological, or emotional reaction that is reported in a peer-reviewed journal to be statistically associated with abortion such that there is less than a five percent probability ($P < .05$) that the result is due to chance;

(3) Conception means the fecundation of the ovum by the spermatozoa;

(4) Emergency situation means that condition which, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial impairment of a major bodily function;

(5) Hospital means those institutions licensed by the Department of Health and Human Services pursuant to the Health Care Facility Licensure Act;

(6) Negligible risk means a risk that a reasonable person would consider to be immaterial to a decision to undergo an elective medical procedure;

(7) Partial-birth abortion means an abortion procedure in which the person performing the abortion partially delivers vaginally a living unborn child before killing the unborn child and completing the delivery. For purposes of this subdivision, the term partially delivers vaginally a living unborn child before killing the unborn child means deliberately and intentionally delivering into the vagina a living unborn child, or a substantial portion thereof, for the purpose of performing a procedure that the person performing such procedure knows will kill the unborn child and does kill the unborn child;

(8) Physician means any person licensed to practice medicine in this state as provided in the Uniform Credentialing Act;

(9) Pregnant means that condition of a woman who has unborn human life within her as the result of conception;

(10) Probable gestational age of the unborn child means what will with reasonable probability, in the judgment of the physician, be the gestational age of the unborn child at the time the abortion is planned to be performed;

(11) Risk factor associated with abortion means any factor, including any physical, psychological, emotional, demographic, or situational factor, for which there is a statistical association with one or more complications associated with abortion such that there is less than a five percent probability ($P < .05$) that such statistical association is due to chance. Such information on risk factors shall have been published in any peer-reviewed journals indexed by the United States National Library of Medicine's search services (PubMed or MEDLINE) or in any journal included in the Thomson Reuters Scientific Master Journal List not less than twelve months prior to the day preabortion screening was provided;

(12) Self-induced abortion means any abortion or menstrual extraction attempted or completed by a pregnant woman on her own body;

(13) Ultrasound means the use of ultrasonic waves for diagnostic or therapeutic purposes, specifically to monitor an unborn child;

(14) Viability means that stage of human development when the unborn child is potentially able to live more than merely momentarily outside the womb of the mother by natural or artificial means; and

(15) Woman means any female human being whether or not she has reached the age of majority.

Source: Laws 1977, LB 38, § 41; Laws 1979, LB 316, § 1; Laws 1984, LB 695, § 1; Laws 1986, LB 663, § 1; Laws 1993, LB 110, § 1; Laws 1996, LB 1044, § 59; Laws 1997, LB 23, § 2; Laws 2000, LB 819, § 64; Laws 2007, LB296, § 27; Laws 2009, LB675, § 1; Laws 2010, LB594, § 3.

Cross References

Health Care Facility Licensure Act, see section 71-401.

Uniform Credentialing Act, see section 38-101.

28-327 Abortion; voluntary and informed consent required; exception.

No abortion shall be performed except with the voluntary and informed consent of the woman upon whom the abortion is to be performed. Except in the case of an emergency situation, consent to an abortion is voluntary and informed only if:

(1) The woman is told the following by the physician who is to perform the abortion, by the referring physician, or by a physician assistant or registered nurse licensed under the Uniform Credentialing Act who is an agent of either physician, at least twenty-four hours before the abortion:

(a) The particular medical risks associated with the particular abortion procedure to be employed including, when medically accurate, the risks of infection, hemorrhage, perforated uterus, danger to subsequent pregnancies, and infertility;

(b) The probable gestational age of the unborn child at the time the abortion is to be performed;

(c) The medical risks associated with carrying her child to term; and

(d) That she cannot be forced or required by anyone to have an abortion and is free to withhold or withdraw her consent for an abortion.

The person providing the information specified in this subdivision to the person upon whom the abortion is to be performed shall be deemed qualified to so advise and provide such information only if, at a minimum, he or she has had training in each of the following subjects: Sexual and reproductive health; abortion technology; contraceptive technology; short-term counseling skills; community resources and referral; and informed consent. The physician or the physician's agent may provide this information by telephone without conducting a physical examination or tests of the patient, in which case the information required to be supplied may be based on facts supplied by the patient and whatever other relevant information is reasonably available to the physician or the physician's agent;

(2) The woman is informed by telephone or in person, by the physician who is to perform the abortion, by the referring physician, or by an agent of either physician, at least twenty-four hours before the abortion:

(a) The name of the physician who will perform the abortion;

(b) That medical assistance benefits may be available for prenatal care, childbirth, and neonatal care;

(c) That the father is liable to assist in the support of her child, even in instances in which the father has offered to pay for the abortion;

(d) That she has the right to review the printed materials described in section 28-327.01. The physician or his or her agent shall orally inform the woman that the materials have been provided by the Department of Health and Human Services and that they describe the unborn child and list agencies which offer alternatives to abortion. If the woman chooses to review the materials, they shall either be given to her at least twenty-four hours before the abortion or mailed to her at least seventy-two hours before the abortion by certified mail, restricted delivery to addressee, which means the postal employee can only deliver the mail to the addressee. The physician and his or her agent may disassociate themselves from the materials and may comment or refrain from commenting on them as they choose; and

(e) That she has the right to request a comprehensive list, compiled by the Department of Health and Human Services, of health care providers, facilities, and clinics that offer to have ultrasounds performed by a person at least as qualified as a registered nurse licensed under the Uniform Credentialing Act, including and specifying those that offer to perform such ultrasounds free of charge. The list shall be arranged geographically and shall include the name, address, hours of operation, and telephone number of each entity. If requested by the woman, the physician who is to perform the abortion, the referring physician, or his or her agent shall provide such a list as compiled by the department;

(3) If an ultrasound is used prior to the performance of an abortion, the physician who is to perform the abortion, the referring physician, or a physician assistant or registered nurse licensed under the Uniform Credentialing Act who is an agent of either physician, or any qualified agent of either physician, shall:

(a) Perform an ultrasound of the woman's unborn child of a quality consistent with standard medical practice in the community at least one hour prior to the performance of the abortion;

(b) Simultaneously display the ultrasound images so that the woman may choose to view the ultrasound images or not view the ultrasound images. The woman shall be informed that the ultrasound images will be displayed so that she is able to view them. Nothing in this subdivision shall be construed to require the woman to view the displayed ultrasound images; and

(c) If the woman requests information about the displayed ultrasound image, her questions shall be answered. If she requests a detailed, simultaneous, medical description of the ultrasound image, one shall be provided that includes the dimensions of the unborn child, the presence of cardiac activity, if present and viewable, and the presence of external members and internal organs, if present and viewable;

(4) At least one hour prior to the performance of an abortion, a physician, psychiatrist, psychologist, mental health practitioner, physician assistant, registered nurse, or social worker licensed under the Uniform Credentialing Act has:

(a) Evaluated the pregnant woman to identify if the pregnant woman had the perception of feeling pressured or coerced into seeking or consenting to an abortion;

(b) Evaluated the pregnant woman to identify the presence of any risk factors associated with abortion;

(c) Informed the pregnant woman and the physician who is to perform the abortion of the results of the evaluation in writing. The written evaluation shall include, at a minimum, a checklist identifying both the positive and negative results of the evaluation for each risk factor associated with abortion and both the licensed person's written certification and the woman's written certification that the pregnant woman was informed of the risk factors associated with abortion as discussed; and

(d) Retained a copy of the written evaluation results in the pregnant woman's permanent record;

(5) If any risk factors associated with abortion were identified, the pregnant woman was informed of the following in such manner and detail that a reasonable person would consider material to a decision of undergoing an elective medical procedure:

(a) Each complication associated with each identified risk factor; and

(b) Any quantifiable risk rates whenever such relevant data exists;

(6) The physician performing the abortion has formed a reasonable medical judgment, documented in the permanent record, that:

(a) The preponderance of statistically validated medical studies demonstrates that the physical, psychological, and familial risks associated with abortion for patients with risk factors similar to the patient's risk factors are negligible risks;

(b) Continuance of the pregnancy would involve risk of injury to the physical or mental health of the pregnant woman greater than if the pregnancy were terminated by induced abortion; or

(c) Continuance of the pregnancy would involve less risk of injury to the physical or mental health of the pregnant woman than if the pregnancy were terminated by an induced abortion;

(7) The woman certifies in writing, prior to the abortion, that:

(a) The information described in subdivisions (1) and (2)(a), (b), and (c) of this section has been furnished her;

(b) She has been informed of her right to review the information referred to in subdivision (2)(d) of this section; and

(c) The requirements of subdivision (3) of this section have been performed if an ultrasound is performed prior to the performance of the abortion; and

(8) Prior to the performance of the abortion, the physician who is to perform the abortion or his or her agent receives a copy of the written certification prescribed by subdivision (7) of this section. The physician or his or her agent

shall retain a copy of the signed certification form in the woman's medical record.

Source: Laws 1977, LB 38, § 42; Laws 1979, LB 316, § 2; Laws 1984, LB 695, § 2; Laws 1993, LB 110, § 2; Laws 1996, LB 1044, § 60; Laws 2009, LB675, § 2; Laws 2010, LB594, § 4.

Cross References

Uniform Credentialing Act, see section 38-101.

28-327.01 Department of Health and Human Services; printed materials; duties; availability; Internet web site information.

(1) The Department of Health and Human Services shall cause to be published the following easily comprehensible printed materials:

(a) Geographically indexed materials designed to inform the woman of public and private agencies and services available to assist a woman through pregnancy, upon childbirth, and while the child is dependent, including adoption agencies and agencies and services for prevention of unintended pregnancies, which materials shall include a comprehensive list of the agencies available, a description of the services they offer, and a description of the manner, including telephone numbers and addresses in which such agencies may be contacted or printed materials including a toll-free, twenty-four-hour-a-day telephone number which may be called to orally obtain such a list and description of agencies in the locality of the caller and of the services they offer;

(b) Materials designed to inform the woman of the probable anatomical and physiological characteristics of the unborn child at two-week gestational increments from the time when a woman can be known to be pregnant to full term, including pictures or drawings representing the development of unborn children at the two-week gestational increments, and any relevant information on the possibility of the unborn child's survival. Any such pictures or drawings shall contain the dimensions of the unborn child and shall be realistic and appropriate for the stage of pregnancy depicted. The materials shall be objective, nonjudgmental, and designed to convey only accurate scientific information about the unborn child at the various gestational ages. The materials shall also contain objective information describing the methods of abortion procedures commonly employed, the medical risks commonly associated with each such procedure, the possible detrimental psychological effects of abortion, the medical risks commonly associated with abortion, and the medical risks commonly associated with carrying a child to term; and

(c) A comprehensive list of health care providers, facilities, and clinics that offer to have ultrasounds performed by a person at least as qualified as a registered nurse licensed under the Uniform Credentialing Act, including and specifying those that offer to perform such ultrasounds free of charge. The list shall be arranged geographically and shall include the name, address, hours of operation, and telephone number of each entity.

(2) The printed materials shall be printed in a typeface large enough to be clearly legible.

(3) The printed materials required under this section shall be available from the department upon the request by any person, facility, or hospital for an amount equal to the cost incurred by the department to publish the materials.

(4) The Department of Health and Human Services shall make available on its Internet web site a printable publication of geographically indexed materials designed to inform the woman of public and private agencies with services available to assist a woman with mental health concerns, following a risk factor evaluation. Such services shall include, but not be limited to, outpatient and crisis intervention services and crisis hotlines. The materials shall include a comprehensive list of the agencies available, a description of the services offered, and a description of the manner in which such agencies may be contacted, including addresses and telephone numbers of such agencies, as well as a toll-free, twenty-four-hour-a-day telephone number to be provided by the department which may be called to orally obtain the names of the agencies and the services they provide in the locality of the woman. The department shall update the publication as necessary.

Source: Laws 1993, LB 110, § 3; Laws 1996, LB 1044, § 61; Laws 2009, LB675, § 3; Laws 2010, LB594, § 12.

Cross References

Uniform Credentialing Act, see section 38-101.

28-327.03 Civil liability; limitation.

No civil liability for failure to comply with subdivision (2)(d) of section 28-327 or that portion of subdivision (7) of such section requiring a written certification that the woman has been informed of her right to review the information referred to in subdivision (2)(d) of such section may be imposed unless the Department of Health and Human Services has published and made available the printed materials at the time the physician or his or her agent is required to inform the woman of her right to review them.

Source: Laws 1993, LB 110, § 5; Laws 1996, LB 1044, § 62; Laws 2009, LB675, § 4; Laws 2010, LB594, § 13.

28-327.04 Civil cause of action; authorized; evidence of professional negligence; attorney's fee.

Any person upon whom an abortion has been performed or attempted in violation of section 28-327 or the parent or guardian of a minor upon whom an abortion has been performed or attempted in violation of such section shall have a right to maintain a civil cause of action against the person who performed the abortion or attempted to perform the abortion. A violation of subdivision (1), (2), (3), (7), or (8) of section 28-327 shall be prima facie evidence of professional negligence. The written certifications prescribed by subdivisions (4) and (7) of section 28-327 signed by the person upon whom an abortion has been performed or attempted shall constitute and create a rebuttable presumption of full compliance with all provisions of section 28-327 in favor of the physician who performed or attempted to perform the abortion, the referring physician, or the agent of either physician. The written certification shall be admissible as evidence in the cause of action for professional negligence or in any criminal action. If judgment is rendered in favor of the plaintiff in any such action, the court shall also render judgment for a reasonable attorney's fee in favor of the plaintiff against the defendant.

Source: Laws 1993, LB 110, § 6; Laws 2009, LB675, § 5; Laws 2010, LB594, § 14.

28-327.06 Waiver of evaluations and notices; void and unenforceable.

Any waiver of the evaluations and notices provided for in subdivision (4) of section 28-327 is void and unenforceable.

Source: Laws 2010, LB594, § 5.

28-327.07 Damages.

In addition to whatever remedies are available under the common or statutory laws of this state, the intentional, knowing, or negligent failure to comply with the requirements of section 28-327 shall provide a basis for the following damages:

(1) The award of reasonable costs and attorney's fees; and

(2) A recovery for the pregnant woman for the wrongful death of her unborn child under section 30-809 upon proving by a preponderance of evidence that the physician knew or should have known that the pregnant woman's consent was either not fully informed or not fully voluntary pursuant to section 28-327.

Source: Laws 2010, LB594, § 6.

28-327.08 Action for civil remedies.

Any action for civil remedies based on a failure to comply with the requirements of section 28-327 shall be commenced in accordance with section 25-222 or 44-2828.

Source: Laws 2010, LB594, § 7.

28-327.09 Minor; burden of proof.

If a physician performed an abortion on a pregnant woman who is a minor without providing the information required in section 28-327 to the pregnant woman's parent or legal guardian, then the physician bears the burden of proving that the pregnant woman was capable of independently evaluating the information given to her.

Source: Laws 2010, LB594, § 8.

28-327.10 Time requirement.

Except in the case of an emergency situation, if a pregnant woman is provided with the information required by section 28-327 less than twenty-four hours before her scheduled abortion, the physician shall bear the burden of proving that the pregnant woman had sufficient reflection time, given her age, maturity, emotional state, and mental capacity, to comprehend and consider such information.

Source: Laws 2010, LB594, § 9.

28-327.11 Civil action; rebuttable presumption; noneconomic damages; expert witness; physician deemed transacting business; affirmative defense; additional remedies.

In a civil action involving section 28-327, the following shall apply:

(1) In determining the liability of the physician and the validity of the consent of a pregnant woman, the failure to comply with the requirements of section 28-327 shall create a rebuttable presumption that the pregnant woman would

not have undergone the recommended abortion had section 28-327 been complied with by the physician;

(2) The absence of physical injury shall not preclude an award of noneconomic damages including pain, suffering, inconvenience, mental suffering, emotional distress, psychological trauma, loss of society or companionship, loss of consortium, injury to reputation, or humiliation associated with the abortion;

(3) The fact that a physician does not perform elective abortions or has not performed elective abortions in the past shall not automatically disqualify such physician from being an expert witness. A licensed obstetrician or family practitioner who regularly assists pregnant women in resolving medical matters related to pregnancy may be qualified to testify as an expert on the screening, counseling, management, and treatment of pregnancies;

(4) Any physician advertising services in this state shall be deemed to be transacting business in this state pursuant to section 25-536 and shall be subject to the provisions of section 28-327;

(5) It shall be an affirmative defense to an allegation of inadequate disclosure under the requirements of section 28-327 that the defendant omitted the contested information because statistically validated surveys of the general population of women of reproductive age, conducted within the three years before or after the contested abortion, demonstrate that less than five percent of women would consider the contested information to be relevant to an abortion decision; and

(6) In addition to the other remedies available under the common or statutory law of this state, a woman or her survivors shall have a cause of action for reckless endangerment against any person, other than a physician or pharmacist licensed under the Uniform Credentialing Act, who attempts or completes an abortion on the pregnant woman or aids or abets the commission of a self-induced abortion. Proof of injury shall not be required to recover an award, including reasonable costs and attorney's fees, for wrongful death under this subdivision.

Source: Laws 2010, LB594, § 10.

Cross References

Uniform Credentialing Act, see section 38-101.

28-327.12 Statute of limitations; tolled; section, how construed; violations; how treated.

(1) In the event that any portion of section 28-327 is enjoined and subsequently upheld, the statute of limitations for filing a civil suit under section 28-327 shall be tolled during the period for which the injunction is pending and for two years thereafter.

(2) Nothing in section 28-327 shall be construed as defining a standard of care for any medical procedure other than an induced abortion.

(3) A violation of subdivision (4), (5), or (6) of section 28-327 shall not provide grounds for any criminal action or disciplinary action against or revocation of a license to practice medicine and surgery pursuant to the Uniform Credentialing Act.

Source: Laws 2010, LB594, § 11.

Cross References

Uniform Credentialing Act, see section 38-101.

28-335 Abortion by other than licensed physician; penalty; physical presence; violation; penalty.

(1) The performing of an abortion by any person other than a licensed physician is a Class IV felony.

(2) No abortion shall be performed, induced, or attempted unless the physician who uses or prescribes any instrument, device, medicine, drug, or other substance to perform, induce, or attempt the abortion is physically present in the same room with the patient when the physician performs, induces, or attempts to perform or induce the abortion. Any person who knowingly or recklessly violates this subsection shall be guilty of a Class IV felony. No civil or criminal penalty shall be assessed against the patient upon whom the abortion is performed, induced, or attempted to be performed or induced.

Source: Laws 1977, LB 38, § 50; Laws 2011, LB521, § 1.

28-340 Discrimination against person refusing to participate in an abortion; damages.

Any person whose employment or position has been in any way altered, impaired, or terminated in violation of sections 28-325 to 28-345 may sue in the district court for all consequential damages, lost wages, reasonable attorney's fees incurred, and the cost of litigation.

Source: Laws 1977, LB 38, § 55; Laws 1997, LB 23, § 4; Laws 2010, LB594, § 15.

(b) ADULT PROTECTIVE SERVICES ACT

28-348 Act, how cited.

Sections 28-348 to 28-387 shall be known and may be cited as the Adult Protective Services Act.

Source: Laws 1988, LB 463, § 1; Laws 2012, LB1051, § 1.

28-349 Legislative intent.

The Legislature recognizes the need for the investigation and provision of services to certain persons who are substantially impaired and are unable to protect themselves from abuse, neglect, or exploitation. Often such persons cannot find others able or willing to render assistance. The Legislature intends through the Adult Protective Services Act to establish a program designed to fill this need and to assure the availability of the program to all eligible persons. It is also the intent of the Legislature to authorize the least restriction possible on the exercise of personal and civil rights consistent with the person's need for services.

Source: Laws 1988, LB 463, § 2; Laws 2012, LB1051, § 2.

28-350 Definitions, where found.

For purposes of the Adult Protective Services Act, unless the context otherwise requires, the definitions found in sections 28-351 to 28-371 shall be used.

Source: Laws 1988, LB 463, § 3; Laws 2012, LB1051, § 3.

28-351 Abuse, defined.

Abuse means any knowing or intentional act on the part of a caregiver or any other person which results in physical injury, unreasonable confinement, cruel punishment, sexual abuse, or sexual exploitation of a vulnerable adult.

Source: Laws 1988, LB 463, § 4; Laws 2012, LB1051, § 4.

28-352 Adult protective services, defined.

Adult protective services means those services provided by the department for the prevention, correction, or discontinuance of abuse, neglect, or exploitation. Such services shall be those necessary and appropriate under the circumstances to protect an abused, neglected, or exploited vulnerable adult, ensure that the least restrictive alternative is provided, prevent further abuse, neglect, or exploitation, and promote self-care and independent living. Such services shall include, but not be limited to: (1) Receiving and investigating reports of alleged abuse, neglect, or exploitation; (2) developing social service plans; (3) arranging for the provision of services such as medical care, mental health care, legal services, fiscal management, housing, or home health care; (4) arranging for the provision of items such as food, clothing, or shelter; and (5) arranging or coordinating services for caregivers.

Source: Laws 1988, LB 463, § 5; Laws 2012, LB1051, § 5.

28-355 Transferred to section 28-361.01.**28-358 Exploitation, defined.**

Exploitation means the taking of property of a vulnerable adult by any person by means of undue influence, breach of a fiduciary relationship, deception, or extortion or by any unlawful means.

Source: Laws 1988, LB 463, § 11; Laws 2012, LB1051, § 6.

28-361.01 Neglect, defined.

Neglect means any knowing or intentional act or omission on the part of a caregiver to provide essential services or the failure of a vulnerable adult, due to physical or mental impairments, to perform self-care or obtain essential services to such an extent that there is actual physical injury to a vulnerable adult or imminent danger of the vulnerable adult suffering physical injury or death.

Source: Laws 1988, LB 463, § 8; R.S.1943, (2008), § 28-355; Laws 2012, LB1051, § 7.

28-367.01 Sexual exploitation, defined.

Sexual exploitation includes, but is not limited to, a violation of section 28-311.08 and causing, allowing, permitting, inflicting, or encouraging a vulnerable adult to engage in voyeurism, in exhibitionism, in prostitution, or in the lewd, obscene, or pornographic photographing, filming, or depiction of the vulnerable adult.

Source: Laws 2012, LB1051, § 8; Laws 2014, LB998, § 3.
Effective date April 10, 2014.

28-370 Unreasonable confinement, defined.

Unreasonable confinement means confinement which intentionally causes physical injury to a vulnerable adult or false imprisonment as described in section 28-314 or 28-315.

Source: Laws 1988, LB 463, § 23; Laws 2012, LB1051, § 9.

28-372 Report of abuse, neglect, or exploitation; required; contents; notification; toll-free number established.

(1) When any physician, psychologist, physician assistant, nurse, nursing assistant, other medical, developmental disability, or mental health professional, law enforcement personnel, caregiver or employee of a caregiver, operator or employee of a sheltered workshop, owner, operator, or employee of any facility licensed by the department, or human services professional or paraprofessional not including a member of the clergy has reasonable cause to believe that a vulnerable adult has been subjected to abuse, neglect, or exploitation or observes such adult being subjected to conditions or circumstances which reasonably would result in abuse, neglect, or exploitation, he or she shall report the incident or cause a report to be made to the appropriate law enforcement agency or to the department. Any other person may report abuse, neglect, or exploitation if such person has reasonable cause to believe that a vulnerable adult has been subjected to abuse, neglect, or exploitation or observes such adult being subjected to conditions or circumstances which reasonably would result in abuse, neglect, or exploitation.

(2) Such report may be made by telephone, with the caller giving his or her name and address, and, if requested by the department, shall be followed by a written report within forty-eight hours. To the extent available the report shall contain: (a) The name, address, and age of the vulnerable adult; (b) the address of the caregiver or caregivers of the vulnerable adult; (c) the nature and extent of the alleged abuse, neglect, or exploitation or the conditions and circumstances which would reasonably be expected to result in such abuse, neglect, or exploitation; (d) any evidence of previous abuse, neglect, or exploitation, including the nature and extent of the abuse, neglect, or exploitation; and (e) any other information which in the opinion of the person making the report may be helpful in establishing the cause of the alleged abuse, neglect, or exploitation and the identity of the perpetrator or perpetrators.

(3) Any law enforcement agency receiving a report of abuse, neglect, or exploitation shall notify the department no later than the next working day by telephone or mail.

(4) A report of abuse, neglect, or exploitation made to the department which was not previously made to or by a law enforcement agency shall be communicated to the appropriate law enforcement agency by the department no later than the next working day by telephone or mail.

(5) The department shall establish a statewide toll-free number to be used by any person any hour of the day or night and any day of the week to make reports of abuse, neglect, or exploitation.

Source: Laws 1988, LB 463, § 25; Laws 1996, LB 1044, § 66; Laws 2006, LB 994, § 52; Laws 2007, LB296, § 32; Laws 2012, LB1051, § 10.

28-373 Report of abuse, neglect, or exploitation; law enforcement agency; duties.

(1) Upon the receipt of a report concerning abuse, neglect, or exploitation pursuant to section 28-372, it shall be the duty of the law enforcement agency (a) to make an investigation if deemed warranted because of alleged violations of section 28-386, (b) to take immediate steps, if necessary, to protect the vulnerable adult, and (c) to institute legal proceedings if appropriate. The law enforcement agency shall notify the department if an investigation is undertaken. Such notification shall be made no later than the next working day following receipt of the report.

(2) The law enforcement agency shall make a written report or a case summary to the department of all investigated cases of abuse, neglect, or exploitation and action taken with respect to all such cases.

Source: Laws 1988, LB 463, § 26; Laws 2012, LB1051, § 11.

28-374 Alleged abuse, neglect, or exploitation; department; duties.

(1) The department shall investigate each case of alleged abuse, neglect, or exploitation and shall provide such adult protective services as are necessary and appropriate under the circumstances.

(2) In each case of alleged abuse, neglect, or exploitation, the department may make a request for further assistance from the appropriate law enforcement agency or initiate such action as may be appropriate under the circumstances.

(3) The department shall make a written report or case summary to the appropriate law enforcement agency and to the registry of all reported cases of abuse, neglect, or exploitation and action taken.

(4) The department shall deliver a written report or case summary to the appropriate county attorney if the investigation indicates a reasonable cause to believe that a violation of section 28-386 has occurred.

Source: Laws 1988, LB 463, § 27; Laws 2012, LB1051, § 12.

28-374.01 Alleged abuse, neglect, or exploitation; completion of investigation; decision regarding entry into registry; notice; contents; right to amend or expunge information.

(1) Upon completion of the investigation pursuant to sections 28-373 and 28-374, the person who allegedly abused, neglected, or exploited a vulnerable adult shall be given written notice of the determination of the investigation and whether the person who allegedly abused, neglected, or exploited a vulnerable adult will be entered into the registry.

(2) If the person who allegedly abused, neglected, or exploited a vulnerable adult will be entered into the registry, the notice shall be sent by certified mail with return receipt requested or first-class mail to the last-known address of the person who allegedly abused, neglected, or exploited a vulnerable adult and shall include:

(a) The nature of the report;

(b) The classification of the report; and

(c) The right of the person who allegedly abused, neglected, or exploited a vulnerable adult to request the department to amend or expunge identifying information from the report or to remove the substantiated report from the registry in accordance with section 28-380.

(3) If the person who allegedly abused, neglected, or exploited a vulnerable adult will not be entered into the registry, the notice shall be sent by first-class mail and shall include:

- (a) The nature of the report; and
- (b) The classification of the report.

Source: Laws 2012, LB1051, § 13.

28-376 Adult Protective Services Central Registry; established; access; name-change order; treatment.

(1) The department shall establish and maintain an Adult Protective Services Central Registry which shall contain any substantiated report regarding a person who has allegedly abused, neglected, or exploited a vulnerable adult.

(2) Upon request, a vulnerable adult who is the subject of a report or, if the vulnerable adult is legally incapacitated, the guardian or guardian ad litem of the vulnerable adult and the person who has allegedly abused, neglected, or exploited the vulnerable adult shall be entitled to receive a copy of all information contained in the registry pertaining to such report. The department shall not release data that would be harmful or detrimental to the vulnerable adult or that would identify or locate a person who, in good faith, made a report or cooperated in a subsequent investigation unless ordered to do so by a court of competent jurisdiction.

(3) The department shall establish classifications for all cases in the registry.

(4) The department shall determine whether a name-change order received from the clerk of a district court pursuant to section 25-21,271 is for a person on the Adult Protective Services Central Registry and, if so, shall include the changed name with the former name in the registry and file or cross-reference the information under both names.

Source: Laws 1988, LB 463, § 29; Laws 2010, LB147, § 2; Laws 2012, LB1051, § 14.

28-386 Knowing and intentional abuse, neglect, or exploitation of a vulnerable adult; penalty.

(1) A person commits knowing and intentional abuse, neglect, or exploitation of a vulnerable adult if he or she through a knowing and intentional act causes or permits a vulnerable adult to be:

- (a) Physically injured;
- (b) Unreasonably confined;
- (c) Sexually abused;
- (d) Exploited;
- (e) Cruelly punished;
- (f) Neglected; or
- (g) Sexually exploited.

(2) Knowing and intentional abuse, neglect, or exploitation of a vulnerable adult is a Class IIIA felony.

Source: Laws 1988, LB 463, § 39; Laws 1997, LB 364, § 7; Laws 2012, LB1051, § 15.

Cross References

Registration of sex offenders, see sections 29-4001 to 29-4014.

28-387 Short-term protective services; temporary placement; authorized; when; procedure.

(1) A county court may issue an ex parte order authorizing the provision of short-term involuntary adult protective services or temporary placement for a vulnerable adult for up to forty-eight hours, excluding nonjudicial days, pending the hearing for a need for continuing services, after finding on the record that:

- (a) The person is a vulnerable adult;
- (b) An emergency exists; and
- (c) There are compelling reasons for ordering protective services or temporary placement.

(2) An ex parte order shall be issued only if other protective custody services are unavailable or other services provide insufficient protection.

(3) The department shall contact the appropriate county attorney to file an application for short-term involuntary adult protective services or temporary placement if an investigation indicates probable cause to believe that an emergency exists for a vulnerable adult. The department shall not be given legal custody nor be made guardian of such vulnerable adult. A vulnerable adult shall be responsible for the costs of services provided either through his or her own income or other programs for which he or she may be eligible.

(4) A law enforcement officer accompanied by a representative of the department may enter the premises where the vulnerable adult is located after obtaining the court order and announcing his or her authority and purpose. Forcible entry may be made only after the court order has been obtained unless there is probable cause to believe that the delay of such entry would cause the vulnerable adult to be in imminent danger of life-threatening physical injury or neglect.

(5) When, from the personal observations of a representative of the department and a law enforcement officer, it appears probable that the vulnerable adult is likely to be in imminent danger of life-threatening physical injury or neglect if he or she is not immediately removed from the premises, the law enforcement agency shall, when authorized by the court order, take into custody and transport the vulnerable adult to an appropriate medical or protective placement facility.

(6) When action is taken under this section, a hearing shall be held within forty-eight hours of the signing of the court order, excluding nonjudicial days, to establish probable cause for short-term involuntary adult protective services or for protective placement. Unless the vulnerable adult has counsel of his or her own choice or has indicated a desire for an attorney of his or her own choice, the court shall appoint an attorney to represent him or her in the proceeding, who shall have the powers and duties of a guardian ad litem.

(7) Notice of the hearing shall be served personally on the vulnerable adult. Waiver of notice by the vulnerable adult shall not be effective unless he or she attends the hearing or such notice is waived by the guardian ad litem. Notice of the hearing shall be given to the following parties whose whereabouts can be

readily ascertained: (a) The spouse of the vulnerable adult; (b) children of the vulnerable adult; and (c) any other party specified by the court.

(8) A judgment authorizing continuance of short-term involuntary adult protective services shall prescribe those specific adult protective services which are to be provided, the duration of the services which shall not exceed sixty days, and the person or persons who are authorized or ordered to provide them.

Source: Laws 1988, LB 463, § 40; Laws 2012, LB1051, § 16.

(c) HOMICIDE OF THE UNBORN CHILD ACT

28-394 Motor vehicle homicide of an unborn child; penalty.

(1) A person who causes the death of an unborn child unintentionally while engaged in the operation of a motor vehicle in violation of the law of the State of Nebraska or in violation of any city or village ordinance commits motor vehicle homicide of an unborn child.

(2) Except as provided in subsection (3) of this section, motor vehicle homicide of an unborn child is a Class I misdemeanor.

(3)(a) If the proximate cause of the death of an unborn child is the operation of a motor vehicle in violation of section 60-6,213 or 60-6,214, motor vehicle homicide of an unborn child is a Class IV felony.

(b) Except as provided in subdivision (3)(c) of this section, if the proximate cause of the death of an unborn child is the operation of a motor vehicle in violation of section 60-6,196 or 60-6,197.06, motor vehicle homicide of an unborn child is a Class IV 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 after the date ordered by the court and shall order that the operator's license of such person be revoked for the same period. The revocation shall not run concurrently with any jail term imposed.

(c) If the proximate cause of the death of an unborn child is the operation of a motor vehicle in violation of section 60-6,196 or 60-6,197.06 and the defendant has a prior conviction for a violation of section 60-6,196 or a city or village ordinance enacted in conformance with section 60-6,196, motor vehicle homicide of an unborn child is a Class III 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 after the date ordered by the court and shall order that the operator's license of such person be revoked for the same period. The revocation shall not run concurrently with any jail term imposed.

(4) The crime punishable under this section shall be treated as a separate and distinct offense from any other offense arising out of acts alleged to have been committed while the person was in violation of this section.

Source: Laws 2002, LB 824, § 8; Laws 2004, LB 208, § 2; Laws 2011, LB667, § 4.

(e) PAIN-CAPABLE UNBORN CHILD PROTECTION ACT

28-3,102 Act, how cited.

Sections 28-3,102 to 28-3,111 shall be known and may be cited as the Pain-Capable Unborn Child Protection Act.

Source: Laws 2010, LB1103, § 1.

28-3,103 Terms, defined.

For purposes of the Pain-Capable Unborn Child Protection Act:

(1) Abortion means the use or prescription of any instrument, medicine, drug, or other substance or device to terminate the pregnancy of a woman known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead unborn child who died as the result of natural causes in utero, accidental trauma, or a criminal assault on the pregnant woman or her unborn child, and which causes the premature termination of the pregnancy;

(2) Attempt to perform or induce an abortion means an act, or an omission of a statutorily required act, that, under the circumstances as the actor believes them to be, constitutes a substantial step in a course of conduct planned to culminate in the performance or induction of an abortion in this state in violation of the Pain-Capable Unborn Child Protection Act;

(3) Fertilization means the fusion of a human spermatozoon with a human ovum;

(4) Medical emergency means a condition which, in reasonable medical judgment, so complicates the medical condition of the pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create a serious risk of substantial and irreversible physical impairment of a major bodily function. No condition shall be deemed a medical emergency if based on a claim or diagnosis that the woman will engage in conduct which would result in her death or in substantial and irreversible physical impairment of a major bodily function;

(5) Postfertilization age means the age of the unborn child as calculated from the fertilization of the human ovum;

(6) Reasonable medical judgment means a medical judgment that would be made by a reasonably prudent physician, knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved;

(7) Physician means any person licensed to practice medicine and surgery or osteopathic medicine under the Uniform Credentialing Act;

(8) Probable postfertilization age of the unborn child means what, in reasonable medical judgment, will with reasonable probability be the postfertilization age of the unborn child at the time the abortion is planned to be performed;

(9) Unborn child or fetus each mean an individual organism of the species homo sapiens from fertilization until live birth; and

(10) Woman means a female human being whether or not she has reached the age of majority.

Source: Laws 2010, LB1103, § 2.

Cross References

Uniform Credentialing Act, see section 38-101.

28-3,104 Legislative findings.

The Legislature makes the following findings:

(1) At least by twenty weeks after fertilization there is substantial evidence that an unborn child has the physical structures necessary to experience pain;

(2) There is substantial evidence that, by twenty weeks after fertilization, unborn children seek to evade certain stimuli in a manner which in an infant or an adult would be interpreted as a response to pain;

(3) Anesthesia is routinely administered to unborn children who have developed twenty weeks or more past fertilization who undergo prenatal surgery;

(4) Even before twenty weeks after fertilization, unborn children have been observed to exhibit hormonal stress responses to painful stimuli. Such responses were reduced when pain medication was administered directly to such unborn children; and

(5) It is the purpose of the State of Nebraska to assert a compelling state interest in protecting the lives of unborn children from the stage at which substantial medical evidence indicates that they are capable of feeling pain.

Source: Laws 2010, LB1103, § 3.

28-3,105 Determination of probable postfertilization age of unborn child; physician; duties.

(1) Except in the case of a medical emergency which prevents compliance with this section, no abortion shall be performed or induced or be attempted to be performed or induced unless the physician performing or inducing it has first made a determination of the probable postfertilization age of the unborn child or relied upon such a determination made by another physician. In making such a determination, a physician shall make such inquiries of the woman and perform or cause to be performed such medical examinations and tests as a reasonably prudent physician, knowledgeable about the case and the medical conditions involved, would consider necessary to perform in making an accurate diagnosis with respect to postfertilization age.

(2) Failure by any physician to conform to any requirement of this section constitutes unprofessional conduct pursuant to section 38-2021.

Source: Laws 2010, LB1103, § 4.

28-3,106 Abortion; performance; restrictions.

No person shall perform or induce or attempt to perform or induce an abortion upon a woman when it has been determined, by the physician performing or inducing the abortion or by another physician upon whose determination that physician relies, that the probable postfertilization age of the woman's unborn child is twenty or more weeks unless, in reasonable medical judgment (1) she has a condition which so complicates her medical condition as to necessitate the abortion of her pregnancy to avert her death or to avert serious risk of substantial and irreversible physical impairment of a major bodily function or (2) it is necessary to preserve the life of an unborn child. No such condition shall be deemed to exist if it is based on a claim or diagnosis that the woman will engage in conduct which would result in her death or in substantial and irreversible physical impairment of a major bodily function. In such a case, the physician shall terminate the pregnancy in the manner which, in reasonable medical judgment, provides the best opportunity for the unborn child to survive, unless, in reasonable medical judgment, termination of the

pregnancy in that manner would pose a greater risk either of the death of the pregnant woman or of the substantial and irreversible physical impairment of a major bodily function of the woman than would another available method. No such greater risk shall be deemed to exist if it is based on a claim or diagnosis that the woman will engage in conduct which would result in her death or in substantial and irreversible physical impairment of a major bodily function.

Source: Laws 2010, LB1103, § 5.

28-3,107 Report to Department of Health and Human Services; contents; department; issue public report; failure to file report; late fee; prohibited acts; penalty.

(1) Any physician who performs or induces or attempts to perform or induce an abortion shall report to the Department of Health and Human Services, on a schedule and in accordance with forms and rules and regulations adopted and promulgated by the department:

(a) If a determination of probable postfertilization age was made, the probable postfertilization age determined and the method and basis of the determination;

(b) If a determination of probable postfertilization age was not made, the basis of the determination that a medical emergency existed;

(c) If the probable postfertilization age was determined to be twenty or more weeks, the basis of the determination that the pregnant woman had a condition which so complicated her medical condition as to necessitate the abortion of her pregnancy to avert her death or to avert serious risk of substantial and irreversible physical impairment of a major bodily function, or the basis of the determination that it was necessary to preserve the life of an unborn child; and

(d) The method used for the abortion and, in the case of an abortion performed when the probable postfertilization age was determined to be twenty or more weeks, whether the method of abortion used was one that, in reasonable medical judgment, provided the best opportunity for the unborn child to survive or, if such a method was not used, the basis of the determination that termination of the pregnancy in that manner would pose a greater risk either of the death of the pregnant woman or of the substantial and irreversible physical impairment of a major bodily function of the woman than would other available methods.

(2) By June 30 of each year, the department shall issue a public report providing statistics for the previous calendar year compiled from all of the reports covering that year submitted in accordance with this section for each of the items listed in subsection (1) of this section. Each such report shall also provide the statistics for all previous calendar years during which this section was in effect, adjusted to reflect any additional information from late or corrected reports. The department shall take care to ensure that none of the information included in the public reports could reasonably lead to the identification of any pregnant woman upon whom an abortion was performed.

(3) Any physician who fails to submit a report by the end of thirty days following the due date shall be subject to a late fee of five hundred dollars for each additional thirty-day period or portion of a thirty-day period the report is overdue. Any physician required to report in accordance with the Pain-Capable Unborn Child Protection Act who has not submitted a report, or has submitted

only an incomplete report, more than one year following the due date, may, in an action brought in the manner in which actions are brought to enforce the Uniform Credentialing Act pursuant to section 38-1,139, be directed by a court of competent jurisdiction to submit a complete report within a time period stated by court order or be subject to civil contempt. Failure by any physician to conform to any requirement of this section, other than late filing of a report, constitutes unprofessional conduct pursuant to section 38-2021. Failure by any physician to submit a complete report in accordance with a court order constitutes unprofessional conduct pursuant to section 38-2021. Intentional or reckless falsification of any report required under this section is a Class V misdemeanor.

(4) Within ninety days after October 15, 2010, the department shall adopt and promulgate rules and regulations to assist in compliance with this section.

Source: Laws 2010, LB1103, § 6.

Cross References

Uniform Credentialing Act, see section 38-101.

28-3,108 Prohibited abortion; penalty.

Any person who intentionally or recklessly performs or attempts to perform an abortion in violation of section 28-3,106 is guilty of a Class IV felony. No penalty shall be assessed against the woman upon whom the abortion is performed or attempted to be performed.

Source: Laws 2010, LB1103, § 7.

28-3,109 Action for damages; action for injunctive relief; attorney's fees.

(1) Any woman upon whom an abortion has been performed in violation of the Pain-Capable Unborn Child Protection Act or the father of the unborn child who was the subject of such an abortion may maintain an action against the person who performed the abortion in an intentional or a reckless violation of the Pain-Capable Unborn Child Protection Act for actual damages. Any woman upon whom an abortion has been attempted in violation of the Pain-Capable Unborn Child Protection Act may maintain an action against the person who attempted to perform the abortion in an intentional or a reckless violation of the Pain-Capable Unborn Child Protection Act for actual damages.

(2) A cause of action for injunctive relief against any person who has intentionally violated the Pain-Capable Unborn Child Protection Act may be maintained by the woman upon whom an abortion was performed or attempted to be performed in violation of the Pain-Capable Unborn Child Protection Act, by any person who is the spouse, parent, sibling, or guardian of, or a current or former licensed health care provider of, the woman upon whom an abortion has been performed or attempted to be performed in violation of the Pain-Capable Unborn Child Protection Act, by a county attorney with appropriate jurisdiction, or by the Attorney General. The injunction shall prevent the abortion provider from performing further abortions in violation of the Pain-Capable Unborn Child Protection Act in this state.

(3) If judgment is rendered in favor of the plaintiff in an action described in this section, the court shall also render judgment for reasonable attorney's fees in favor of the plaintiff against the defendant.

(4) If judgment is rendered in favor of the defendant and the court finds that the plaintiff's suit was frivolous and brought in bad faith, the court shall also render judgment for reasonable attorney's fees in favor of the defendant against the plaintiff.

(5) No damages or attorney's fees may be assessed against the woman upon whom an abortion was performed or attempted to be performed except as provided in subsection (4) of this section.

Source: Laws 2010, LB1103, § 8.

28-3,110 Anonymity; court orders authorized.

In every civil or criminal proceeding or action brought under the Pain-Capable Unborn Child Protection Act, the court shall rule whether the anonymity of any woman upon whom an abortion has been performed or attempted shall be preserved from public disclosure if she does not give her consent to such disclosure. The court, upon motion or sua sponte, shall make such a ruling and, upon determining that her anonymity should be preserved, shall issue orders to the parties, witnesses, and counsel and shall direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to safeguard her identity from public disclosure. Each such order shall be accompanied by specific written findings explaining why the anonymity of the woman should be preserved from public disclosure, why the order is essential to that end, how the order is narrowly tailored to serve that interest, and why no reasonable less restrictive alternative exists. In the absence of written consent of the woman upon whom an abortion has been performed or attempted, anyone, other than a public official, who brings an action under section 28-3,109 shall do so under a pseudonym. This section shall not be construed to conceal the identity of the plaintiff or of witnesses from the defendant or from attorneys for the defendant.

Source: Laws 2010, LB1103, § 9.

28-3,111 Severability.

If any one or more provisions, sections, subsections, sentences, clauses, phrases, or words of the Pain-Capable Unborn Child Protection Act or the application thereof to any person or circumstance is found to be unconstitutional, the same is hereby declared to be severable and the balance of the Pain-Capable Unborn Child Protection Act shall remain effective notwithstanding such unconstitutionality. The Legislature hereby declares that it would have passed the Pain-Capable Unborn Child Protection Act, and each provision, section, subsection, sentence, clause, phrase, or word thereof, irrespective of the fact that any one or more provisions, sections, subsections, sentences, clauses, phrases, or words of the Pain-Capable Unborn Child Protection Act, or the application of the Pain-Capable Unborn Child Protection Act, would be declared unconstitutional.

Source: Laws 2010, LB1103, § 10.

ARTICLE 4

DRUGS AND NARCOTICS

Section

28-401. Terms, defined.

28-401.01. Act, how cited.

- Section
- 28-405. Controlled substances; schedules; enumerated.
- 28-407. Registration required; exceptions.
- 28-413. Distribution to another registrant; manner.
- 28-414. Controlled substance; Schedule II; prescription; contents.
- 28-414.01. Controlled substance; Schedule III, IV, or V; prescription; contents.
- 28-414.02. Prescription created, signed, transmitted, and received electronically; records.
- 28-414.03. Controlled substances; maintenance of records; label.
- 28-414.04. Controlled substance; transfer.
- 28-414.05. Controlled substance; destruction; records.
- 28-414.06. Controlled substance; practitioner; provide information; limit on liability or penalty.
- 28-414.07. Controlled substances; chemical analysis; admissible as evidence in preliminary hearing.
- 28-415. Narcotic drugs; label; requirements.
- 28-416. Prohibited acts; violations; penalties.
- 28-418. Intentional violations; penalty.
- 28-421. Act, exceptions.
- 28-429. Division of Drug Control; established; personnel; powers and duties; Nebraska State Patrol Drug Control and Education Cash Fund; created; use; investment; report; contents.
- 28-435.01. Health care facility; peer review organization or professional association; report required; contents; confidentiality; immunity; failure to report; civil penalty; disposition.
- 28-445. Imitation controlled substance; prohibited acts; determination; penalties; seizure.
- 28-448. Repealed. Laws 2009, LB 151, § 5.
- 28-454. Repealed. Laws 2009, LB 151, § 5.
- 28-456. Phenylpropanolamine or pseudoephedrine; sold without a prescription; requirements; enforcement.
- 28-456.01. Pseudoephedrine or phenylpropanolamine; limitation on acquisition; violation; penalty.
- 28-458. Methamphetamine precursor; terms, defined.
- 28-459. Methamphetamine precursor; seller; duties; waiver authorized.
- 28-460. Methamphetamine precursor; access to exchange to law enforcement.
- 28-461. Methamphetamine precursor; seller; immunity.
- 28-462. Methamphetamine precursor; prohibited acts; penalty.

28-401 Terms, defined.

As used in the Uniform Controlled Substances Act, unless the context otherwise requires:

(1) Administer means to directly apply a controlled substance by injection, inhalation, ingestion, or any other means to the body of a patient or research subject;

(2) Agent means an authorized person who acts on behalf of or at the direction of another person but does not include a common or contract carrier, public warehouse keeper, or employee of a carrier or warehouse keeper;

(3) Administration means the Drug Enforcement Administration of the United States Department of Justice;

(4) Controlled substance means a drug, biological, substance, or immediate precursor in Schedules I to V of section 28-405. Controlled substance does not include distilled spirits, wine, malt beverages, tobacco, or any nonnarcotic substance if such substance may, under the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301 et seq., as such act existed on January 1, 2014, and the law of this state, be lawfully sold over the counter without a prescription;

(5) Counterfeit substance means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person or persons who in fact manufactured, distributed, or dispensed such substance and which thereby falsely purports or is represented to be the product of, or to have been distributed by, such other manufacturer, distributor, or dispenser;

(6) Department means the Department of Health and Human Services;

(7) Division of Drug Control means the personnel of the Nebraska State Patrol who are assigned to enforce the Uniform Controlled Substances Act;

(8) Dispense means to deliver a controlled substance to an ultimate user or a research subject pursuant to a medical order issued by a practitioner authorized to prescribe, including the packaging, labeling, or compounding necessary to prepare the controlled substance for such delivery;

(9) Distribute means to deliver other than by administering or dispensing a controlled substance;

(10) Prescribe means to issue a medical order;

(11) Drug means (a) articles recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, official National Formulary, or any supplement to any of them, (b) substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in human beings or animals, and (c) substances intended for use as a component of any article specified in subdivision (a) or (b) of this subdivision, but does not include devices or their components, parts, or accessories;

(12) Deliver or delivery means the actual, constructive, or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship;

(13) Marijuana means all parts of the plant of the genus *cannabis*, whether growing or not, the seeds thereof, and every compound, manufacture, salt, derivative, mixture, or preparation of such plant or its seeds, but does not include the mature stalks of such plant, hashish, tetrahydrocannabinols extracted or isolated from the plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks, or the sterilized seed of such plant which is incapable of germination. When the weight of marijuana is referred to in the Uniform Controlled Substances Act, it means its weight at or about the time it is seized or otherwise comes into the possession of law enforcement authorities, whether cured or uncured at that time. When industrial hemp as defined in section 2-5701 is in the possession of a person as authorized under section 2-5701, it is not considered marijuana for purposes of the Uniform Controlled Substances Act;

(14) Manufacture means the production, preparation, propagation, conversion, or processing of a controlled substance, either directly or indirectly, by extraction from substances of natural origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container. Manufacture does not include the preparation or compounding of a controlled substance by an individual for his or her own use, except for the preparation or compounding of components or ingredients used

for or intended to be used for the manufacture of methamphetamine, or the preparation, compounding, conversion, packaging, or labeling of a controlled substance: (a) By a practitioner as an incident to his or her prescribing, administering, or dispensing of a controlled substance in the course of his or her professional practice; or (b) by a practitioner, or by his or her authorized agent under his or her supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale;

(15) Narcotic drug means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis: (a) Opium, opium poppy and poppy straw, coca leaves, and opiates; (b) a compound, manufacture, salt, derivative, or preparation of opium, coca leaves, or opiates; or (c) a substance and any compound, manufacture, salt, derivative, or preparation thereof which is chemically equivalent to or identical with any of the substances referred to in subdivisions (a) and (b) of this subdivision, except that the words narcotic drug as used in the Uniform Controlled Substances Act does not include decocainized coca leaves or extracts of coca leaves, which extracts do not contain cocaine or ecgonine, or isoquinoline alkaloids of opium;

(16) Opiate means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having such addiction-forming or addiction-sustaining liability. Opiate does not include the dextrorotatory isomer of 3-methoxy-n methylmorphinan and its salts. Opiate includes its racemic and levorotatory forms;

(17) Opium poppy means the plant of the species *Papaver somniferum* L., except the seeds thereof;

(18) Poppy straw means all parts, except the seeds, of the opium poppy after mowing;

(19) Person means any corporation, association, partnership, limited liability company, or one or more persons;

(20) Practitioner means a physician, a physician assistant, a dentist, a veterinarian, a pharmacist, a podiatrist, an optometrist, a certified nurse midwife, a certified registered nurse anesthetist, a nurse practitioner, a scientific investigator, a pharmacy, a hospital, or any other person licensed, registered, or otherwise permitted to distribute, dispense, prescribe, conduct research with respect to, or administer a controlled substance in the course of practice or research in this state, including an emergency medical service as defined in section 38-1207;

(21) Production includes the manufacture, planting, cultivation, or harvesting of a controlled substance;

(22) Immediate precursor means a substance which is the principal compound commonly used or produced primarily for use and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit such manufacture;

(23) State means the State of Nebraska;

(24) Ultimate user means a person who lawfully possesses a controlled substance for his or her own use, for the use of a member of his or her

household, or for administration to an animal owned by him or her or by a member of his or her household;

(25) Hospital has the same meaning as in section 71-419;

(26) Cooperating individual means any person, other than a commissioned law enforcement officer, who acts on behalf of, at the request of, or as agent for a law enforcement agency for the purpose of gathering or obtaining evidence of offenses punishable under the Uniform Controlled Substances Act;

(27) Hashish or concentrated cannabis means (a) the separated resin, whether crude or purified, obtained from a plant of the genus cannabis or (b) any material, preparation, mixture, compound, or other substance which contains ten percent or more by weight of tetrahydrocannabinols. When resins extracted from industrial hemp as defined in section 2-5701 are in the possession of a person as authorized under section 2-5701, they are not considered hashish or concentrated cannabis for purposes of the Uniform Controlled Substances Act;

(28) Exceptionally hazardous drug means (a) a narcotic drug, (b) thiophene analog of phencyclidine, (c) phencyclidine, (d) amobarbital, (e) secobarbital, (f) pentobarbital, (g) amphetamine, or (h) methamphetamine;

(29) Imitation controlled substance means a substance which is not a controlled substance or controlled substance analogue but which, by way of express or implied representations and consideration of other relevant factors including those specified in section 28-445, would lead a reasonable person to believe the substance is a controlled substance or controlled substance analogue. A placebo or registered investigational drug manufactured, distributed, possessed, or delivered in the ordinary course of practice or research by a health care professional shall not be deemed to be an imitation controlled substance;

(30)(a) Controlled substance analogue means a substance (i) the chemical structure of which is substantially similar to the chemical structure of a Schedule I or Schedule II controlled substance as provided in section 28-405 or (ii) which has a stimulant, depressant, analgesic, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, analgesic, or hallucinogenic effect on the central nervous system of a Schedule I or Schedule II controlled substance as provided in section 28-405. A controlled substance analogue shall, to the extent intended for human consumption, be treated as a controlled substance under Schedule I of section 28-405 for purposes of the Uniform Controlled Substances Act; and

(b) Controlled substance analogue does not include (i) a controlled substance, (ii) any substance generally recognized as safe and effective within the meaning of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301 et seq., as such act existed on January 1, 2014, (iii) any substance for which there is an approved new drug application, or (iv) with respect to a particular person, any substance if an exemption is in effect for investigational use for that person, under section 505 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 355, as such section existed on January 1, 2014, to the extent conduct with respect to such substance is pursuant to such exemption;

(31) Anabolic steroid means any drug or hormonal substance, chemically and pharmacologically related to testosterone (other than estrogens, progestins, and corticosteroids), that promotes muscle growth and includes any controlled substance in Schedule III(d) of section 28-405. Anabolic steroid does not include any anabolic steroid which is expressly intended for administration

through implants to cattle or other nonhuman species and has been approved by the Secretary of Health and Human Services for such administration, but if any person prescribes, dispenses, or distributes such a steroid for human use, such person shall be considered to have prescribed, dispensed, or distributed an anabolic steroid within the meaning of this subdivision;

(32) Chart order means an order for a controlled substance issued by a practitioner for a patient who is in the hospital where the chart is stored or for a patient receiving detoxification treatment or maintenance treatment pursuant to section 28-412. Chart order does not include a prescription;

(33) Medical order means a prescription, a chart order, or an order for pharmaceutical care issued by a practitioner;

(34) Prescription means an order for a controlled substance issued by a practitioner. Prescription does not include a chart order;

(35) Registrant means any person who has a controlled substances registration issued by the state or the administration;

(36) Reverse distributor means a person whose primary function is to act as an agent for a pharmacy, wholesaler, manufacturer, or other entity by receiving, inventorying, and managing the disposition of outdated, expired, or otherwise nonsaleable controlled substances;

(37) Signature means the name, word, or mark of a person written in his or her own hand with the intent to authenticate a writing or other form of communication or a digital signature which complies with section 86-611 or an electronic signature;

(38) Facsimile means a copy generated by a system that encodes a document or photograph into electrical signals, transmits those signals over telecommunications lines, and reconstructs the signals to create an exact duplicate of the original document at the receiving end;

(39) Electronic signature has the definition found in section 86-621;

(40) Electronic transmission means transmission of information in electronic form. Electronic transmission includes computer-to-computer transmission or computer-to-facsimile transmission;

(41) Long-term care facility means an intermediate care facility, an intermediate care facility for persons with developmental disabilities, a long-term care hospital, a mental health center, a nursing facility, or a skilled nursing facility, as such terms are defined in the Health Care Facility Licensure Act;

(42) Compounding has the same meaning as in section 38-2811; and

(43) Cannabinoid receptor agonist shall mean any chemical compound or substance that, according to scientific or medical research, study, testing, or analysis, demonstrates the presence of binding activity at one or more of the CB1 or CB2 cell membrane receptors located within the human body.

Source: Laws 1977, LB 38, § 61; Laws 1978, LB 276, § 1; Laws 1980, LB 696, § 1; Laws 1985, LB 323, § 1; Laws 1985, LB 406, § 2; Laws 1988, LB 273, § 3; Laws 1988, LB 537, § 1; Laws 1992, LB 1019, § 30; Laws 1993, LB 121, § 175; Laws 1996, LB 1044, § 68; Laws 1996, LB 1108, § 1; Laws 1997, LB 307, § 3; Laws 1999, LB 379, § 1; Laws 2001, LB 398, § 1; Laws 2002, LB 1105, § 428; Laws 2003, LB 200, § 1; Laws 2005, LB 117, § 1; Laws 2005, LB 256, § 16; Laws 2005, LB 382, § 1; Laws 2007, LB247,

§ 1; Laws 2007, LB296, § 35; Laws 2007, LB463, § 1119; Laws 2009, LB195, § 1; Laws 2013, LB23, § 4; Laws 2014, LB811, § 2; Laws 2014, LB1001, § 2.

Effective date July 18, 2014.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB811, section 2, with LB1001, section 2, to reflect all amendments.

Cross References

Health Care Facility Licensure Act, see section 71-401.

28-401.01 Act, how cited.

Sections 28-401 to 28-456.01 and 28-458 to 28-462 shall be known and may be cited as the Uniform Controlled Substances Act.

Source: Laws 1977, LB 38, § 98; R.S.1943, (1995), § 28-438; Laws 2001, LB 113, § 17; Laws 2001, LB 398, § 2; Laws 2005, LB 117, § 2; Laws 2007, LB463, § 1120; Laws 2011, LB20, § 2; Laws 2014, LB811, § 3.

Effective date July 18, 2014.

28-405 Controlled substances; schedules; enumerated.

The following are the schedules of controlled substances referred to in the Uniform Controlled Substances Act:

Schedule I

(a) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

- (1) Acetylmethadol;
- (2) Allylprodine;
- (3) Alphacetylmethadol, except levo-alphacetylmethadol which is also known as levo-alpha-acetylmethadol, levomethadyl acetate, and LAAM;
- (4) Alphameprodine;
- (5) Alphamethadol;
- (6) Benzethidine;
- (7) Betacetylmethadol;
- (8) Betameprodine;
- (9) Betamethadol;
- (10) Betaprodine;
- (11) Clonitazene;
- (12) Dextromoramide;
- (13) Difenoxyin;
- (14) Diampromide;
- (15) Diethylthiambutene;
- (16) Dimenoxadol;
- (17) Dimepheptanol;
- (18) Dimethylthiambutene;
- (19) Dioxaphetyl butyrate;

- (20) Dipipanone;
- (21) Ethylmethylthiambutene;
- (22) Etonitazene;
- (23) Etoxeridine;
- (24) Furethidine;
- (25) Hydroxypethidine;
- (26) Ketobemidone;
- (27) Levomoramide;
- (28) Levophenacymorphan;
- (29) Morpheridine;
- (30) Noracymethadol;
- (31) Norlevorphanol;
- (32) Normethadone;
- (33) Norpipanone;
- (34) Phenadoxone;
- (35) Phenampromide;
- (36) Phenomorphan;
- (37) Phenoperidine;
- (38) Piritramide;
- (39) Proheptazine;
- (40) Properidine;
- (41) Propiram;
- (42) Racemoramide;
- (43) Trimeperidine;
- (44) Alpha-methylfentanyl, N-(1-(alpha-methyl-beta-phenyl)ethyl-4-piperidyl)propionanilide, 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine;
- (45) Tilidine;
- (46) 3-Methylfentanyl, N-(3-methyl-1-(2-phenylethyl)-4-piperidyl)-N-phenylpropanamide, its optical and geometric isomers, salts, and salts of isomers;
- (47) 1-methyl-4-phenyl-4-propionoxypiperidine (MPPP), its optical isomers, salts, and salts of isomers;
- (48) PEPAP, 1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine, its optical isomers, salts, and salts of isomers;
- (49) Acetyl-alpha-methylfentanyl, N-(1-(1-methyl-2-phenethyl)-4-piperidiny)-N-phenylacetamide, its optical isomers, salts, and salts of isomers;
- (50) Alpha-methylthiofentanyl, N-(1-methyl-2-(2-thienyl)ethyl-4-piperidiny)-N-phenylpropanamide, its optical isomers, salts, and salts of isomers;
- (51) Benzylfentanyl, N-(1-benzyl-4-piperidyl)-N-phenylpropanamide, its optical isomers, salts, and salts of isomers;
- (52) Beta-hydroxyfentanyl, N-(1-(2-hydroxy-2-phenethyl)-4-piperidiny)-N-phenylpropanamide, its optical isomers, salts, and salts of isomers;

(53) Beta-hydroxy-3-methylfentanyl, (other name: N-(1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl)-N-phenylpropanamide), its optical and geometric isomers, salts, and salts of isomers;

(54) 3-methylthiofentanyl, N-(3-methyl-1-(2-thienyl)ethyl-4-piperidinyl)-N-phenylpropanamide, its optical and geometric isomers, salts, and salts of isomers;

(55) N-(1-(2-thienyl)methyl-4-piperidyl)-N-phenylpropanamide (thenylfentanyl), its optical isomers, salts, and salts of isomers;

(56) Thiofentanyl, N-phenyl-N-(1-(2-thienyl)ethyl-4-piperidinyl)-propanamide, its optical isomers, salts, and salts of isomers; and

(57) Para-fluorofentanyl, N-(4-fluorophenyl)-N-(1-(2-phenethyl)-4-piperidinyl)propanamide, its optical isomers, salts, and salts of isomers.

(b) Any of the following opium derivatives, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Acetorphine;
- (2) Acetyldihydrocodeine;
- (3) Benzylmorphine;
- (4) Codeine methylbromide;
- (5) Codeine-N-Oxide;
- (6) Cyprenorphine;
- (7) Desomorphine;
- (8) Dihydromorphine;
- (9) Drotebanol;
- (10) Etorphine, except hydrochloride salt;
- (11) Heroin;
- (12) Hydromorphanol;
- (13) Methyl-desorphine;
- (14) Methyl-dihydromorphine;
- (15) Morphine methylbromide;
- (16) Morphine methylsulfonate;
- (17) Morphine-N-Oxide;
- (18) Myrophine;
- (19) Nicocodeine;
- (20) Nicomorphine;
- (21) Normorphine;
- (22) Pholcodine; and
- (23) Thebacon.

(c) Any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical

designation, and, for purposes of this subdivision only, isomer shall include the optical, position, and geometric isomers:

(1) Bufotenine. Trade and other names shall include, but are not limited to: 3-(beta-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N,N-dimethylserotonin; 5-hydroxy-N,N-dimethyltryptamine; and mappine;

(2) 4-bromo-2,5-dimethoxyamphetamine. Trade and other names shall include, but are not limited to: 4-bromo-2,5-dimethoxy-alpha-methylphenethylamine; and 4-bromo-2,5-DMA;

(3) 4-methoxyamphetamine. Trade and other names shall include, but are not limited to: 4-methoxy-alpha-methylphenethylamine; and paramethoxyamphetamine, PMA;

(4) 4-methyl-2,5-dimethoxyamphetamine. Trade and other names shall include, but are not limited to: 4-methyl-2,5-dimethoxy-alpha-methylphenethylamine; DOM; and STP;

(5) Ibogaine. Trade and other names shall include, but are not limited to: 7-Ethyl-6,6beta,7,8,9,10,12,13-octahydro-2-methoxy-6,9-methano-5H-pyrido (1',2':1,2) azepino (5,4-b) indole; and Tabernanthe iboga;

(6) Lysergic acid diethylamide;

(7) Marijuana;

(8) Mescaline;

(9) Peyote. Peyote shall mean all parts of the plant presently classified botanically as *Lophophora williamsii* Lemaire, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, derivative, mixture, or preparation of such plant or its seeds or extracts;

(10) Psilocybin;

(11) Psilocyn;

(12) Tetrahydrocannabinols, including, but not limited to, synthetic equivalents of the substances contained in the plant or in the resinous extractives of cannabis, sp. or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following: Delta 1 cis or trans tetrahydrocannabinol and their optical isomers, excluding dronabinol in sesame oil and encapsulated in a soft gelatin capsule in a drug product approved by the federal Food and Drug Administration; Delta 6 cis or trans tetrahydrocannabinol and their optical isomers; and Delta 3,4 cis or trans tetrahydrocannabinol and its optical isomers. Since nomenclature of these substances is not internationally standardized, compounds of these structures shall be included regardless of the numerical designation of atomic positions covered;

(13) N-ethyl-3-piperidyl benzilate;

(14) N-methyl-3-piperidyl benzilate;

(15) Thiophene analog of phencyclidine. Trade and other names shall include, but are not limited to: 1-(1-(2-thienyl)-cyclohexyl)-piperidine; 2-thienyl analog of phencyclidine; TPCP; and TCP;

(16) Hashish or concentrated cannabis;

(17) Parahexyl. Trade and other names shall include, but are not limited to: 3-Hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6H-dibenzo(b,d)pyran; and Synhexyl;

(18) Ethylamine analog of phencyclidine. Trade and other names shall include, but are not limited to: N-ethyl-1-phenylcyclohexylamine; (1-phenylcyclohexyl)ethylamine; N-(1-phenylcyclohexyl)ethylamine; cyclohexamine; and PCE;

(19) Pyrrolidine analog of phencyclidine. Trade and other names shall include, but are not limited to: 1-(1-phenylcyclohexyl)-pyrrolidine; PCPy; and PHP;

(20) Alpha-ethyltryptamine. Some trade or other names: etryptamine; Monase; alpha-ethyl-1H-indole-3-ethanamine; 3-(2-aminobutyl) indole; alpha-ET; and AET;

(21) 2,5-dimethoxy-4-ethylamphet-amine; and DOET;

(22) 1-(1-(2-thienyl)cyclohexyl)pyrrolidine; and TCPy;

(23) Alpha-methyltryptamine, which is also known as AMT;

(24) *Salvia divinorum* or Salvinorin A. *Salvia divinorum* or Salvinorin A includes all parts of the plant presently classified botanically as *Salvia divinorum*, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, derivative, mixture, or preparation of such plant, its seeds, or its extracts, including salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation;

(25) Any material, compound, mixture, or preparation containing any quantity of synthetically produced cannabinoids as listed in subdivisions (A) through (M) of this subdivision, including their salts, isomers, salts of isomers, and nitrogen-heterocyclic analogs, unless specifically excepted elsewhere in this section. Since nomenclature of these synthetically produced cannabinoids is not internationally standardized and may continually evolve, these structures or compounds of these structures shall be included under this subdivision, regardless of their specific numerical designation of atomic positions covered, so long as it can be determined through a recognized method of scientific testing or analysis that the substance contains properties that fit within one or more of the following categories:

(A) Tetrahydrocannabinols: Meaning tetrahydrocannabinols naturally contained in a plant of the genus *cannabis* (*cannabis* plant), as well as synthetic equivalents of the substances contained in the plant, or in the resinous extractives of *cannabis*, sp. and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following: Delta 1 cis or trans tetrahydrocannabinol, and their optical isomers; Delta 6 cis or trans tetrahydrocannabinol, and their optical isomers; Delta 3,4 cis or trans tetrahydrocannabinol, and its optical isomers;

(B) Naphthoylindoles: Any compound containing a 3-(1-naphthoyl)indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 2-(4-morpholinyl)ethyl group, cyanoalkyl, 1-(N-methyl-2-piperidinyl)methyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranylmethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent;

(C) Naphthylmethylindeles: Any compound containing a 1 H-indol-3-yl-(1-naphthyl)methane structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 2-(4-morpholinyl)ethyl group, cyanoalkyl, 1-(N-methyl-2-piperidinyl)methyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranylmethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent;

(D) Naphthoypyrroles: Any compound containing a 3-(1-naphthoypyrrole) structure with substitution at the nitrogen atom of the pyrrole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 2-(4-morpholinyl)ethyl group, cyanoalkyl, 1-(N-methyl-2-piperidinyl)methyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranylmethyl group, whether or not further substituted in the pyrrole ring to any extent and whether or not substituted in the naphthyl ring to any extent;

(E) Naphthylideneindenes: Any compound containing a naphthylideneindene structure with substitution at the 3-position of the indene ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 2-(4-morpholinyl)ethyl group, cyanoalkyl, 1-(N-methyl-2-piperidinyl)methyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranylmethyl group, whether or not further substituted in the indene ring to any extent and whether or not substituted in the naphthyl ring to any extent;

(F) Phenylacetylindoles: Any compound containing a 3-phenylacetylindole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 2-(4-morpholinyl)ethyl group, cyanoalkyl, 1-(N-methyl-2-piperidinyl)methyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranylmethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent;

(G) Cyclohexylphenols: Any compound containing a 2-(3-hydroxycyclohexyl)phenol structure with substitution at the 5-position of the phenolic ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 2-(4-morpholinyl)ethyl group, cyanoalkyl, 1-(N-methyl-2-piperidinyl)methyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranylmethyl group, whether or not substituted in the cyclohexyl ring to any extent;

(H) Benzoylindoles: Any compound containing a 3-(benzoyl)indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 2-(4-morpholinyl)ethyl group, cyanoalkyl, 1-(N-methyl-2-piperidinyl)methyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranylmethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent;

(I) Adamantoylindoles: Any compound containing a 3-adamantoylindole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranylmethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the adamantyl ring to any extent;

(J) Tetramethylcyclopropanoylindoles: Any compound containing a 3-tetramethylcyclopropanoylindole structure with substitution at the nitrogen atom of

the indole ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranylmethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the tetramethylcyclopropyl ring to any extent;

(K) Indole carboxamides: Any compound containing a 1-indole-3-carboxamide structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, halobenzyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranylmethyl group, substitution at the carboxamide group by an adamantyl, 1-naphthyl, phenyl, or aminooxoalkyl group, whether or not further substituted in any of the ring systems to any extent;

(L) Indole carboxylates: Any compound containing a 1-indole-3-carboxylate structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranylmethyl group, substitution at the carboxylate group by an adamantyl, 1-naphthyl, phenyl or quinolinyl group, whether or not further substituted in any of the ring systems to any extent; and

(M) Any nonnaturally occurring substance, chemical compound, mixture, or preparation, not specifically listed elsewhere in these schedules and which is not approved for human consumption by the federal Food and Drug Administration, containing or constituting a cannabinoid receptor agonist as defined in section 28-401;

(26) Any material, compound, mixture, or preparation containing any quantity of a substituted phenethylamine as listed in subdivisions (A) through (C) of this subdivision, unless specifically excepted, listed in another schedule, or specifically named in this schedule, that is structurally derived from phenylethan-2-amine by substitution on the phenyl ring with a fused methylenedioxy ring, fused furan ring, or a fused tetrahydrofuran ring; by substitution with two alkoxy groups; by substitution with one alkoxy and either one fused furan, tetrahydrofuran, or tetrahydropyran ring system; or by substitution with two fused ring systems from any combination of the furan, tetrahydrofuran, or tetrahydropyran ring systems, whether or not the compound is further modified in any of the following ways:

(A) Substitution of the phenyl ring by any halo, hydroxyl, alkyl, trifluoromethyl, alkoxy, or alkylthio groups; (B) substitution at the 2-position by any alkyl groups; or (C) substitution at the 2-amino nitrogen atom with alkyl, dialkyl, benzyl, hydroxybenzyl or methoxybenzyl groups, and including, but not limited to:

(i) 2-(4-Chloro-2,5-dimethoxyphenyl)ethanamine, which is also known as 2C-C or 2,5-Dimethoxy-4-chlorophenethylamine;

(ii) 2-(2,5-Dimethoxy-4-methylphenyl)ethanamine, which is also known as 2C-D or 2,5-Dimethoxy-4-methylphenethylamine;

(iii) 2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine, which is also known as 2C-E or 2,5-Dimethoxy-4-ethylphenethylamine;

- (iv) 2-(2,5-Dimethoxyphenyl)ethanamine, which is also known as 2C-H or 2,5-Dimethoxyphenethylamine;
- (v) 2-(4-Iodo-2,5-dimethoxyphenyl)ethanamine, which is also known as 2C-I or 2,5-Dimethoxy-4-iodophenethylamine;
- (vi) 2-(2,5-Dimethoxy-4-nitro-phenyl)ethanamine, which is also known as 2C-N or 2,5-Dimethoxy-4-nitrophenethylamine;
- (vii) 2-(2,5-Dimethoxy-4-(n)-propylphenyl)ethanamine, which is also known as 2C-P or 2,5-Dimethoxy-4-propylphenethylamine;
- (viii) 2-[4-(Ethylthio)-2,5-dimethoxyphenyl]ethanamine, which is also known as 2C-T-2 or 2,5-Dimethoxy-4-ethylthiophenethylamine;
- (ix) 2-[4-(Isopropylthio)-2,5-dimethoxyphenyl]ethanamine, which is also known as 2C-T-4 or 2,5-Dimethoxy-4-isopropylthiophenethylamine;
- (x) 2-(4-bromo-2,5-dimethoxyphenyl)ethanamine, which is also known as 2C-B or 2,5-Dimethoxy-4-bromophenethylamine;
- (xi) 2-(2,5-dimethoxy-4-(methylthio)phenyl)ethanamine, which is also known as 2C-T or 4-methylthio-2,5-dimethoxyphenethylamine;
- (xii) 1-(2,5-dimethoxy-4-iodophenyl)-propan-2-amine, which is also known as DOI or 2,5-Dimethoxy-4-iodoamphetamine;
- (xiii) 1-(4-Bromo-2,5-dimethoxyphenyl)-2-aminopropane, which is also known as DOB or 2,5-Dimethoxy-4-bromoamphetamine;
- (xiv) 1-(4-chloro-2,5-dimethoxy-phenyl)propan-2-amine, which is also known as DOC or 2,5-Dimethoxy-4-chloroamphetamine;
- (xv) 2-(4-bromo-2,5-dimethoxyphenyl)-N-[(2-methoxyphenyl)methyl]ethanamine, which is also known as 2C-B-NBOMe; 25B-NBOMe or 2,5-Dimethoxy-4-bromo-N-(2-methoxybenzyl)phenethylamine;
- (xvi) 2-(4-iodo-2,5-dimethoxyphenyl)-N-[(2-methoxyphenyl)methyl]ethanamine, which is also known as 2C-I-NBOMe; 25I-NBOMe or 2,5-Dimethoxy-4-iodo-N-(2-methoxybenzyl)phenethylamine;
- (xvii) N-(2-Methoxybenzyl)-2-(3,4,5-trimethoxyphenyl)ethanamine, which is also known as Mescaline-NBOMe or 3,4,5-trimethoxy-N-(2-methoxybenzyl)phenethylamine;
- (xviii) 2-(4-chloro-2,5-dimethoxyphenyl)-N-[(2-methoxyphenyl)methyl]ethanamine, which is also known as 2C-C-NBOMe; or 25C-NBOMe or 2,5-Dimethoxy-4-chloro-N-(2-methoxybenzyl)phenethylamine;
- (xix) 2-(7-Bromo-5-methoxy-2,3-dihydro-1-benzofuran-4-yl)ethanamine, which is also known as 2CB-5-hemiFLY;
- (xx) 2-(8-bromo-2,3,6,7-tetrahydrofuro [2,3-f][1]benzofuran-4-yl)ethanamine, which is also known as 2C-B-FLY;
- (xxi) 2-(10-Bromo-2,3,4,7,8,9-hexahydropyrano[2,3-g]chromen-5-yl)ethanamine, which is also known as 2C-B-butterFLY;
- (xxii) N-(2-Methoxybenzyl)-1-(8-bromo-2,3,6,7-tetrahydrobenzo[1,2-b:4,5-b']difuran-4-yl)-2-aminoethane, which is also known as 2C-B-FLY-NBOMe;
- (xxiii) 1-(4-Bromofuro[2,3-f][1]benzofuran-8-yl)propan-2-amine, which is also known as bromo-benzodifuranylisopropylamine or bromo-dragonFLY;
- (xxiv) N-(2-Hydroxybenzyl)-4-iodo-2,5-dimethoxyphenethylamine, which is also known as 2C-INBOH or 25I-NBOH;

(xxv) 5-(2-Aminopropyl)benzofuran, which is also known as 5-APB;

(xxvi) 6-(2-Aminopropyl)benzofuran, which is also known as 6-APB;

(xxvii) 5-(2-Aminopropyl)-2,3-dihydrobenzofuran, which is also known as 5-APDB;

(xxviii) 6-(2-Aminopropyl)-2,3-dihydrobenzofuran, which is also known as 6-APDB;

(xxix) 2,5-dimethoxy-amphetamine, which is also known as 2, 5-dimethoxy-amethylphenethylamine; 2, 5-DMA;

(xxx) 2,5-dimethoxy-4-ethylamphetamine, which is also known as DOET;

(xxxi) 2,5-dimethoxy-4-(n)-propylthiophenethylamine, which is also known as 2C-T-7;

(xxxii) 5-methoxy-3,4-methylenedioxy-amphetamine;

(xxxiii) 4-methyl-2,5-dimethoxy-amphetamine, which is also known as 4-methyl-2,5-dimethoxy-amethylphenethylamine; DOM and STP;

(xxxiv) 3,4-methylenedioxy amphetamine, which is also known as MDA;

(xxxv) 3,4-methylenedioxymethamphetamine, which is also known as MDMA;

(xxxvi) 3,4-methylenedioxy-N-ethylamphetamine, which is also known as N-ethyl-alpha-methyl-3,4(methylenedioxy)phenethylamine, MDE, MDEA; and

(xxxvii) 3,4,5-trimethoxy amphetamine;

(27) Any material, compound, mixture, or preparation containing any quantity of a substituted tryptamine unless specifically excepted, listed in another schedule, or specifically named in this schedule, that is structurally derived from 2-(1H-indol-3-yl)ethanamine, which is also known as tryptamine, by mono- or di-substitution of the amine nitrogen with alkyl or alkenyl groups or by inclusion of the amino nitrogen atom in a cyclic structure whether or not the compound is further substituted at the alpha position with an alkyl group or whether or not further substituted on the indole ring to any extent with any alkyl, alkoxy, halo, hydroxyl, or acetoxy groups, and including, but not limited to:

(A) 5-methoxy-N,N-diallyltryptamine, which is also known as 5-MeO-DALT;

(B) 4-acetoxy-N,N-dimethyltryptamine, which is also known as 4-AcO-DMT or OAcetylpsilocin;

(C) 4-hydroxy-N-methyl-N-ethyltryptamine, which is also known as 4-HO-MET;

(D) 4-hydroxy-N,N-diisopropyltryptamine, which is also known as 4-HO-DIPT;

(E) 5-methoxy-N-methyl-N-isopropyltryptamine, which is also known as 5-MeOMiPT;

(F) 5-Methoxy-N,N-Dimethyltryptamine, which is also known as 5-MeO-DMT;

(G) 5-methoxy-N,N-diisopropyltryptamine, which is also known as 5-MeO-DiPT;

(H) Diethyltryptamine, which is also known as N,N-Diethyltryptamine, DET; and

(I) Dimethyltryptamine, which is also known as DMT; and

(28)(A) Any substance containing any quantity of the following materials, compounds, mixtures, or structures:

- (i) 3,4-methylenedioxy-methcathinone, or bk-MDMA, or methy-lone;
- (ii) 3,4-methylenedioxy-pyrovalerone, or MDPV;
- (iii) 4-methylmethcathinone, or 4-MMC, or mephedrone;
- (iv) 4-methoxymethcathinone, or bk-PMMA, or PMMC, or methedrone;
- (v) Fluoromethcathinone, or FMC;
- (vi) Naphthylpyrovalerone, or naphyrone; or
- (vii) Beta-keto-N-methylbenzodioxolylpropylamine; or

(B) Unless listed in another schedule, any substance which contains any quantity of any material, compound, mixture, or structure, other than bupropion, that is structurally derived by any means from 2-aminopropan-1-one by substitution at the 1-position with either phenyl, naphthyl, or thiophene ring systems, whether or not the compound is further modified in any of the following ways:

(i) Substitution in the ring system to any extent with alkyl, alkoxy, alkylenedioxy, haloalkyl, hydroxyl, or halide substituents, whether or not further substituted in the ring system by one or more other univalent substituents;

(ii) Substitution at the 3-position with an acyclic alkyl substituent; or

(iii) Substitution at the 2-amino nitrogen atom with alkyl or dialkyl groups, or by inclusion of the 2-amino nitrogen atom in a cyclic structure.

(d) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Mecloqualone;

(2) Methaqualone; and

(3) Gamma-Hydroxybutyric Acid. Some other names include: GHB; Gamma-hydroxybutyrate; 4-Hydroxybutyrate; 4-Hydroxybutanoic Acid; Sodium Ox-bate; and Sodium Oxybutyrate.

(e) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

(1) Fenethylamine;

(2) N-ethylamphetamine;

(3) Aminorex; aminoxaphen; 2-amino-5-phenyl-2-oxazoline; or 4,5-dihydro-5-phenyl-2-oxazolamine;

(4) Cathinone; 2-amino-1-phenyl-1-propanone; alpha-aminopropiophenone; 2-aminopropiophenone; and norephedrine;

(5) Methcathinone, its salts, optical isomers, and salts of optical isomers. Some other names: 2-(methylamino)-propionophenone; alpha-(methylamino)propionophenone; 2-(methylamino)-1-phenylpropan-1-one; alpha-N-methylaminopropionophenone; methylcathinone; monomethylpropion; ephedrone; N-methylcathinone; AL-464; AL-422; AL-463; and UR1432;

(6) (+/-)cis-4-methylaminorex; and (+/-)cis-4,5-dihydro-4-methyl-5-phenyl-2-oxazolamine;

(7) N,N-dimethylamphetamine; N,N-alpha-trimethyl-benzeneethanamine; and N,N-alpha-trimethylphenethylamine; and

(8) Benzylpiperazine, 1-benzylpiperazine.

(f) Any controlled substance analogue to the extent intended for human consumption.

Schedule II

(a) Any of the following substances except those narcotic drugs listed in other schedules whether produced directly or indirectly by extraction from substances of vegetable origin, independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, excluding apomorphine, buprenorphine, thebaine-derived butorphanol, dextrorphan, nalbuphine, nalmefene, naloxone, and naltrexone and their salts, but including the following:

(A) Raw opium;

(B) Opium extracts;

(C) Opium fluid;

(D) Powdered opium;

(E) Granulated opium;

(F) Tincture of opium;

(G) Codeine;

(H) Ethylmorphine;

(I) Etorphine hydrochloride;

(J) Hydrocodone;

(K) Hydromorphone;

(L) Metopon;

(M) Morphine;

(N) Oxycodone;

(O) Oxymorphone;

(P) Oripavine;

(Q) Thebaine; and

(R) Dihydroetorphine;

(2) Any salt, compound, derivative, or preparation thereof which is chemically equivalent to or identical with any of the substances referred to in subdivision (1) of this subdivision, except that these substances shall not include the isoquinoline alkaloids of opium;

(3) Opium poppy and poppy straw;

(4) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation thereof which is chemically equivalent to or identical with any of these substances, including cocaine and its salts, optical isomers, and salts of optical isomers, except that the substances shall not include decocainized coca leaves or extractions which do not contain cocaine or ecgonine; and

(5) Concentrate of poppy straw, the crude extract of poppy straw in either liquid, solid, or powder form which contains the phenanthrene alkaloids of the opium poppy.

(b) Unless specifically excepted or unless in another schedule any of the following opiates, including their isomers, esters, ethers, salts, and salts of their isomers, esters, and ethers whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation, dextrorphan excepted:

- (1) Alphaprodine;
- (2) Anileridine;
- (3) Bezitramide;
- (4) Diphenoxylate;
- (5) Fentanyl;
- (6) Isomethadone;
- (7) Levomethorphan;
- (8) Levorphanol;
- (9) Metazocine;
- (10) Methadone;
- (11) Methadone-intermediate, 4-cyano-2-dimethylamino-4,4-diphenyl butane;
- (12) Moramide-intermediate, 2-methyl-3-morpholino-1,1-diphenylpropane-carboxylic acid;
- (13) Pethidine or meperidine;
- (14) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;
- (15) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;
- (16) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;
- (17) Phenazocine;
- (18) Piminodine;
- (19) Racemethorphan;
- (20) Racemorphan;
- (21) Dihydrocodeine;
- (22) Bulk Propoxyphene in nondosage forms;
- (23) Sufentanil;
- (24) Alfentanil;
- (25) Levo-alpha-acetylmethadol which is also known as levo-alpha-acetylmethadol, levomethadyl acetate, and LAAM;
- (26) Carfentanil;
- (27) Remifentanil; and
- (28) Tapentadol.

(c) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:

- (1) Amphetamine, its salts, optical isomers, and salts of its optical isomers;
- (2) Phenmetrazine and its salts;

(3) Methamphetamine, its salts, isomers, and salts of its isomers; and

(4) Methylphenidate.

(d) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system, including their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designations:

(1) Amobarbital;

(2) Secobarbital;

(3) Pentobarbital;

(4) Phencyclidine; and

(5) Glutethimide.

(e) Hallucinogenic substances known as:

(1) Nabilone. Another name for nabilone: (+/-)-trans-3-(1,1-dimethylheptyl)-6,6a,7,8,10,10a-Hexahydro-1-hydroxy-6,6-dimethyl-9H-dibenzo(b,d)pyran-9-one.

(f) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances:

(1) Immediate precursor to amphetamine and methamphetamine: Phenylacetone. Trade and other names shall include, but are not limited to: Phenyl-2-propanone; P2P; benzyl methyl ketone; and methyl benzyl ketone; or

(2) Immediate precursors to phencyclidine, PCP:

(A) 1-phenylcyclohexylamine; or

(B) 1-piperidinocyclohexanecarbonitrile, PCC.

Schedule III

(a) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system, including their salts, isomers, whether optical, position, or geometric, and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Benzphetamine;

(2) Chlorphentermine;

(3) Clortermine; and

(4) Phendimetrazine.

(b) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

(1) Any substance which contains any quantity of a derivative of barbituric acid or any salt of a derivative of barbituric acid, except those substances which are specifically listed in other schedules of this section;

(2) Chlorhexadol;

(3) Lysergic acid;

(4) Lysergic acid amide;

(5) Methypylon;

(6) Sulfondiethylmethane;

(7) Sulfonethylmethane;

(8) Sulfonmethane;

(9) Nalorphine;

(10) Any compound, mixture, or preparation containing amobarbital, secobarbital, pentobarbital, or any salt thereof and one or more other active medicinal ingredients which are not listed in any schedule;

(11) Any suppository dosage form containing amobarbital, secobarbital, pentobarbital, or any salt of any of these drugs and approved by the federal Food and Drug Administration for marketing only as a suppository;

(12) Any drug product containing gamma-hydroxybutyric acid, including its salts, isomers, and salts of isomers, for which an application is approved under section 505 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 355, as such section existed on January 1, 2014;

(13) Ketamine, its salts, isomers, and salts of isomers. Some other names for ketamine: (+/-)-2-(2-chlorophenyl)-2-(methylamino)-cyclohexanone; and

(14) Tiletamine and zolazepam or any salt thereof. Trade or other names for a tiletamine-zolazepam combination product shall include, but are not limited to: telazol. Trade or other names for tiletamine shall include, but are not limited to: 2-(ethylamino)-2-(2-thienyl)-cyclohexanone. Trade or other names for zolazepam shall include, but are not limited to: 4-(2-fluorophenyl)-6,8-dihydro-1,3,8-trimethylpyrazolo-(3,4-e) (1,4)-diazepin-7(1H)-one, and flupyrazapon.

(c) Unless specifically excepted or unless listed in another schedule:

(1) Any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

(A) Not more than one and eight-tenths grams of codeine per one hundred milliliters or not more than ninety milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(B) Not more than one and eight-tenths grams of codeine per one hundred milliliters or not more than ninety milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(C) Not more than three hundred milligrams of dihydrocodeinone which is also known as hydrocodone per one hundred milliliters or not more than fifteen milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

(D) Not more than three hundred milligrams of dihydrocodeinone which is also known as hydrocodone per one hundred milliliters or not more than fifteen milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(E) Not more than one and eight-tenths grams of dihydrocodeine per one hundred milliliters or not more than ninety milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(F) Not more than three hundred milligrams of ethylmorphine per one hundred milliliters or not more than fifteen milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(G) Not more than five hundred milligrams of opium per one hundred milliliters or per one hundred grams, or not more than twenty-five milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts; and

(H) Not more than fifty milligrams of morphine per one hundred milliliters or per one hundred grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts; and

(2) Any material, compound, mixture, or preparation containing any of the following narcotic drug or its salts, as set forth below:

(A) Buprenorphine.

(d) Unless contained on the administration's list of exempt anabolic steroids as the list existed on January 1, 2014, any anabolic steroid, which shall include any material, compound, mixture, or preparation containing any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts of isomers is possible within the specific chemical designation:

- (1) Boldenone;
- (2) Boldione;
- (3) Chlorotestosterone (4-chlortestosterone);
- (4) Clostebol;
- (5) Dehydrochloromethyltestosterone;
- (6) Desoxymethyltestosterone;
- (7) Dihydrotestosterone (4-dihydrotestosterone);
- (8) Drostanolone;
- (9) Ethylestrenol;
- (10) Fluoxymesterone;
- (11) Formebolone (formebolone);
- (12) Mesterolone;
- (13) Methandienone;
- (14) Methandranone;
- (15) Methandriol;
- (16) Methandrostenolone;
- (17) Methenolone;
- (18) Methyltestosterone;
- (19) Mibolerone;
- (20) Nandrolone;
- (21) Norethandrolone;
- (22) Oxandrolone;
- (23) Oxymesterone;
- (24) Oxymetholone;
- (25) Stanolone;
- (26) Stanozolol;
- (27) Testolactone;
- (28) Testosterone;

(29) Trenbolone;

(30) 19-nor-4,9(10)-androstadienedione; and

(31) Any salt, ester, or ether of a drug or substance described or listed in this subdivision if the salt, ester, or ether promotes muscle growth.

(e) Hallucinogenic substances known as:

(1) Dronabinol, synthetic, in sesame oil and encapsulated in a soft gelatin capsule in a drug product approved by the federal Food and Drug Administration. Some other names for dronabinol are (6aR-trans)-6a,7,8,10a-tetrahydro-6,6,9-trimethyl-3-pentyl-6H-dibenzo (b,d)pyran-1-ol or (-)-delta-9-(trans)-tetrahydrocannabinol.

Schedule IV

(a) Any material, compound, mixture, or preparation which contains any quantity of the following substances, including their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Barbital;

(2) Chloral betaine;

(3) Chloral hydrate;

(4) Chlordiazepoxide, but not including librax (chlordiazepoxide hydrochloride and clindinium bromide) or menrium (chlordiazepoxide and water soluble esterified estrogens);

(5) Clonazepam;

(6) Clorazepate;

(7) Diazepam;

(8) Ethchlorvynol;

(9) Ethinamate;

(10) Flurazepam;

(11) Mebutamate;

(12) Meproamate;

(13) Methohexital;

(14) Methylphenobarbital;

(15) Oxazepam;

(16) Paraldehyde;

(17) Petrichloral;

(18) Phenobarbital;

(19) Prazepam;

(20) Alprazolam;

(21) Bromazepam;

(22) Camazepam;

(23) Clobazam;

(24) Clotiazepam;

(25) Cloxazolam;

(26) Delorazepam;

- (27) Estazolam;
- (28) Ethyl loflazepate;
- (29) Fludiazepam;
- (30) Flunitrazepam;
- (31) Halazepam;
- (32) Haloxazolam;
- (33) Ketazolam;
- (34) Loprazolam;
- (35) Lorazepam;
- (36) Lormetazepam;
- (37) Medazepam;
- (38) Nimetazepam;
- (39) Nitrazepam;
- (40) Nordiazepam;
- (41) Oxazolam;
- (42) Pinazepam;
- (43) Temazepam;
- (44) Tetrazepam;
- (45) Triazolam;
- (46) Midazolam;
- (47) Quazepam;
- (48) Zolpidem;
- (49) Dichloralphenazone; and
- (50) Zaleplon.

(b) Any material, compound, mixture, or preparation which contains any quantity of the following substance, including its salts, isomers, whether optical, position, or geometric, and salts of such isomers, whenever the existence of such salts, isomers, and salts of isomers is possible: Fenfluramine.

(c) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including their salts, isomers, whether optical, position, or geometric, and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Diethylpropion;
- (2) Phentermine;
- (3) Pemoline, including organometallic complexes and chelates thereof;
- (4) Mazindol;
- (5) Pipradrol;
- (6) SPA, ((-)-1-dimethylamino- 1,2-diphenylethane);
- (7) Cathine. Another name for cathine is ((+)-norpseudoephedrine);
- (8) Fencamfamin;
- (9) Fenproporex;

- (10) Mefenorex;
- (11) Modafinil; and
- (12) Sibutramine.

(d) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following narcotic drugs, or their salts or isomers calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

(1) Propoxyphene in manufactured dosage forms; and

(2) Not more than one milligram of difenoxin and not less than twenty-five micrograms of atropine sulfate per dosage unit.

(e) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substance, including its salts: Pentazocine.

(f) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substance, including its salts, isomers, and salts of such isomers: Butorphanol.

(g) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substance, including its salts, isomers, and salts of such isomers: Carisoprodol.

(h)(1) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substance, including its salts, optical isomers, and salts of such optical isomers: Ephedrine.

(2) The following drug products containing ephedrine, its salts, optical isomers, and salts of such optical isomers, are excepted from subdivision (h)(1) of Schedule IV if they (A) are stored behind a counter, in an area not accessible to customers, or in a locked case so that a customer needs assistance from an employee to access the drug product; (B) are sold by a person, eighteen years of age or older, in the course of his or her employment to a customer eighteen years of age or older with the following restrictions: No customer shall be allowed to purchase, receive, or otherwise acquire more than three and six-tenths grams of ephedrine base during a twenty-four-hour period; no customer shall purchase, receive, or otherwise acquire more than nine grams of ephedrine base during a thirty-day period; and the customer shall display a valid driver's or operator's license, a Nebraska state identification card, a military identification card, an alien registration card, or a passport as proof of identification; (C) are labeled and marketed in a manner consistent with the pertinent OTC Tentative Final or Final Monograph; (D) are manufactured and distributed for legitimate medicinal use in a manner that reduces or eliminates the likelihood of abuse; and (E) are not marketed, advertised, or represented in any manner for the indication of stimulation, mental alertness, euphoria, ecstasy, a buzz or high, heightened sexual performance, or increased muscle mass:

- (i) Primatene Tablets; and
- (ii) Bronkaid Dual Action Caplets.

Schedule V

(a) Any compound, mixture, or preparation containing any of the following limited quantities of narcotic drugs or salts calculated as the free anhydrous base or alkaloid, which shall include one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

(1) Not more than two hundred milligrams of codeine per one hundred milliliters or per one hundred grams;

(2) Not more than one hundred milligrams of dihydrocodeine per one hundred milliliters or per one hundred grams;

(3) Not more than one hundred milligrams of ethylmorphine per one hundred milliliters or per one hundred grams;

(4) Not more than two and five-tenths milligrams of diphenoxylate and not less than twenty-five micrograms of atropine sulfate per dosage unit;

(5) Not more than one hundred milligrams of opium per one hundred milliliters or per one hundred grams; and

(6) Not more than five-tenths milligram of difenoxin and not less than twenty-five micrograms of atropine sulfate per dosage unit.

(b) Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers: Pyrovalerone.

(c) Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers:

(1) Ezogabine (N-(2-amino-4-(4-fluorobenzylamino)-phenyl)-carbamic acid ethyl ester);

(2) Lacosamide ((R)-2-acetoamido-N-benzyl-3-methoxy-propionamide); and

(3) Pregabalin ((S)-3-(aminomethyl)-5-methylhexanoic acid).

Source: Laws 1977, LB 38, § 65; Laws 1978, LB 748, § 50; Laws 1980, LB 696, § 2; Laws 1985, LB 323, § 2; Laws 1985, LB 406, § 3; Laws 1986, LB 1160, § 1; Laws 1987, LB 473, § 1; Laws 1990, LB 571, § 6; Laws 1992, LB 1019, § 32; Laws 1994, LB 1210, § 3; Laws 1995, LB 406, § 5; Laws 1996, LB 1213, § 4; Laws 1998, LB 1073, § 8; Laws 1999, LB 594, § 1; Laws 2000, LB 1115, § 2; Laws 2001, LB 113, § 10; Laws 2002, LB 500, § 1; Laws 2003, LB 245, § 1; Laws 2005, LB 382, § 2; Laws 2007, LB247, § 2; Laws 2008, LB902, § 1; Laws 2009, LB123, § 1; Laws 2009, LB151, § 1; Laws 2010, LB792, § 1; Laws 2011, LB19, § 1; Laws 2012, LB670, § 1; Laws 2013, LB298, § 1; Laws 2014, LB811, § 4.

Effective date July 18, 2014.

28-407 Registration required; exceptions.

(1) Except as otherwise provided in this section, every person who manufactures, prescribes, distributes, administers, or dispenses any controlled sub-

stance within this state or who proposes to engage in the manufacture, prescribing, administering, distribution, or dispensing of any controlled substance within this state shall obtain a registration issued by the department, except that on and after January 1, 2000, health care providers credentialed by the department and facilities licensed by the department shall not be required to obtain a separate Nebraska controlled substances registration upon providing proof of a Federal Controlled Substances Registration to the department. Federal Controlled Substances Registration numbers obtained under this section shall not be public information but may be shared by the department for investigative and regulatory purposes if necessary and only under appropriate circumstances to ensure against any unauthorized access to such information.

(2) The following persons shall not be required to register and may lawfully possess controlled substances under the provisions of the Uniform Controlled Substances Act:

(a) An agent, or an employee thereof, of any practitioner, registered manufacturer, distributor, or dispenser of any controlled substance if such agent is acting in the usual course of his or her business or employment;

(b) A common or contract carrier or warehouse keeper, or an employee thereof, whose possession of any controlled substance is in the usual course of his or her business or employment; and

(c) An ultimate user or a person in possession of any controlled substance pursuant to a medical order issued by a practitioner authorized to prescribe.

(3) A separate registration shall be required at each principal place of business of professional practice where the applicant manufactures, distributes, or dispenses controlled substances, except that no registration shall be required in connection with the placement of an emergency box within a long-term care facility pursuant to the provisions of the Emergency Box Drug Act.

(4) The department is authorized to inspect the establishment of a registrant or applicant for registration in accordance with the rules and regulations promulgated.

Source: Laws 1977, LB 38, § 67; Laws 1994, LB 1210, § 4; Laws 1997, LB 307, § 5; Laws 1997, LB 550, § 2; Laws 1999, LB 828, § 1; Laws 2001, LB 398, § 5; Laws 2009, LB195, § 2.

Cross References

Emergency Box Drug Act, see section 71-2410.

28-413 Distribution to another registrant; manner.

Controlled substances listed in Schedules I and II of section 28-405 shall be distributed by a registrant to another registrant pursuant to an order form or the electronic controlled substance ordering system of the administration.

Compliance with the provisions of the Controlled Substances Act, 21 U.S.C. 801 et seq., as such act existed on January 1, 2014, respecting order forms shall be deemed compliance with this section.

Source: Laws 1977, LB 38, § 73; Laws 2001, LB 398, § 11; Laws 2014, LB811, § 5.
Effective date July 18, 2014.

28-414 Controlled substance; Schedule II; prescription; contents.

(1) Except as otherwise provided in this section or section 28-412 or when administered directly by a practitioner to an ultimate user, a controlled substance listed in Schedule II of section 28-405 shall not be dispensed without a prescription from a practitioner authorized to prescribe. No prescription for a controlled substance listed in Schedule II of section 28-405 shall be filled more than six months from the date of issuance. A prescription for a controlled substance listed in Schedule II of section 28-405 shall not be refilled.

(2) A prescription for controlled substances listed in Schedule II of section 28-405 must contain the following information prior to being filled by a pharmacist or dispensing practitioner: (a) Patient's name and address, (b) name of the drug, device, or biological, (c) strength of the drug or biological, (d) dosage form of the drug or biological, if applicable, (e) quantity of the drug, device, or biological prescribed, (f) directions for use, (g) date of issuance, (h) prescribing practitioner's name and address, and (i) Drug Enforcement Administration number of the prescribing practitioner. If the prescription is a written paper prescription, the paper prescription must contain the prescribing practitioner's manual signature. If the prescription is an electronic prescription, the electronic prescription must contain all of the elements in subdivisions (a) through (i) of this subsection, must be digitally signed, and must be transmitted to and received by the pharmacy electronically to meet all of the requirements of the Controlled Substances Act, 21 U.S.C. 801 et seq., as it existed on January 1, 2014, pertaining to electronic prescribing of controlled substances.

(3) In emergency situations as defined by rule and regulation of the department, a controlled substance listed in Schedule II of section 28-405 may be dispensed pursuant to an oral prescription reduced to writing in accordance with subsection (2) of this section, except for the prescribing practitioner's signature, and bearing the word "emergency".

(4)(a) In nonemergency situations:

(i) A controlled substance listed in Schedule II of section 28-405 may be dispensed pursuant to a facsimile of a written, signed paper prescription if the original written, signed paper prescription is presented to the pharmacist for review before the controlled substance is dispensed, except as provided in subdivision (a)(ii) or (iii) of this subsection;

(ii) A narcotic drug listed in Schedule II of section 28-405 may be dispensed pursuant to a facsimile of a written, signed paper prescription (A) to be compounded for direct parenteral administration to a patient for the purpose of home infusion therapy or (B) for administration to a patient enrolled in a hospice care program and bearing the words "hospice patient"; and

(iii) A controlled substance listed in Schedule II of section 28-405 may be dispensed pursuant to a facsimile of a written, signed paper prescription for administration to a resident of a long-term care facility.

(b) For purposes of subdivisions (a)(ii) and (iii) of this subsection, a facsimile of a written, signed paper prescription shall serve as the original written prescription and shall be maintained in accordance with subsection (1) of section 28-414.03.

(5)(a) A prescription for a controlled substance listed in Schedule II of section 28-405 may be partially filled if the pharmacist does not supply the full quantity prescribed and he or she makes a notation of the quantity supplied on the face of the prescription or in the electronic record. The remaining portion of the prescription may be filled within seventy-two hours of the first partial

filling. The pharmacist shall notify the prescribing practitioner if the remaining portion of the prescription is not or cannot be filled within such period. No further quantity may be supplied after such period without a new written, signed paper prescription.

(b) A prescription for a controlled substance listed in Schedule II of section 28-405 written for a patient in a long-term care facility or for a patient with a medical diagnosis documenting a terminal illness may be partially filled. Such prescription shall bear the words “terminally ill” or “long-term care facility patient” on its face or in the electronic record. If there is any question whether a patient may be classified as having a terminal illness, the pharmacist shall contact the prescribing practitioner prior to partially filling the prescription. Both the pharmacist and the prescribing practitioner have a corresponding responsibility to assure that the controlled substance is for a terminally ill patient. For each partial filling, the dispensing pharmacist shall record on the back of the prescription or on another appropriate record, uniformly maintained and readily retrievable, the date of the partial filling, quantity dispensed, remaining quantity authorized to be dispensed, and the identification of the dispensing pharmacist. The total quantity of controlled substances listed in Schedule II which is dispensed in all partial fillings shall not exceed the total quantity prescribed. A prescription for a Schedule II controlled substance for a patient in a long-term care facility or a patient with a medical diagnosis documenting a terminal illness is valid for sixty days from the date of issuance or until discontinuance of the prescription, whichever occurs first.

Source: Laws 1977, LB 38, § 74; Laws 1988, LB 273, § 5; Laws 1995, LB 406, § 7; Laws 1996, LB 1108, § 4; Laws 1997, LB 307, § 8; Laws 1999, LB 594, § 4; Laws 2000, LB 819, § 65; Laws 2001, LB 398, § 12; Laws 2004, LB 1005, § 2; Laws 2005, LB 382, § 3; Laws 2007, LB463, § 1122; Laws 2009, LB195, § 3; Laws 2011, LB179, § 1; Laws 2014, LB811, § 6.
Effective date July 18, 2014.

28-414.01 Controlled substance; Schedule III, IV, or V; prescription; contents.

(1) Except as otherwise provided in this section or when administered directly by a practitioner to an ultimate user, a controlled substance listed in Schedule III, IV, or V of section 28-405 shall not be dispensed without a written, oral, or electronic medical order. Such medical order is valid for six months after the date of issuance. Original prescription information for any controlled substance listed in Schedule III, IV, or V of section 28-405 may be transferred between pharmacies for purposes of refill dispensing pursuant to section 38-2871.

(2) A prescription for controlled substances listed in Schedule III, IV, or V of section 28-405 must contain the following information prior to being filled by a pharmacist or dispensing practitioner: (a) Patient’s name and address, (b) name of the drug, device, or biological, (c) strength of the drug or biological, (d) dosage form of the drug or biological, if applicable, (e) quantity of the drug, device, or biological prescribed, (f) directions for use, (g) date of issuance, (h) number of refills, not to exceed five refills within six months after the date of issuance, (i) prescribing practitioner’s name and address, and (j) Drug Enforcement Administration number of the prescribing practitioner. If the prescription

is a written paper prescription, the paper prescription must contain the prescribing practitioner's manual signature. If the prescription is an electronic prescription, the electronic prescription must contain all of the elements in subdivisions (a) through (j) of this subsection, must be digitally signed, and must be transmitted to and received by the pharmacy electronically to meet all of the requirements of 21 C.F.R. 1311, as the regulation existed on January 1, 2014, pertaining to electronic prescribing of controlled substances.

(3) A controlled substance listed in Schedule III, IV, or V of section 28-405 may be dispensed pursuant to a facsimile of a written, signed paper prescription. The facsimile of a written, signed paper prescription shall serve as the original written prescription for purposes of this subsection and shall be maintained in accordance with subsection (2) of section 28-414.03.

(4) A prescription for a controlled substance listed in Schedule III, IV, or V of section 28-405 may be partially filled if (a) each partial filling is recorded in the same manner as a refilling, (b) the total quantity dispensed in all partial fillings does not exceed the total quantity prescribed, and (c) each partial filling is dispensed within six months after the prescription was issued.

Source: Laws 2014, LB811, § 7.

Effective date July 18, 2014.

28-414.02 Prescription created, signed, transmitted, and received electronically; records.

(1) If a prescription is created, signed, transmitted, and received electronically, all records related to that prescription must be retained electronically.

(2) Electronic records must be maintained electronically for five years after the date of their creation or receipt.

(3) Records regarding controlled substances must be readily retrievable from all other records. Electronic records must be easily readable or easily rendered into a format that a person can read.

(4) Records of electronic prescriptions for controlled substances shall be maintained in an application that meets the requirements of 21 C.F.R. 1311, as the regulation existed on January 1, 2014. The computers on which the records are maintained may be located at another location, but the records must be readily retrievable at the registered location if requested by an agent of the department or the administration or other law enforcement agent. The electronic application must be capable of printing out or transferring the records in a format that is readily understandable to an agent of the department or the administration or other law enforcement agent at the registered location.

Source: Laws 2014, LB811, § 8.

Effective date July 18, 2014.

28-414.03 Controlled substances; maintenance of records; label.

(1) Paper prescriptions for all controlled substances listed in Schedule II of section 28-405 shall be kept in a separate file by the dispensing practitioner and shall be maintained for a minimum of five years. The practitioner shall make all such files readily available to the department and law enforcement for inspection without a search warrant.

(2) Prescriptions for all controlled substances listed in Schedule III, IV, or V of section 28-405 shall be maintained either separately from other prescriptions

or in a form in which the information required is readily retrievable from ordinary business records of the dispensing practitioner and shall be maintained for a minimum of five years. The practitioner shall make all such records readily available to the department, the administration, and law enforcement for inspection without a search warrant.

(3) Before dispensing any controlled substance listed in Schedule II, III, IV, or V of section 28-405, the dispensing practitioner shall affix a label to the container in which the controlled substance is dispensed. Such label shall bear the name and address of the pharmacy or dispensing practitioner, the name of the patient, the date of filling, the serial number of the prescription under which it is recorded in the practitioner's prescription records, the name of the prescribing practitioner, and the directions for use of the controlled substance. Unless the prescribing practitioner writes "do not label" or words of similar import on the original paper prescription or so designates in an electronic prescription or an oral prescription, such label shall also bear the name of the controlled substance.

Source: Laws 2014, LB811, § 9.
Effective date July 18, 2014.

28-414.04 Controlled substance; transfer.

A registrant who is the owner of a controlled substance may transfer:

(1) Any controlled substance listed in Schedule I or II of section 28-405 to another registrant as provided by law or by rule and regulation of the department; and

(2) Any controlled substance listed in Schedule III, IV, or V of section 28-405 to another registrant if such owner complies with subsection (4) of section 28-411.

Source: Laws 2014, LB811, § 10.
Effective date July 18, 2014.

28-414.05 Controlled substance; destruction; records.

(1) The owner of any stock of controlled substances may cause such controlled substances to be destroyed pursuant to this section when the need for such substances ceases. Complete records of the destruction of controlled substances pursuant to this section shall be maintained by the registrant for five years after the date of destruction.

(2) If the owner is a registrant:

(a) Controlled substances listed in Schedule II, III, IV, or V of section 28-405 may be destroyed by a pharmacy inspector, by a reverse distributor, or by the administration. Upon destruction, any forms required by the administration to document such destruction shall be completed;

(b) Liquid controlled substances in opened containers which originally contained fifty milliliters or less or compounded liquid controlled substances within the facility where they were compounded may be destroyed if witnessed by two individuals credentialed under the Uniform Credentialing Act and designated by the facility and recorded in accordance with subsection (4) of section 28-411; or

(c) Solid controlled substances in opened unit-dose containers or which have been adulterated within a hospital where they were to be administered to

patients in such hospital may be destroyed if witnessed by two individuals credentialed under the Uniform Credentialing Act and designated by the hospital and recorded in accordance with subsection (4) of section 28-411.

(3) If the owner is a resident of a long-term care facility or hospital, a controlled substance listed in Schedule II, III, IV, or V of section 28-405 shall be destroyed by two individuals credentialed under the Uniform Credentialing Act and designated by the facility or hospital.

Source: Laws 2014, LB811, § 11.
Effective date July 18, 2014.

Cross References

Uniform Credentialing Act, see section 38-101.

28-414.06 Controlled substance; practitioner; provide information; limit on liability or penalty.

(1) Any practitioner who gives information to a law enforcement officer or professional board appointed pursuant to the Uniform Credentialing Act shall not be subject to any civil, criminal, or administrative liability or penalty for giving such information.

(2) As used in this section, unless the context otherwise requires:

(a) Information means information regarding unlawfully obtaining or attempting to obtain from a practitioner (i) a controlled substance, (ii) a written or oral prescription for a controlled substance, or (iii) the administration of a controlled substance; and

(b) Law enforcement officer has the definition found in section 81-1401.

Source: Laws 1988, LB 273, § 2; R.S.1943, (2008), § 28-1438.01; Laws 2014, LB811, § 12.
Effective date July 18, 2014.

Cross References

Uniform Credentialing Act, see section 38-101.

28-414.07 Controlled substances; chemical analysis; admissible as evidence in preliminary hearing.

Whenever matter is submitted to the criminalistics laboratory of the Nebraska State Patrol for chemical analysis to determine if the matter is, or contains, a controlled substance, the report of that analysis shall be admissible in any preliminary hearing in any court in Nebraska as prima facie evidence of the identity, nature, and quantity of the matter analyzed. Nothing in this section is intended to require the use of a laboratory report in a preliminary hearing or to prohibit the use of other evidence, including circumstantial evidence, in the preliminary hearing to establish the identity, nature, and quantity of a controlled substance.

Source: Laws 1976, LB 487, § 1; R.R.S.1943, § 28-4,135.01, (1975); Laws 1984, LB 403, § 3; R.S.1943, (2008), § 28-1439; Laws 2014, LB811, § 13.
Effective date July 18, 2014.

28-415 Narcotic drugs; label; requirements.

(1) A manufacturer, distributor, or packager who sells or dispenses a narcotic drug or a wholesaler who sells or dispenses a narcotic drug in a package prepared by him or her shall securely affix a label to each package in which such drug is contained showing in legible English the name and address of the vendor and the quantity, kind, and form of narcotic drug contained therein. No person, except a pharmacy for the purpose of filling a medical order under the Uniform Controlled Substances Act, shall alter, deface, or remove any label so affixed.

(2) A pharmacy that sells or dispenses any narcotic drug on a prescription issued by a practitioner shall affix a label to the container in which such drug is sold or dispensed pursuant to subsection (3) of section 28-414.03. No person shall alter, deface, or remove any label so affixed.

Source: Laws 1977, LB 38, § 75; Laws 1988, LB 273, § 6; Laws 1995, LB 406, § 8; Laws 1999, LB 379, § 3; Laws 1999, LB 594, § 5; Laws 2001, LB 398, § 13; Laws 2014, LB811, § 14.
Effective date July 18, 2014.

28-416 Prohibited acts; violations; penalties.

(1) Except as authorized by the Uniform Controlled Substances Act, it shall be unlawful for any person knowingly or intentionally: (a) To manufacture, distribute, deliver, dispense, or possess with intent to manufacture, distribute, deliver, or dispense a controlled substance; or (b) to create, distribute, or possess with intent to distribute a counterfeit controlled substance.

(2) Except as provided in subsections (4), (5), (7), (8), (9), and (10) of this section, any person who violates subsection (1) of this section with respect to: (a) A controlled substance classified in Schedule I, II, or III of section 28-405 which is an exceptionally hazardous drug shall be guilty of a Class II felony; (b) any other controlled substance classified in Schedule I, II, or III of section 28-405 shall be guilty of a Class III felony; or (c) a controlled substance classified in Schedule IV or V of section 28-405 shall be guilty of a Class IIIA felony.

(3) A person knowingly or intentionally possessing a controlled substance, except marijuana or any substance containing a quantifiable amount of the substances, chemicals, or compounds described, defined, or delineated in subdivision (c)(25) of Schedule I of section 28-405, unless such substance was obtained directly or pursuant to a medical order issued by a practitioner authorized to prescribe while acting in the course of his or her professional practice, or except as otherwise authorized by the act, shall be guilty of a Class IV felony.

(4)(a) Except as authorized by the Uniform Controlled Substances Act, any person eighteen years of age or older who knowingly or intentionally manufactures, distributes, delivers, dispenses, or possesses with intent to manufacture, distribute, deliver, or dispense a controlled substance or a counterfeit controlled substance (i) to a person under the age of eighteen years, (ii) in, on, or within one thousand feet of the real property comprising a public or private elementary, vocational, or secondary school, a community college, a public or private college, junior college, or university, or a playground, or (iii) within one hundred feet of a public or private youth center, public swimming pool, or video arcade facility shall be punished by the next higher penalty classification than the penalty prescribed in subsection (2), (7), (8), (9), or (10) of this section,

depending upon the controlled substance involved, for the first violation and for a second or subsequent violation shall be punished by the next higher penalty classification than that prescribed for a first violation of this subsection, but in no event shall such person be punished by a penalty greater than a Class IB felony.

(b) For purposes of this subsection:

(i) Playground shall mean any outdoor facility, including any parking lot appurtenant to the facility, intended for recreation, open to the public, and with any portion containing three or more apparatus intended for the recreation of children, including sliding boards, swingsets, and teeterboards;

(ii) Video arcade facility shall mean any facility legally accessible to persons under eighteen years of age, intended primarily for the use of pinball and video machines for amusement, and containing a minimum of ten pinball or video machines; and

(iii) Youth center shall mean any recreational facility or gymnasium, including any parking lot appurtenant to the facility or gymnasium, intended primarily for use by persons under eighteen years of age which regularly provides athletic, civic, or cultural activities.

(5)(a) Except as authorized by the Uniform Controlled Substances Act, it shall be unlawful for any person eighteen years of age or older to knowingly and intentionally employ, hire, use, cause, persuade, coax, induce, entice, seduce, or coerce any person under the age of eighteen years to manufacture, transport, distribute, carry, deliver, dispense, prepare for delivery, offer for delivery, or possess with intent to do the same a controlled substance or a counterfeit controlled substance.

(b) Except as authorized by the Uniform Controlled Substances Act, it shall be unlawful for any person eighteen years of age or older to knowingly and intentionally employ, hire, use, cause, persuade, coax, induce, entice, seduce, or coerce any person under the age of eighteen years to aid and abet any person in the manufacture, transportation, distribution, carrying, delivery, dispensing, preparation for delivery, offering for delivery, or possession with intent to do the same of a controlled substance or a counterfeit controlled substance.

(c) Any person who violates subdivision (a) or (b) of this subsection shall be punished by the next higher penalty classification than the penalty prescribed in subsection (2), (7), (8), (9), or (10) of this section, depending upon the controlled substance involved, for the first violation and for a second or subsequent violation shall be punished by the next higher penalty classification than that prescribed for a first violation of this subsection, but in no event shall such person be punished by a penalty greater than a Class IB felony.

(6) It shall not be a defense to prosecution for violation of subsection (4) or (5) of this section that the defendant did not know the age of the person through whom the defendant violated such subsection.

(7) Any person who violates subsection (1) of this section with respect to cocaine or any mixture or substance containing a detectable amount of cocaine in a quantity of:

(a) One hundred forty grams or more shall be guilty of a Class IB felony;

(b) At least twenty-eight grams but less than one hundred forty grams shall be guilty of a Class IC felony; or

(c) At least ten grams but less than twenty-eight grams shall be guilty of a Class ID felony.

(8) Any person who violates subsection (1) of this section with respect to base cocaine (crack) or any mixture or substance containing a detectable amount of base cocaine in a quantity of:

(a) One hundred forty grams or more shall be guilty of a Class IB felony;

(b) At least twenty-eight grams but less than one hundred forty grams shall be guilty of a Class IC felony; or

(c) At least ten grams but less than twenty-eight grams shall be guilty of a Class ID felony.

(9) Any person who violates subsection (1) of this section with respect to heroin or any mixture or substance containing a detectable amount of heroin in a quantity of:

(a) One hundred forty grams or more shall be guilty of a Class IB felony;

(b) At least twenty-eight grams but less than one hundred forty grams shall be guilty of a Class IC felony; or

(c) At least ten grams but less than twenty-eight grams shall be guilty of a Class ID felony.

(10) Any person who violates subsection (1) of this section with respect to amphetamine, its salts, optical isomers, and salts of its isomers, or with respect to methamphetamine, its salts, optical isomers, and salts of its isomers, in a quantity of:

(a) One hundred forty grams or more shall be guilty of a Class IB felony;

(b) At least twenty-eight grams but less than one hundred forty grams shall be guilty of a Class IC felony; or

(c) At least ten grams but less than twenty-eight grams shall be guilty of a Class ID felony.

(11) Any person knowingly or intentionally possessing marijuana weighing more than one ounce but not more than one pound shall be guilty of a Class III misdemeanor.

(12) Any person knowingly or intentionally possessing marijuana weighing more than one pound shall be guilty of a Class IV felony.

(13) Any person knowingly or intentionally possessing marijuana weighing one ounce or less or any substance containing a quantifiable amount of the substances, chemicals, or compounds described, defined, or delineated in subdivision (c)(25) of Schedule I of section 28-405 shall:

(a) For the first offense, be guilty of an infraction, receive a citation, be fined three hundred dollars, and be assigned to attend a course as prescribed in section 29-433 if the judge determines that attending such course is in the best interest of the individual defendant;

(b) For the second offense, be guilty of a Class IV misdemeanor, receive a citation, and be fined four hundred dollars and may be imprisoned not to exceed five days; and

(c) For the third and all subsequent offenses, be guilty of a Class IIIA misdemeanor, receive a citation, be fined five hundred dollars, and be imprisoned not to exceed seven days.

(14) Any person convicted of violating this section, if placed on probation, shall, as a condition of probation, satisfactorily attend and complete appropriate treatment and counseling on drug abuse provided by a program authorized under the Nebraska Behavioral Health Services Act or other licensed drug treatment facility.

(15) Any person convicted of violating this section, if sentenced to the Department of Correctional Services, shall attend appropriate treatment and counseling on drug abuse.

(16) Any person knowingly or intentionally possessing a firearm while in violation of subsection (1) of this section shall be punished by the next higher penalty classification than the penalty prescribed in subsection (2), (7), (8), (9), or (10) of this section, but in no event shall such person be punished by a penalty greater than a Class IB felony.

(17) A person knowingly or intentionally in possession of money used or intended to be used to facilitate a violation of subsection (1) of this section shall be guilty of a Class IV felony.

(18) In addition to the penalties provided in this section:

(a) If the person convicted or adjudicated of violating this section is eighteen years of age or younger and has one or more licenses or permits issued under the Motor Vehicle Operator's License Act:

(i) For the first offense, the court may, as a part of the judgment of conviction or adjudication, (A) impound any such licenses or permits for thirty days and (B) require such person to attend a drug education class;

(ii) For a second offense, the court may, as a part of the judgment of conviction or adjudication, (A) impound any such licenses or permits for ninety days and (B) require such person to complete no fewer than twenty and no more than forty hours of community service and to attend a drug education class; and

(iii) For a third or subsequent offense, the court may, as a part of the judgment of conviction or adjudication, (A) impound any such licenses or permits for twelve months and (B) require such person to complete no fewer than sixty hours of community service, to attend a drug education class, and to submit to a drug assessment by a licensed alcohol and drug counselor; and

(b) If the person convicted or adjudicated of violating this section is eighteen years of age or younger and does not have a permit or license issued under the Motor Vehicle Operator's License Act:

(i) For the first offense, the court may, as part of the judgment of conviction or adjudication, (A) prohibit such person from obtaining any permit or any license pursuant to the act for which such person would otherwise be eligible until thirty days after the date of such order and (B) require such person to attend a drug education class;

(ii) For a second offense, the court may, as part of the judgment of conviction or adjudication, (A) prohibit such person from obtaining any permit or any license pursuant to the act for which such person would otherwise be eligible until ninety days after the date of such order and (B) require such person to complete no fewer than twenty hours and no more than forty hours of community service and to attend a drug education class; and

(iii) For a third or subsequent offense, the court may, as part of the judgment of conviction or adjudication, (A) prohibit such person from obtaining any

permit or any license pursuant to the act for which such person would otherwise be eligible until twelve months after the date of such order and (B) require such person to complete no fewer than sixty hours of community service, to attend a drug education class, and to submit to a drug assessment by a licensed alcohol and drug counselor.

A copy of an abstract of the court's conviction or adjudication shall be transmitted to the Director of Motor Vehicles pursuant to sections 60-497.01 to 60-497.04 if a license or permit is impounded or a juvenile is prohibited from obtaining a license or permit under this subsection.

Source: Laws 1977, LB 38, § 76; Laws 1978, LB 808, § 2; Laws 1980, LB 696, § 3; Laws 1985, LB 406, § 4; Laws 1986, LB 504, § 1; Laws 1989, LB 592, § 2; Laws 1991, LB 742, § 1; Laws 1993, LB 117, § 2; Laws 1995, LB 371, § 6; Laws 1997, LB 364, § 8; Laws 1999, LB 299, § 1; Laws 2001, LB 398, § 14; Laws 2003, LB 46, § 1; Laws 2004, LB 1083, § 86; Laws 2005, LB 117, § 3; Laws 2008, LB844, § 1; Laws 2010, LB800, § 4; Laws 2011, LB19, § 2; Laws 2011, LB463, § 1; Laws 2013, LB298, § 2.

Cross References

Motor Vehicle Operator's License Act, see section 60-462.

Nebraska Behavioral Health Services Act, see section 71-801.

28-418 Intentional violations; penalty.

(1) It shall be unlawful for any person knowingly or intentionally:

(a) Who is a registrant to distribute a controlled substance classified in Schedule I or II of section 28-405 in the course of his or her legitimate business except in compliance with section 28-413;

(b) To use in the course of the manufacture or distribution of a controlled substance a registration number which is fictitious, revoked, suspended, or issued to another person;

(c) To acquire or obtain or to attempt to acquire or obtain possession of a controlled substance by theft, misrepresentation, fraud, forgery, deception, or subterfuge;

(d) To furnish false or fraudulent material information in or omit any material information from any application, report, or other document required to be kept or filed under the Uniform Controlled Substances Act or any record required to be kept by the act;

(e) To make, distribute, or possess any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as to render such drug a counterfeit controlled substance;

(f) Who is subject to sections 28-406 to 28-414.05 to distribute or dispense a controlled substance in violation of sections 28-414 to 28-414.05;

(g) Who is a registrant to manufacture a controlled substance not authorized by his or her registration or to distribute or dispense a controlled substance not authorized by his or her registration to another registrant or authorized person;

(h) To possess a false or forged medical order for a controlled substance issued by a practitioner authorized to prescribe, except that this subdivision

shall not apply to law enforcement officials, practitioners, or attorneys in the performance of their official lawful duties; or

(i) To communicate information to a practitioner in an effort to unlawfully procure a controlled substance, the administration of a controlled substance, or a medical order for a controlled substance issued by a practitioner authorized to prescribe.

(2) Any person who violates this section shall be guilty of a Class IV felony.

Source: Laws 1977, LB 38, § 78; Laws 1988, LB 273, § 8; Laws 2001, LB 113, § 12; Laws 2001, LB 398, § 16; Laws 2014, LB811, § 15. Effective date July 18, 2014.

28-421 Act, exceptions.

The provisions of sections 28-419 to 28-424 shall not apply to the use or sale of such substances, as defined in sections 28-419 and 28-420, when such use or sale is administered or prescribed for medical or dental purposes, nor shall the provisions of sections 28-419 to 28-424 apply to the use or sale of alcoholic liquors as defined by section 53-103.02.

Source: Laws 1977, LB 38, § 81; Laws 2010, LB861, § 5.

28-429 Division of Drug Control; established; personnel; powers and duties; Nebraska State Patrol Drug Control and Education Cash Fund; created; use; investment; report; contents.

(1) There is hereby established in the Nebraska State Patrol a Division of Drug Control. The division shall consist of such personnel as may be designated by the Superintendent of Law Enforcement and Public Safety. It shall be the duty of the division to enforce all of the provisions of the Uniform Controlled Substances Act and any other provisions of the law dealing with controlled substances and to conduct drug education activities as directed by the superintendent. The Nebraska State Patrol shall cooperate with federal agencies, the department, other state agencies, elementary and secondary schools, and County Drug Law Enforcement and Education Fund Boards in discharging their responsibilities concerning traffic in controlled substances, in suppressing the abuse of controlled substances, and in conducting drug education activities. To this end the division is authorized to: (a) Arrange for the exchange of information between governmental officials concerning the use and abuse of controlled substances; (b) coordinate and cooperate in training programs on controlled substance law enforcement and education at the local and state levels; (c) establish a centralized unit which will accept, catalog, file, and collect statistics, including records of drug dependent persons and other controlled substance law offenders within the state, and make such information available for federal, state, and local law enforcement purposes on request; (d) cooperate in locating, eradicating, and destroying wild or illicit growth of plant species from which controlled substances may be extracted, and for these purposes a peace officer is hereby authorized to enter onto property upon which there are no buildings or upon which there are only uninhabited buildings without first obtaining a search warrant or consent; (e) develop a priority program so as to focus the bulk of its efforts on the reduction and elimination of the most damaging drugs including narcotic drugs, depressant and stimulant drugs, and hallucinogenic drugs; and (f) develop and conduct drug education activities in cooperation

with elementary and secondary schools in Nebraska and with County Drug Law Enforcement and Education Fund Boards.

(2) There is hereby created the Nebraska State Patrol Drug Control and Education Cash Fund which shall be used for the purposes of (a) obtaining evidence for enforcement of any state law relating to the control of drug abuse and (b) drug education activities conducted pursuant to subsection (1) of this section, except that transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Nebraska State Patrol Drug Control and Education 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) For the purpose of establishing and maintaining legislative oversight and accountability, the Appropriations Committee of the Legislature shall formulate record-keeping procedures to be adhered to by the Nebraska State Patrol for all expenditures, disbursements, and transfers of cash from the Nebraska State Patrol Drug Control and Education Cash Fund. Based on these record-keeping procedures, the Nebraska State Patrol shall prepare and electronically deliver to the Clerk of the Legislature at the commencement of each succeeding session a detailed report which shall contain, but not be limited to: (a) Current total in the cash fund; (b) total amount of expenditures; (c) purpose of the expenditures to include: (i) Salaries and any expenses of all agents and informants; (ii) front money for drug purchases; (iii) names of drugs and quantity of purchases; (iv) amount of front money recovered; and (v) drug education activities; (d) total number of informers on payroll; (e) amounts delivered to patrol supervisors for distribution to agents and informants and the method of accounting for such transactions and the results procured through such transactions; and (f) a description of the drug education activities conducted since the date of the previous report. Each member of the Legislature shall receive an electronic copy of such report by making a request for it to the superintendent.

(4) The superintendent shall adopt and promulgate rules and regulations to carry out this section.

Source: Laws 1977, LB 38, § 89; Laws 1979, LB 322, § 8; Laws 1991, LB 773, § 1; Laws 1994, LB 1066, § 19; Laws 2001, LB 398, § 17; Laws 2009, First Spec. Sess., LB3, § 13; Laws 2012, LB782, § 31.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

28-435.01 Health care facility; peer review organization or professional association; report required; contents; confidentiality; immunity; failure to report; civil penalty; disposition.

(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 Uniform Controlled Substances Act shall report to the department, on a form and in the manner specified by the department, any facts known to the facility, organization, or association, including, but not limited to, the identity of the credential holder and consumer, when the facility, organization, or association:

(a) Has made payment due to adverse judgment, settlement, or award of a professional liability claim against it or a licensee, including settlements made prior to suit, arising out of the acts or omissions of the licensee; or

(b) Takes action adversely affecting the privileges or membership of a licensee in such facility, organization, or association due to alleged incompetence, professional negligence, unprofessional conduct, or physical, mental, or chemical impairment.

The report shall be made within thirty days after the date of the action or event.

(2) A report made to the department under this section shall be confidential. The facility, organization, association, or person making such report shall be completely immune from criminal or civil liability of any nature, whether direct or derivative, for filing a report or for disclosure of documents, records, or other information to the department under this section. Nothing in this subsection shall be construed to require production of records protected by the Health Care Quality Improvement Act or section 25-12,123 or patient safety work product under the Patient Safety Improvement Act except as otherwise provided in either of such acts or such section.

(3) Any health care facility, peer review organization, or professional association that fails or neglects to make a report or provide information as required under this section is subject to a civil penalty of five hundred dollars for the first offense and a civil penalty of up to one thousand dollars for a subsequent offense. Any civil penalty collected under this subsection shall be remitted to the State Treasurer to be disposed of in accordance with Article VII, section 5, of the Constitution of Nebraska.

(4) For purposes of this section, the department shall accept reports made to it under the Nebraska Hospital-Medical Liability Act or in accordance with national practitioner data bank requirements of the federal Health Care Quality Improvement Act of 1986, as the act existed on January 1, 2007, and may require a supplemental report to the extent such reports do not contain the information required by the department.

Source: Laws 2007, LB463, § 1124; Laws 2011, LB431, § 11.

Cross References

Health Care Facility Licensure Act, see section 71-401.

Health Care Quality Improvement Act, see section 71-7904.

Nebraska Hospital-Medical Liability Act, see section 44-2855.

Patient Safety Improvement Act, see section 71-8701.

28-445 Imitation controlled substance; prohibited acts; determination; penalties; seizure.

(1) Any person who knowingly and intentionally manufactures, distributes, delivers, or possesses with intent to distribute or deliver an imitation controlled substance shall:

(a) For the first offense, be guilty of a Class III misdemeanor; and

(b) For the second and all subsequent offenses, be guilty of a Class II misdemeanor.

(2) In determining whether a substance is an imitation controlled substance the court or other authority concerned shall consider all relevant factors, including, but not limited to, the following:

(a) Whether the substance is represented as having an effect similar to or the same as an illicit controlled substance;

(b) Whether the substance is represented by way of terminology which is deceptively similar to or the same as that describing a particular controlled substance;

(c) Whether the dosage unit price substantially exceeds the reasonable price of a similar dosage unit of like chemical composition sold over the counter;

(d) Whether the substance was approved by the federal Food and Drug Administration for over-the-counter sales and contained the packaging and labeling information approved by the federal Food and Drug Administration;

(e) Whether the substance is packaged in a manner and quantity similar to or the same as that commonly used for illicit controlled substances;

(f) Whether the dosage unit appearance of the substance is deceptively similar to that of a particular controlled substance;

(g) Whether the substance is distributed to persons who represent it as a controlled substance or controlled substance analogue, under circumstances which indicate the distributor knows, intends, or should know that his or her distributee is making or will make such representations; and

(h) Whether the person in possession or control of the substance utilized deception, fraud, or evasive tactics or actions to prevent the seizure, discovery, or detection of the substance by law enforcement.

(3) Any substance possessed, distributed, or delivered in violation of this section shall be subject to seizure and forfeiture as provided in section 28-431.

Source: Laws 1985, LB 406, § 5; Laws 2014, LB811, § 16.
Effective date July 18, 2014.

28-448 Repealed. Laws 2009, LB 151, § 5.

28-454 Repealed. Laws 2009, LB 151, § 5.

28-456 Phenylpropanolamine or pseudoephedrine; sold without a prescription; requirements; enforcement.

(1) Any drug products containing phenylpropanolamine, pseudoephedrine, or their salts, optical isomers, or salts of such optical isomers may be sold without a prescription only if they are:

(a) Labeled and marketed in a manner consistent with the pertinent OTC Tentative Final or Final Monograph;

(b) Manufactured and distributed for legitimate medicinal use in a manner that reduces or eliminates the likelihood of abuse;

(c) Packaged as follows:

(i) Except for liquids, sold in package sizes of not more than three and six-tenths grams of pseudoephedrine base or three and six-tenths grams of phenylpropanolamine base, in blister packs, each blister containing not more than two dosage units, or if the use of blister packs is technically infeasible, in unit dose packets or pouches; and

(ii) For liquids, sold in package sizes of not more than three and six-tenths grams of pseudoephedrine base or three and six-tenths grams of phenylpropanolamine base;

(d) Sold by a person, eighteen years of age or older, in the course of his or her employment to a customer, eighteen years of age or older, with the following restrictions:

(i) No customer shall be allowed to purchase, receive, or otherwise acquire more than three and six-tenths grams of pseudoephedrine base or three and six-tenths grams of phenylpropanolamine base during a twenty-four-hour period;

(ii) No customer shall purchase, receive, or otherwise acquire more than nine grams of pseudoephedrine base or nine grams of phenylpropanolamine base during a thirty-day period; and

(iii) The customer shall display a valid driver's or operator's license, a Nebraska state identification card, a military identification card, an alien registration card, or a passport as proof of identification; and

(e) Stored behind a counter, in an area not accessible to customers, or in a locked case so that a customer needs assistance from an employee to access the drug product.

(2) Any person who sells drug products in violation of this section may be subject to a civil penalty of fifty dollars per day, and for a second or any subsequent violation, the penalty may be one hundred dollars per day. Any such drug products shall be seized and destroyed upon the finding of a violation of this section. The department, in conjunction with the Attorney General, the Nebraska State Patrol, and local law enforcement agencies, shall have authority to make inspections and investigations to enforce this section. In addition, the department may seek injunctive relief for suspected violations of this section.

Source: Laws 2001, LB 113, § 9; Laws 2005, LB 117, § 5; Laws 2007, LB218, § 1; Laws 2007, LB296, § 36; Laws 2009, LB151, § 2.

28-456.01 Pseudoephedrine or phenylpropanolamine; limitation on acquisition; violation; penalty.

(1) No person shall purchase, receive, or otherwise acquire, other than wholesale acquisition by a retail business in the normal course of its trade or business, any drug product containing more than three and six-tenths grams of pseudoephedrine base or three and six-tenths grams of phenylpropanolamine base during a twenty-four-hour period unless purchased pursuant to a medical order. Any person who violates this section shall be guilty of a Class IV misdemeanor for the first offense and a Class III misdemeanor for each subsequent offense.

(2) No person shall purchase, receive, or otherwise acquire, other than wholesale acquisition by a retail business in the normal course of its trade or business, any drug product containing more than nine grams of pseudoephedrine base or nine grams of phenylpropanolamine base during a thirty-day period unless purchased pursuant to a medical order. Any person who violates this section shall be guilty of a Class IV misdemeanor for the first offense and a Class III misdemeanor for each subsequent offense.

Source: Laws 2005, LB 117, § 6; Laws 2009, LB151, § 3; Laws 2011, LB20, § 8.

28-458 Methamphetamine precursor; terms, defined.

For purposes of sections 28-458 to 28-462:

(1) Exchange means the National Precursor Log Exchange administered by the National Association of Drug Diversion Investigators;

(2) Methamphetamine precursor means any drug product containing ephedrine, pseudoephedrine, or phenylpropanolamine that is required to be documented pursuant to the logbook requirements of 21 U.S.C. 830;

(3) Seller means any person who lawfully sells a methamphetamine precursor pursuant to subdivision (1)(d) of section 28-456 or his or her employer; and

(4) Stop-sale alert means a notification sent to a seller indicating that the completion of a methamphetamine precursor sale would result in a violation of subdivision (1)(d)(i) or (ii) of section 28-456.

Source: Laws 2011, LB20, § 3.

28-459 Methamphetamine precursor; seller; duties; waiver authorized.

(1) Beginning January 1, 2012, each seller shall, before completing a sale of a methamphetamine precursor, electronically submit required information to the exchange, if the exchange is available to sellers. Required information shall include, but not be limited to:

(a) The name, age, and address of the person purchasing, receiving, or otherwise acquiring the methamphetamine precursor;

(b) The name of the product and quantity of product purchased;

(c) The date and time of the purchase;

(d) The name or initials of the seller who sold the product; and

(e) The type of identification presented by the customer, the governmental entity that issued the identification, and the number on the identification.

(2) If a seller experiences mechanical or electronic failure of the electronic logging equipment on the sales end of the transaction or a failure of the exchange and is unable to comply with subsection (1) of this section, the seller shall maintain a written log or an alternative electronic recordkeeping mechanism or may refrain from selling any methamphetamine precursor until such time as the seller is able to comply with subsection (1) of this section.

(3) The Attorney General may grant a waiver exempting a seller from compliance with subsection (1) of this section upon a showing of good cause by the seller that he or she is otherwise unable to submit log information by electronic means, including, but not limited to, any financial, technological, or other reason which would place an undue burden on the seller, as established by the Attorney General.

(4) Whenever the exchange generates a stop-sale alert, the seller shall not complete the sale unless the seller has a reasonable fear of imminent bodily harm if he or she does not complete the sale. The exchange shall contain an override function to the stop-sale alert for the seller to use in a situation in which a reasonable fear of imminent bodily harm is present.

(5) This section does not apply if a lawful prescription for the methamphetamine precursor is presented to a pharmacist licensed under the Uniform Credentialing Act.

Source: Laws 2011, LB20, § 4.

Cross References

Uniform Credentialing Act, see section 38-101.

28-460 Methamphetamine precursor; access to exchange to law enforcement.

As a condition of use in Nebraska, the National Association of Drug Diversion Investigators shall provide real-time access to the exchange through its online portal to law enforcement in this state as authorized by the Attorney General and no fee or charge shall be imposed on a seller for the use of the exchange.

Source: Laws 2011, LB20, § 5.

28-461 Methamphetamine precursor; seller; immunity.

A seller utilizing in good faith sections 28-458 to 28-462 shall be immune from any civil cause of action based upon an act or omission in carrying out such sections.

Source: Laws 2011, LB20, § 6.

28-462 Methamphetamine precursor; prohibited acts; penalty.

Beginning January 1, 2013, a seller that knowingly fails to submit methamphetamine precursor information to the exchange as required by sections 28-458 to 28-462 or knowingly submits incorrect information to the exchange shall be guilty of a Class IV misdemeanor.

Source: Laws 2011, LB20, § 7.

ARTICLE 5**OFFENSES AGAINST PROPERTY**

Section

28-502.	Arson, first degree; penalty.
28-503.	Arson, second degree; penalty.
28-504.	Arson, third degree; penalty.
28-511.01.	Theft by shoplifting; penalty; photographic evidence.
28-511.03.	Possession of security device countermeasure; penalty.
28-518.	Grading of theft offenses; aggregation allowed; when.
28-520.	Criminal trespass, first degree; penalty.
28-521.	Criminal trespass, second degree; penalty.
28-524.	Graffiti; penalty.

28-502 Arson, first degree; penalty.

(1) A person commits arson in the first degree if he or she intentionally damages a building or property contained within a building by starting a fire or causing an explosion when another person is present in the building at the time and either (a) the actor knows that fact, or (b) the circumstances are such as to render the presence of a person therein a reasonable probability.

(2) A person commits arson in the first degree if a fire is started or an explosion is caused in the perpetration of any robbery, burglary, or felony criminal mischief when another person is present in the building at the time and either (a) the actor knows that fact, or (b) the circumstances are such as to render the presence of a person therein a reasonable probability.

(3) Arson in the first degree is a Class II felony.

Source: Laws 1977, LB 38, § 101; Laws 1981, LB 83, § 1; Laws 2010, LB712, § 8.

28-503 Arson, second degree; penalty.

(1) A person commits arson in the second degree if he or she intentionally damages a building or property contained within a building by starting a fire or causing an explosion or if a fire is started or an explosion is caused in the perpetration of any robbery, burglary, or felony criminal mischief.

(2) The following affirmative defenses may be introduced into evidence upon prosecution for a violation of this section:

(a) No person other than the accused has a security or proprietary interest in the damaged building, or, if other persons have such interests, all of them consented to his or her conduct; or

(b) The accused's sole intent was to destroy or damage the building for a lawful and proper purpose.

(3) Arson in the second degree is a Class III felony.

Source: Laws 1977, LB 38, § 102; Laws 1981, LB 83, § 2; Laws 2010, LB712, § 9.

28-504 Arson, third degree; penalty.

(1) A person commits arson in the third degree if he or she intentionally sets fire to, burns, causes to be burned, or by the use of any explosive, damages or destroys, or causes to be damaged or destroyed, any property of another person without such other person's consent. Such property shall not be contained within a building and shall not be a building or occupied structure.

(2) Arson in the third degree is a Class IV felony if the damages amount to one hundred dollars or more.

(3) Arson in the third degree is a Class I misdemeanor if the damages are less than one hundred dollars.

Source: Laws 1977, LB 38, § 103; Laws 2010, LB712, § 10.

28-511.01 Theft by shoplifting; penalty; photographic evidence.

(1) A person commits the crime of theft by shoplifting when he or she, with the intent of appropriating goods or merchandise to his or her own use without paying for the goods or merchandise or to deprive the owner of possession of such goods or merchandise or its retail value, in whole or in part, does any of the following:

(a) Conceals or takes possession of the goods or merchandise of any store or retail establishment;

(b) Alters the price tag or other price marking on goods or merchandise of any store or retail establishment;

(c) Transfers the goods or merchandise of any store or retail establishment from one container to another;

(d) Interchanges the label or price tag from one item of a good or of merchandise with a label or price tag for another item of a good or of merchandise;

(e) Causes the cash register or other sales recording device to reflect less than the retail price of the goods or merchandise; or

(f) Alters, bypasses, disables, shields, or removes any security or alarm device attached to or housing any goods or merchandise of any store, including the

use or possession of a security device countermeasure as defined in section 28-511.03, prior to purchase of the goods or merchandise.

(2) In any prosecution for theft by shoplifting, photographs of the shoplifted property may be accepted as prima facie evidence as to the identity of the property. Such photograph shall be accompanied by a written statement containing the following:

- (a) A description of the property;
- (b) The name of the owner or owners of the property;
- (c) The time, date, and location where the shoplifting occurred;
- (d) The time and date the photograph was taken;
- (e) The name of the photographer; and
- (f) Verification by the arresting officer.

The purpose of this subsection is to allow the owner or owners of shoplifted property the use of such property during pending criminal prosecutions.

Prior to allowing the use of the shoplifted property as provided in this section, legal counsel for the alleged shoplifter shall have a reasonable opportunity to inspect and appraise the property and may file a motion for retention of the property, which motion shall be granted if there is any reasonable basis for believing that the photographs and accompanying affidavit may be misleading.

Source: Laws 1982, LB 126, § 4; Laws 2010, LB894, § 2.

28-511.03 Possession of security device countermeasure; penalty.

(1) It shall be unlawful for any person, other than an authorized agent of a store or retail establishment, to possess, in that store, any security device countermeasure.

(2) For purposes of this section, security device countermeasure means a device which bypasses, disables, or removes an electronic or magnetic theft alarm sensor.

(3) Any person violating this section is guilty of a Class II misdemeanor.

Source: Laws 2010, LB894, § 3.

28-518 Grading of theft offenses; aggregation allowed; when.

(1) Theft constitutes a Class III felony when the value of the thing involved is over one thousand five hundred dollars.

(2) Theft constitutes a Class IV felony when the value of the thing involved is five hundred dollars or more, but not over one thousand five hundred dollars.

(3) Theft constitutes a Class I misdemeanor when the value of the thing involved is more than two hundred dollars, but less than five hundred dollars.

(4) Theft constitutes a Class II misdemeanor when the value of the thing involved is two hundred dollars or less.

(5) For any second or subsequent conviction under subsection (3) of this section, any person so offending shall be guilty of a Class IV felony.

(6) For any second conviction under subsection (4) of this section, any person so offending shall be guilty of a Class I misdemeanor, and for any third or subsequent conviction under subsection (4) of this section, the person so offending shall be guilty of a Class IV felony.

(7) Amounts taken pursuant to one scheme or course of conduct from one or more persons may be aggregated in the indictment or information in determining the classification of the offense, except that amounts may not be aggregated into more than one offense.

(8) In any prosecution for theft under sections 28-509 to 28-518, value shall be an essential element of the offense that must be proved beyond a reasonable doubt.

Source: Laws 1977, LB 38, § 117; Laws 1978, LB 748, § 7; Laws 1982, LB 347, § 8; Laws 1992, LB 111, § 2; Laws 2009, LB155, § 7.

28-520 Criminal trespass, first degree; penalty.

(1) A person commits first degree criminal trespass if:

(a) He or she enters or secretly remains in any building or occupied structure, or any separately secured or occupied portion thereof, knowing that he or she is not licensed or privileged to do so; or

(b) He or she enters or remains in or on a public power infrastructure facility knowing that he or she does not have the consent of a person who has the right to give consent to be in or on the facility.

(2) First degree criminal trespass is a Class I misdemeanor.

(3) For purposes of this section, public power infrastructure facility means a power plant, an electrical station or substation, or any other facility which is used by a public power supplier as defined in section 70-2103 to support the generation, transmission, or distribution of electricity and which is surrounded by a fence or is otherwise enclosed.

Source: Laws 1977, LB 38, § 119; Laws 2009, LB238, § 1.

28-521 Criminal trespass, second degree; penalty.

(1) A person commits second degree criminal trespass if, knowing that he or she is not licensed or privileged to do so, he or she enters or remains in any place as to which notice against trespass is given by:

(a) Actual communication to the actor; or

(b) Posting in a manner prescribed by law or reasonably likely to come to the attention of intruders; or

(c) Fencing or other enclosure manifestly designed to exclude intruders except as otherwise provided in section 28-520.

(2) Second degree criminal trespass is a Class III misdemeanor, except as provided for in subsection (3) of this section.

(3) Second degree criminal trespass is a Class II misdemeanor if the offender defies an order to leave personally communicated to him or her by the owner of the premises or other authorized person.

Source: Laws 1977, LB 38, § 120; Laws 2009, LB238, § 2.

28-524 Graffiti; penalty.

(1) Any person who knowingly and intentionally applies graffiti of any type on any building, public or private, or any other tangible property owned by any person, firm, or corporation or any public entity or instrumentality, without the

express permission of the owner or operator of the property, commits the offense of unauthorized application of graffiti.

(2) Unauthorized application of graffiti is a Class III misdemeanor for a first offense and a Class IV felony for a second or subsequent offense.

(3) Upon conviction of an offense under this section, the court may, in addition to any other punishment imposed, order the defendant to clean up, repair, or replace the damaged property, keep the defaced property or another specified property in the community free of graffiti or other inscribed materials for up to one year, or order a combination of restitution and labor.

(4) Upon conviction of an offense under this section, the court may, in addition to any other punishment imposed, order the defendant to undergo counseling.

(5) Upon conviction of an offense under this section, the court may, in addition to any other punishment imposed, order the suspension of the defendant's motor vehicle operator's license for up to one year. A copy of an abstract of the court's conviction, including an adjudication of a juvenile, shall be transmitted to the director pursuant to sections 60-497.01 to 60-497.04.

(6) For purposes of this section, graffiti means any letter, word, name, number, symbol, slogan, message, drawing, picture, writing, or other mark of any kind visible to the public that is drawn, painted, chiseled, scratched, or etched on a rock, tree, wall, bridge, fence, gate, building, or other structure. Graffiti does not include advertising or any other letter, word, name, number, symbol, slogan, message, drawing, picture, writing, or other mark of any kind lawfully placed on property by an owner of the property, a tenant of the property, or an authorized agent for such owner or tenant.

Source: Laws 2009, LB63, § 6.

ARTICLE 6 OFFENSES INVOLVING FRAUD

Section	
28-603.	Forgery, second degree; penalty; aggregation allowed; when.
28-604.	Criminal possession of a forged instrument; penalty; aggregation allowed; when.
28-608.	Transferred to section 28-638.
28-611.	Issuing or passing a bad check or similar order; penalty; collection procedures.
28-611.01.	Issuing a no-account check; penalty; aggregation allowed; when.
28-631.	Fraudulent insurance act; penalties.
28-636.	Criminal impersonation; identity theft; identity fraud; terms, defined.
28-637.	Criminal impersonation; identity theft; identity fraud; venue; victim; contact local law enforcement agency.
28-638.	Criminal impersonation; penalty; restitution.
28-639.	Identity theft; penalty; restitution.
28-640.	Identity fraud; penalty; restitution.

28-603 Forgery, second degree; penalty; aggregation allowed; when.

(1) Whoever, with intent to deceive or harm, falsely makes, completes, endorses, alters, or utters any written instrument which is or purports to be, or which is calculated to become or to represent if completed, a written instrument which does or may evidence, create, transfer, terminate, or otherwise affect a legal right, interest, obligation, or status, commits forgery in the second degree.

(2) Forgery in the second degree is a Class III felony when the face value, or purported face value, or the amount of any proceeds wrongfully procured or intended to be procured by the use of such instrument, is one thousand dollars or more.

(3) Forgery in the second degree is a Class IV felony when the face value, or purported face value, or the amount of any proceeds wrongfully procured or intended to be procured by the use of such instrument, exceeds three hundred dollars but is less than one thousand dollars.

(4) Forgery in the second degree is a Class I misdemeanor when the face value, or purported face value, or the amount of any proceeds wrongfully procured or intended to be procured by the use of such instrument, is three hundred dollars or less.

(5) For the purpose of determining the class of penalty for forgery in the second degree, the face values, or purported face values, or the amounts of any proceeds wrongfully procured or intended to be procured by the use of more than one such instrument, may be aggregated in the indictment or information if such instruments were part of the same scheme or course of conduct which took place within a sixty-day period and within one county. Such values or amounts shall not be aggregated into more than one offense.

Source: Laws 1977, LB 38, § 125; Laws 2003, LB 17, § 7; Laws 2009, LB155, § 13.

28-604 Criminal possession of a forged instrument; penalty; aggregation allowed; when.

(1) Whoever, with knowledge that it is forged and with intent to deceive or harm, possesses any forged instrument covered by section 28-602 or 28-603 commits criminal possession of a forged instrument.

(2) Criminal possession of a forged instrument prohibited by section 28-602 is a Class IV felony.

(3) Criminal possession of a forged instrument prohibited by section 28-603, the amount or value of which is one thousand dollars or more, is a Class IV felony.

(4) Criminal possession of a forged instrument prohibited by section 28-603, the amount or value of which is more than three hundred dollars but less than one thousand dollars, is a Class I misdemeanor.

(5) Criminal possession of a forged instrument prohibited by section 28-603, the amount or value of which is three hundred dollars or less, is a Class II misdemeanor.

(6) For the purpose of determining the class of penalty for criminal possession of a forged instrument prohibited by section 28-603, the amounts or values of more than one such forged instrument may be aggregated in the indictment or information if such forged instruments were part of the same scheme or course of conduct which took place within a sixty-day period and within one county. Such amounts or values shall not be aggregated into more than one offense.

Source: Laws 1977, LB 38, § 126; Laws 2003, LB 17, § 8; Laws 2009, LB155, § 14.

28-608 Transferred to section 28-638.

28-611 Issuing or passing a bad check or similar order; penalty; collection procedures.

(1) Whoever obtains property, services, or present value of any kind by issuing or passing a check, draft, assignment of funds, or similar signed order for the payment of money, knowing that he or she does not have sufficient funds in or credit with the drawee for the payment of the check, draft, assignment of funds, or order in full upon presentation, commits the offense of issuing a bad check. Issuing a bad check is:

(a) A Class III felony if the amount of the check, draft, assignment of funds, or order is one thousand five hundred dollars or more;

(b) A Class IV felony if the amount of the check, draft, assignment of funds, or order is five hundred dollars or more, but less than one thousand five hundred dollars;

(c) A Class I misdemeanor if the amount of the check, draft, assignment of funds, or order is two hundred dollars or more, but less than five hundred dollars; and

(d) A Class II misdemeanor if the amount of the check, draft, assignment of funds, or order is less than two hundred dollars.

(2) The aggregate amount of any series of checks, drafts, assignments, or orders issued or passed within a sixty-day period in one county may be used in determining the classification of the offense pursuant to subsection (1) of this section, except that checks, drafts, assignments, or orders may not be aggregated into more than one offense.

(3) For any second or subsequent offense under subdivision (1)(c) or (1)(d) of this section, any person so offending shall be guilty of a Class IV felony.

(4) Whoever otherwise issues or passes a check, draft, assignment of funds, or similar signed order for the payment of money, knowing that he or she does not have sufficient funds in or credit with the drawee for the payment of the check, draft, assignment of funds, or order in full upon its presentation, shall be guilty of a Class II misdemeanor.

(5) Any person in violation of this section who makes voluntary restitution to the injured party for the value of the check, draft, assignment of funds, or order shall also pay ten dollars to the injured party and any reasonable handling fee imposed on the injured party by a financial institution.

(6) In any prosecution for issuing a bad check, the person issuing the check, draft, assignment of funds, or order shall be presumed to have known that he or she did not have sufficient funds in or credit with the drawee for the payment of the check, draft, assignment of funds, or order in full upon presentation if, within thirty days after issuance of the check, draft, assignment of funds, or order, he or she was notified that the drawee refused payment for lack of funds and he or she failed within ten days after such notice to make the check, draft, assignment of funds, or order good or, in the absence of such notice, he or she failed to make the check, draft, assignment of funds, or order good within ten days after notice that such check, draft, assignment of funds, or order has been returned to the depositor was sent to him or her by the county attorney or his or her deputy, by United States mail addressed to such person at his or her last-known address. Upon request of the depositor and the payment of ten dollars for each check, draft, assignment of funds, or order, the county attorney or his or her deputy shall be required to mail notice to the person issuing the check,

draft, assignment of funds, or order as provided in this subsection. The ten-dollar payment shall be payable to the county treasurer and credited to the county general fund. No such payment shall be collected from any county office to which such a check, draft, assignment of funds, or order is issued in the course of the official duties of the office.

(7) Any person convicted of violating this section may, in addition to a fine or imprisonment, be ordered to make restitution to the party injured for the value of the check, draft, assignment of funds, or order and to pay ten dollars to the injured party and any reasonable handling fee imposed on the injured party by a financial institution. If the court, in addition to sentencing any person to imprisonment under this section, also enters an order of restitution, the time permitted to make such restitution shall not be concurrent with the sentence of imprisonment.

(8) The fact that restitution to the party injured has been made and that ten dollars and any reasonable handling fee imposed on the injured party by a financial institution have been paid to the injured party shall be a mitigating factor in the imposition of punishment for any violation of this section.

Source: Laws 1977, LB 38, § 133; Laws 1978, LB 748, § 8; Laws 1983, LB 208, § 1; Laws 1985, LB 445, § 1; Laws 1987, LB 254, § 1; Laws 1992, LB 111, § 3; Laws 2009, LB155, § 15.

28-611.01 Issuing a no-account check; penalty; aggregation allowed; when.

(1) Whoever issues or passes a check, draft, assignment of funds, or similar signed order for the payment of money, knowing that he or she has no account with the drawee at the time the check, draft, assignment of funds, or order is issued, commits the offense of issuing a no-account check. Issuing a no-account check is:

(a) A Class III felony if the amount of the check, draft, assignment of funds, or order is one thousand five hundred dollars or more;

(b) A Class IV felony if the amount of the check, draft, assignment of funds, or order is five hundred dollars or more, but less than one thousand five hundred dollars;

(c) A Class I misdemeanor if the amount of the check, draft, assignment of funds, or order is two hundred dollars or more, but less than five hundred dollars; and

(d) A Class II misdemeanor if the amount of the check, draft, assignment of funds, or order is less than two hundred dollars.

(2) The aggregate amount of any series of checks, drafts, assignments, or orders issued or passed within a sixty-day period in one county may be used in determining the classification of the offense pursuant to subsection (1) of this section, except that checks, drafts, assignments, or orders may not be aggregated into more than one offense.

(3) For any second or subsequent offense under this section, any person so offending shall be guilty of:

(a) A Class III felony if the amount of the check, draft, assignment of funds, or order is five hundred dollars or more; and

(b) A Class IV felony if the amount of the check, draft, assignment of funds, or order is less than five hundred dollars.

Source: Laws 2009, LB155, § 16.

28-631 Fraudulent insurance act; penalties.

(1) A person or entity commits a fraudulent insurance act if he or she:

(a) Knowingly and with intent to defraud or deceive presents, causes to be presented, or prepares with knowledge or belief that it will be presented to or by an insurer, or any agent of an insurer, any statement as part of, in support of, or in denial of a claim for payment or other benefit from an insurer or pursuant to an insurance policy knowing that the statement contains any false, incomplete, or misleading information concerning any fact or thing material to a claim;

(b) Assists, abets, solicits, or conspires with another to prepare or make any statement that is intended to be presented to or by an insurer or person in connection with or in support of any claim for payment or other benefit from an insurer or pursuant to an insurance policy knowing that the statement contains any false, incomplete, or misleading information concerning any fact or thing material to the claim;

(c) Makes any false or fraudulent representations as to the death or disability of a policy or certificate holder or a covered person in any statement or certificate for the purpose of fraudulently obtaining money or benefit from an insurer;

(d) Knowingly and willfully transacts any contract, agreement, or instrument which violates this section;

(e) Receives money for the purpose of purchasing insurance and converts the money to the person's own benefit;

(f) Willfully embezzles, abstracts, purloins, misappropriates, or converts money, funds, premiums, credits, or other property of an insurer or person engaged in the business of insurance;

(g) Knowingly and with intent to defraud or deceive issues fake or counterfeit insurance policies, certificates of insurance, insurance identification cards, or insurance binders;

(h) Knowingly and with intent to defraud or deceive possesses fake or counterfeit insurance policies, certificates of insurance, insurance identification cards, or insurance binders;

(i) Knowingly and with intent to defraud or deceive makes any false entry of a material fact in or pertaining to any document or statement filed with or required by the Department of Insurance;

(j) Knowingly and with the intent to defraud or deceive provides false, incomplete, or misleading information to an insurer concerning the number, location, or classification of employees for the purpose of lessening or reducing the premium otherwise chargeable for workers' compensation insurance coverage;

(k) Knowingly and with intent to defraud or deceive removes, conceals, alters, diverts, or destroys assets or records of an insurer or person engaged in the business of insurance or attempts to remove, conceal, alter, divert, or

destroy assets or records of an insurer or person engaged in the business of insurance;

(l) Willfully operates as or aids and abets another operating as a discount medical plan organization in violation of subsection (1) of section 44-8306; or

(m) Willfully collects fees for purported membership in a discount medical plan organization but purposefully fails to provide the promised benefits.

(2)(a) A violation of subdivisions (1)(a) through (f) of this section is a Class III felony when the amount involved is one thousand five hundred dollars or more.

(b) A violation of subdivisions (1)(a) through (f) of this section is a Class IV felony when the amount involved is five hundred dollars or more but less than one thousand five hundred dollars.

(c) A violation of subdivisions (1)(a) through (f) of this section is a Class I misdemeanor when the amount involved is two hundred dollars or more but less than five hundred dollars.

(d) A violation of subdivisions (1)(a) through (f) of this section is a Class II misdemeanor when the amount involved is less than two hundred dollars.

(e) For any second or subsequent conviction under subdivision (2)(c) of this section, the violation is a Class IV felony.

(f) A violation of subdivisions (1)(g), (i), (j), (k), (l), and (m) of this section is a Class IV felony.

(g) A violation of subdivision (1)(h) of this section is a Class I misdemeanor.

(3) Amounts taken pursuant to one scheme or course of conduct from one person, entity, or insurer may be aggregated in the indictment or information in determining the classification of the offense, except that amounts may not be aggregated into more than one offense.

(4) In any prosecution under this section, if the amounts are aggregated pursuant to subsection (3) of this section, the amount involved in the offense shall be an essential element of the offense that must be proved beyond a reasonable doubt.

(5) A prosecution under this section shall be in lieu of an action under section 44-6607.

(6) For purposes of this section:

(a) Insurer means any person or entity transacting insurance as defined in section 44-102 with or without a certificate of authority issued by the Director of Insurance. Insurer also means health maintenance organizations, legal service insurance corporations, prepaid limited health service organizations, dental and other similar health service plans, discount medical plan organizations, and entities licensed pursuant to the Intergovernmental Risk Management Act and the Comprehensive Health Insurance Pool Act. Insurer also means an employer who is approved by the Nebraska Workers' Compensation Court as a self-insurer; and

(b) Statement includes, but is not limited to, any notice, statement, proof of loss, bill of lading, receipt for payment, invoice, account, estimate of property damages, bill for services, diagnosis, prescription, hospital or medical records,

X-rays, test result, or other evidence of loss, injury, or expense, whether oral, written, or computer-generated.

Source: Laws 1995, LB 385, § 10; Laws 1997, LB 272, § 1; Laws 2000, LB 930, § 1; Laws 2002, LB 547, § 1; Laws 2008, LB855, § 2; Laws 2009, LB208, § 1.

Cross References

Comprehensive Health Insurance Pool Act, see section 44-4201.

Intergovernmental Risk Management Act, see section 44-4301.

28-636 Criminal impersonation; identity theft; identity fraud; terms, defined.

For purposes of sections 28-636 to 28-640:

(1) Personal identification document means a birth certificate, motor vehicle operator's license, state identification card, public, government, or private employment identification card, social security card, visa work permit, firearm owner's identification card, certificate issued under section 69-2404, or passport or any document made or altered in a manner that it purports to have been made on behalf of or issued to another person or by the authority of a person who did not give that authority. Personal identification document does not include a financial transaction device as defined in section 28-618;

(2) Personal identifying information means any name or number that may be used, alone or in conjunction with any other information, to identify a specific person including a person's: (a) Name; (b) date of birth; (c) address; (d) motor vehicle operator's license number or state identification card number as assigned by the State of Nebraska or another state; (e) social security number or visa work permit number; (f) public, private, or government employer, place of employment, or employment identification number; (g) maiden name of a person's mother; (h) number assigned to a person's credit card, charge card, or debit card, whether issued by a financial institution, corporation, or other business entity; (i) number assigned to a person's depository account, savings account, or brokerage account; (j) personal identification number as defined in section 8-157.01; (k) electronic identification number, address, or routing code used to access financial information; (l) digital signature; (m) telecommunications identifying information or access device; (n) unique biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation; and (o) other number or information which can be used to access a person's financial resources; and

(3) Telecommunications identifying information or access device means a card, plate, code, account number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with other telecommunications identifying information or another telecommunications access device may be used to: (a) Obtain money, goods, services, or any other thing of value; or (b) initiate a transfer of funds other than a transfer originated solely by a paper instrument.

Source: Laws 2009, LB155, § 8.

28-637 Criminal impersonation; identity theft; identity fraud; venue; victim; contact local law enforcement agency.

For purposes of sections 28-636 to 28-640:

(1) Notwithstanding any other provision of law, venue for the prosecution and trial of violations of sections 28-636 to 28-640 may be commenced and maintained in any county in which an element of the offense occurred, including the county where a victim resides; and

(2) If a person or entity reasonably believes that he, she, or it has been the victim of a violation of sections 28-636 to 28-640, the victim may contact a local law enforcement agency which has jurisdiction over the victim's residence, place of business, or registered address. Notwithstanding that jurisdiction may lie elsewhere for investigation and prosecution of a crime of identity theft, the local law enforcement agency shall take the complaint and provide the complainant with a copy of the complaint and refer the complaint to a law enforcement agency in the appropriate jurisdiction.

Source: Laws 2009, LB155, § 9.

28-638 Criminal impersonation; penalty; restitution.

(1) A person commits the crime of criminal impersonation if he or she:

(a) Pretends to be a representative of some person or organization and does an act in his or her fictitious capacity with the intent to gain a pecuniary benefit for himself, herself, or another and to deceive or harm another;

(b) Carries on any profession, business, or any other occupation without a license, certificate, or other authorization required by law;

(c) Knowingly provides false personal identifying information or a false personal identification document to a court or a law enforcement officer; or

(d) Knowingly provides false personal identifying information or a false personal identification document to an employer for the purpose of obtaining employment.

(2)(a) Criminal impersonation, as described in subdivisions (1)(a) and (1)(b) of this section, is a Class III felony if the credit, money, goods, services, or other thing of value that was gained or was attempted to be gained was one thousand five hundred dollars or more. Any second or subsequent conviction under this subdivision is a Class II felony.

(b) Criminal impersonation, as described in subdivisions (1)(a) and (1)(b) of this section, is a Class IV felony if the credit, money, goods, services, or other thing of value that was gained or was attempted to be gained was five hundred dollars or more but less than one thousand five hundred dollars. Any second or subsequent conviction under this subdivision is a Class III felony.

(c) Criminal impersonation, as described in subdivisions (1)(a) and (1)(b) of this section, is a Class I misdemeanor if the credit, money, goods, services, or other thing of value that was gained or was attempted to be gained was two hundred dollars or more but less than five hundred dollars. Any second or subsequent conviction under this subdivision is a Class IV felony.

(d) Criminal impersonation, as described in subdivisions (1)(a) and (1)(b) of this section, is a Class II misdemeanor if no credit, money, goods, services, or other thing of value was gained or was attempted to be gained, or if the credit, money, goods, services, or other thing of value that was gained or was attempted to be gained was less than two hundred dollars. Any second conviction under this subdivision is a Class I misdemeanor, and any third or subsequent conviction under this subdivision is a Class IV felony.

(e) Criminal impersonation, as described in subdivision (1)(c) of this section, is a Class IV felony. Any second conviction under this subdivision is a Class III felony, and any third or subsequent conviction under this subdivision is a Class II felony.

(f) Criminal impersonation, as described in subdivision (1)(d) of this section, is a Class II misdemeanor. Any second or subsequent conviction under this subdivision is a Class I misdemeanor.

(g) A person found guilty of violating this section may, in addition to the penalties under this subsection, be ordered to make restitution pursuant to sections 29-2280 to 29-2289.

Source: Laws 1977, LB 38, § 130; Laws 2002, LB 276, § 2; R.S.1943, (2008), § 28-608; Laws 2009, LB155, § 10.

28-639 Identity theft; penalty; restitution.

(1) A person commits the crime of identity theft if he or she knowingly takes, purchases, manufactures, records, possesses, or uses any personal identifying information or entity identifying information of another person or entity without the consent of that other person or entity or creates personal identifying information for a fictional person or entity, with the intent to obtain or use the other person's or entity's identity for any unlawful purpose or to cause loss to a person or entity whether or not the person or entity actually suffers any economic loss as a result of the offense, or with the intent to obtain or continue employment or with the intent to gain a pecuniary benefit for himself, herself, or another.

(2) Identity theft is not:

(a) The lawful obtaining of credit information in the course of a bona fide consumer or commercial transaction;

(b) The lawful, good faith exercise of a security interest or a right of setoff by a creditor or a financial institution;

(c) The lawful, good faith compliance by any person when required by any warrant, levy, garnishment, attachment, court order, or other judicial or administrative order, decree, or directive; or

(d) The investigative activities of law enforcement.

(3)(a) Identity theft is a Class III felony if the credit, money, goods, services, or other thing of value that was gained or was attempted to be gained was one thousand five hundred dollars or more. Any second or subsequent conviction under this subdivision is a Class II felony.

(b) Identity theft is a Class IV felony if the credit, money, goods, services, or other thing of value that was gained or was attempted to be gained was five hundred dollars or more but less than one thousand five hundred dollars. Any second or subsequent conviction under this subdivision is a Class III felony.

(c) Identity theft is a Class I misdemeanor if the credit, money, goods, services, or other thing of value that was gained or was attempted to be gained was two hundred dollars or more but less than five hundred dollars. Any second or subsequent conviction under this subdivision is a Class IV felony.

(d) Identity theft is a Class II misdemeanor if no credit, money, goods, services, or other thing of value was gained or was attempted to be gained, or if the credit, money, goods, services, or other thing of value that was gained or

was attempted to be gained was less than two hundred dollars. Any second conviction under this subdivision is a Class I misdemeanor, and any third or subsequent conviction under this subdivision is a Class IV felony.

(e) A person found guilty of violating this section may, in addition to the penalties under this subsection, be ordered to make restitution pursuant to sections 29-2280 to 29-2289.

Source: Laws 2009, LB155, § 11.

28-640 Identity fraud; penalty; restitution.

(1) A person commits the crime of identity fraud if he or she without lawful authority:

(a) Makes, counterfeits, alters, or mutilates any personal identification document with the intent to deceive another; or

(b) Willfully and knowingly obtains, possesses, uses, sells or furnishes or attempts to obtain, possess, or furnish to another person for any purpose of deception a personal identification document.

(2)(a) Identity fraud is a Class I misdemeanor. Any second or subsequent conviction under this subdivision is a Class IV felony.

(b) A person found guilty of violating this section may, in addition to the penalties under this subsection, be ordered to make restitution pursuant to sections 29-2280 to 29-2289.

Source: Laws 2009, LB155, § 12.

ARTICLE 7

OFFENSES INVOLVING THE FAMILY RELATION

Section

- 28-707. Child abuse; privileges not available; penalties.
- 28-710. Act, how cited; terms, defined.
- 28-710.01. Legislative declarations.
- 28-711. Child subjected to abuse or neglect; report; contents; toll-free number.
- 28-712. Alternative response implementation plan; contents; department; use; powers; report; evaluation of alternative response demonstration projects; department; powers and duties; rules and regulations.
- 28-712.01. Alternative response demonstration projects; Review, Evaluate, and Decide Team; duties; department; duties; Inspector General's review.
- 28-713. Reports of child abuse or neglect; law enforcement agency; department; duties.
- 28-713.01. Cases of child abuse or neglect; completion of investigation; notice; when; right to amend or expunge information.
- 28-718. Child protection cases; central registry; name-change order; treatment.
- 28-719. Child abuse and neglect records; access; when.
- 28-720. Cases; central registry; classification.
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- 28-721. Central registry; record; amend, expunge, or remove.
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- 28-723. Subject of report; request to amend, expunge, or remove information; denied; hearing; decision; appeal.
- 28-724. Record; amendment, expunction, or removal; notice.
- 28-725. Information, report; confidential; violation; penalty.
- 28-726. Information; access.
- 28-728. Legislative findings and intent; child abuse and neglect investigation team; child advocacy center; child abuse and neglect treatment team; powers and duties.

Section

- 28-729. Teams; members; training; child advocacy center; duties; meetings.
28-732. Repealed. Laws 2012, LB 993, § 4.
28-733. Repealed. Laws 2012, LB 993, § 4.

28-707 Child abuse; privileges not available; penalties.

(1) A person commits child abuse if he or she knowingly, intentionally, or negligently causes or permits a minor child to be:

(a) Placed in a situation that endangers his or her life or physical or mental health;

(b) Cruelly confined or cruelly punished;

(c) Deprived of necessary food, clothing, shelter, or care;

(d) Placed in a situation to be sexually exploited by allowing, encouraging, or forcing such minor child to solicit for or engage in prostitution, debauchery, public indecency, or obscene or pornographic photography, films, or depictions;

(e) Placed in a situation to be sexually abused as defined in section 28-319, 28-319.01, or 28-320.01; or

(f) Placed in a situation to be a trafficking victim as defined in section 28-830.

(2) The statutory privilege between patient and physician, between client and professional counselor, and between husband and wife shall not be available for excluding or refusing testimony in any prosecution for a violation of this section.

(3) Child abuse is a Class I misdemeanor if the offense is committed negligently and does not result in serious bodily injury as defined in section 28-109 or death.

(4) Child abuse is a Class IIIA felony if the offense is committed knowingly and intentionally and does not result in serious bodily injury as defined in section 28-109 or death.

(5) Child abuse is a Class IIIA felony if the offense is committed negligently and results in serious bodily injury as defined in section 28-109.

(6) Child abuse is a Class III felony if the offense is committed negligently and results in the death of such child.

(7) Child abuse is a Class II felony if the offense is committed knowingly and intentionally and results in serious bodily injury as defined in such section.

(8) Child abuse is a Class IB felony if the offense is committed knowingly and intentionally and results in the death of such child.

(9) For purposes of this section, negligently refers to criminal negligence and means that a person knew or should have known of the danger involved and acted recklessly, as defined in section 28-109, with respect to the safety or health of the minor child.

Source: Laws 1977, LB 38, § 146; Laws 1982, LB 347, § 10; Laws 1993, LB 130, § 3; Laws 1993, LB 430, § 3; Laws 1994, LB 908, § 1; Laws 1996, LB 645, § 15; Laws 1997, LB 364, § 9; Laws 2006, LB 1199, § 9; Laws 2010, LB507, § 3; Laws 2012, LB799, § 2; Laws 2013, LB255, § 1.

Cross References

Appointment of guardian ad litem, see section 43-272.01.

28-710 Act, how cited; terms, defined.

(1) Sections 28-710 to 28-727 shall be known and may be cited as the Child Protection and Family Safety Act.

(2) For purposes of the Child Protection and Family Safety Act:

(a) Alternative response means a comprehensive assessment of (i) child safety, (ii) the risk of future child abuse or neglect, (iii) family strengths and needs, and (iv) the provision of or referral for necessary services and support. Alternative response is an alternative to traditional response and does not include an investigation or a formal determination as to whether child abuse or neglect has occurred, and the subject of the report shall not be entered into the central registry of child protection cases maintained pursuant to section 28-718;

(b) Child abuse or neglect means knowingly, intentionally, or negligently causing or permitting a minor child to be:

(i) Placed in a situation that endangers his or her life or physical or mental health;

(ii) Cruelly confined or cruelly punished;

(iii) Deprived of necessary food, clothing, shelter, or care;

(iv) Left unattended in a motor vehicle if such minor child is six years of age or younger;

(v) Sexually abused; or

(vi) Sexually exploited by allowing, encouraging, or forcing such person to solicit for or engage in prostitution, debauchery, public indecency, or obscene or pornographic photography, films, or depictions;

(c) Comprehensive assessment means an analysis of child safety, risk of future child abuse or neglect, and family strengths and needs on a report of child abuse or neglect. Comprehensive assessment does not include a determination as to whether the child abuse or neglect occurred but does determine the need for services and support to address the safety of children and the risk of future abuse or neglect;

(d) Department means the Department of Health and Human Services;

(e) Investigation means fact gathering related to the current safety of a child and the risk of future child abuse or neglect that determines whether child abuse or neglect has occurred and whether child protective services are needed;

(f) Law enforcement agency means the police department or town marshal in incorporated municipalities, the office of the sheriff in unincorporated areas, and the Nebraska State Patrol;

(g) Out-of-home child abuse or neglect means child abuse or neglect occurring in day care homes, foster homes, day care centers, residential child-caring agencies as defined in section 71-1926, and other child care facilities or institutions;

(h) Review, Evaluate, and Decide Team means an internal team of staff within the department and shall include no fewer than two supervisors or administrators and two staff members knowledgeable on the policies and

practices of the department, including, but not limited to, the structured review process. County attorneys, child advocacy centers, or law enforcement agency personnel may attend team reviews upon request of a party;

(i) Traditional response means an investigation by a law enforcement agency or the department pursuant to section 28-713 which requires a formal determination of whether child abuse or neglect has occurred; and

(j) Subject of the report of child abuse or neglect means the person or persons identified in the report as responsible for the child abuse or neglect.

Source: Laws 1977, LB 38, § 149; Laws 1979, LB 505, § 1; Laws 1982, LB 522, § 3; Laws 1985, LB 447, § 10; Laws 1988, LB 463, § 42; Laws 1992, LB 1184, § 9; Laws 1994, LB 1035, § 2; Laws 1996, LB 1044, § 71; Laws 1997, LB 119, § 1; Laws 2005, LB 116, § 1; Laws 2013, LB265, § 29; Laws 2014, LB853, § 1.
Effective date July 18, 2014.

28-710.01 Legislative declarations.

(1) The Legislature declares that the public policy of the State of Nebraska is to protect children whose health or welfare may be jeopardized by abuse or neglect. The Legislature recognizes that most families want to keep their children safe, but circumstances or conditions sometimes interfere with their ability to do so. Families and children are best served by interventions that engage their protective capacities and address immediate safety concerns and ongoing risks of child abuse or neglect. In furtherance of this public policy and the family policy and principles set forth in sections 43-532 and 43-533, it is the intent of the Legislature to strengthen the family and make the home, school, and community safe for children by promoting responsible child care in all settings and to provide, when necessary, a safe temporary or permanent home environment for abused or neglected children.

(2) In addition, it is the policy of this state to: Require the reporting of child abuse or neglect in home, school, and community settings; provide for alternative response to reports as permitted by rules and regulations of the department; provide for traditional response to reports as required by rules and regulations of the department; and provide protective and supportive services designed to preserve and strengthen the family in appropriate cases.

Source: Laws 2014, LB853, § 2.
Effective date July 18, 2014.

28-711 Child subjected to abuse or neglect; report; contents; toll-free number.

(1) When any physician, any medical institution, any nurse, any school employee, any social worker, the Inspector General appointed under section 43-4317, or any other person has reasonable cause to believe that a child has been subjected to child abuse or neglect or observes such child being subjected to conditions or circumstances which reasonably would result in child abuse or neglect, he or she shall report such incident or cause a report of child abuse or neglect to be made to the proper law enforcement agency or to the department on the toll-free number established by subsection (2) of this section. Such report may be made orally by telephone with the caller giving his or her name and address, shall be followed by a written report, and to the extent available shall contain the address and age of the abused or neglected child, the address of the

person or persons having custody of the abused or neglected child, the nature and extent of the child abuse or neglect or the conditions and circumstances which would reasonably result in such child abuse or neglect, any evidence of previous child abuse or neglect including the nature and extent, and any other information which in the opinion of the person may be helpful in establishing the cause of such child abuse or neglect and the identity of the perpetrator or perpetrators. Law enforcement agencies receiving any reports of child abuse or neglect under this subsection shall notify the department pursuant to section 28-718 on the next working day by telephone or mail.

(2) The department shall establish a statewide toll-free number to be used by any person any hour of the day or night, any day of the week, to make reports of child abuse or neglect. Reports of child abuse or neglect not previously made to or by a law enforcement agency shall be made immediately to such agency by the department.

Source: Laws 1977, LB 38, § 150; Laws 1979, LB 505, § 2; Laws 1982, LB 522, § 4; Laws 1988, LB 463, § 43; Laws 2002, LB 1105, § 432; Laws 2005, LB 116, § 2; Laws 2012, LB821, § 39.

28-712 Alternative response implementation plan; contents; department; use; powers; report; evaluation of alternative response demonstration projects; department; powers and duties; rules and regulations.

(1) The department, in consultation with the Nebraska Children's Commission, shall develop an alternative response implementation plan in accordance with this section and sections 28-710.01 and 28-712.01. The alternative response implementation plan shall include the provision of concrete supports and voluntary services, including, but not limited to: Meeting basic needs, including food and clothing assistance; housing assistance; transportation assistance; child care assistance; and mental health and substance abuse services. When the alternative response implementation plan has been developed, the department may begin using alternative response in up to five alternative response demonstration project locations that are designated by the department. The department shall provide a report of an evaluation on the status of alternative response implementation pursuant to subsection (2) of this section to the commission and electronically to the Legislature by November 15, 2015. The commission shall provide feedback on the report to the department before December 15, 2015. The department may begin using alternative response in up to five additional alternative response demonstration project locations on or after January 1, 2016. The department shall provide a report of another evaluation done pursuant to subsection (2) of this section to the commission and electronically to the Legislature by November 15, 2016. The department may continue using alternative response until July 1, 2017. Continued use of alternative response thereafter shall require approval of the Legislature. For purposes of this section, demonstration project location means any geographic region, including, but not limited to, a city, a township, a village, a county, a group of counties, or a group of counties and cities, townships, or villages.

(2) The department shall contract with an independent entity to evaluate the alternative response demonstration projects. The evaluation shall include, but not be limited to:

(a) The screening process used to determine which cases shall be assigned to alternative response;

(b) The number and proportion of repeat child abuse and neglect allegations within a specified period of time following initial intake;

(c) The number and proportion of substantiated child abuse and neglect allegations within a specified period of time following initial intake;

(d) The number and proportion of families with any child entering out-of-home care within a specified period of time following initial intake;

(e) Changes in child and family well-being in the domains of behavioral and emotional functioning and physical health and development as measured by a standardized assessment instrument to be selected by the department;

(f) The number and proportion of families assigned to the alternative response track who are reassigned to a traditional response; and

(g) A cost analysis that will examine, at a minimum, the costs of the key elements of services received.

(3) The department shall provide to the Nebraska Children's Commission regular updates on:

(a) The alternative response implementation plan, including the development of the alternative response interview protocols of children;

(b) The status of alternative response implementation;

(c) Inclusion of child welfare stakeholders, service providers, and other community partners, including families, for feedback and recommendations on the alternative response implementation plan;

(d) Any findings or recommendations made by the independent evaluator, including costs;

(e) Any alternative response programmatic modifications; and

(f) The status of the adoption and promulgation of rules and regulations.

(4) The department shall adopt and promulgate rules and regulations to carry out this section and sections 28-710.01 and 28-712.01. Such rules and regulations shall include, but not be limited to, provisions on the transfer of cases from alternative response to traditional response; notice to families subject to a comprehensive assessment and served through alternative response of the alternative response process and their rights, including the opportunity to challenge agency determinations; the provision of services through alternative response; the collection, sharing, and reporting of data; and the alternative response ineligibility criteria. Whenever the department proposes to change the alternative response ineligibility criteria, public notice of the changes shall be given. The department shall provide public notice and time for public comment by publishing the proposed changes on its web site at least sixty days prior to the public hearing on such regulation changes. The department shall provide a copy of the proposed rules and regulations to the Nebraska Children's Commission no later than October 1, 2014.

Source: Laws 2014, LB853, § 3.

Effective date July 18, 2014.

28-712.01 Alternative response demonstration projects; Review, Evaluate, and Decide Team; duties; department; duties; Inspector General's review.

(1) This section applies to alternative response demonstration projects designated under section 28-712.

(2) The Review, Evaluate, and Decide Team shall convene to review intakes pursuant to the department's rules, regulations, and policies, to evaluate the information, and to determine assignment for alternative response or traditional response. The team shall utilize consistent criteria to review the severity of the allegation of child abuse or neglect, access to the perpetrator, vulnerability of the child, family history including previous reports, parental cooperation, parental or caretaker protective factors, and other information as deemed necessary. At the conclusion of the review, the intake shall be assigned to either traditional response or alternative response. Decisions of the team shall be made by consensus. If the team cannot come to consensus, the intake shall be assigned for a traditional response.

(3) In the case of an alternative response, the department shall complete a comprehensive assessment. The department shall transfer the case being given alternative response to traditional response if the department determines that a child is unsafe. Upon completion of the comprehensive assessment, if it is determined that the child is safe, participation in services offered to the family receiving an alternative response is voluntary, the case shall not be transferred to traditional response based upon the family's failure to enroll or participate in such services, and the subject of the report shall not be entered into the central registry of child protection cases maintained pursuant to section 28-718.

(4) The department shall, by the next working day after receipt of a report of child abuse and neglect, enter into the tracking system of child protection cases maintained pursuant to section 28-715 all reports of child abuse or neglect received under this section that are opened for alternative response and any action taken.

(5) The department shall make available to the appropriate investigating law enforcement agency and the county attorney a copy of all reports relative to a case of suspected child abuse or neglect. Aggregate, nonidentifying reports of child abuse or neglect receiving an alternative response shall be made available quarterly to requesting agencies outside the department. Such alternative response data shall include, but not be limited to, the nature of the initial child abuse or neglect report, the age of the child or children, the nature of services offered, the location of the cases, the number of cases per month, and the number of alternative response cases that were transferred to traditional response. No other agency or individual except the office of Inspector General of Nebraska Child Welfare, the Public Counsel, law enforcement agency personnel, and county attorneys shall be provided specific, identifying reports of child abuse or neglect being given alternative response. The office of Inspector General of Nebraska Child Welfare shall have access to all reports relative to cases of suspected child abuse or neglect subject to traditional response and those subject to alternative response. The department and the office shall develop procedures allowing for the Inspector General's review of cases subject to alternative response. The Inspector General shall include in the report pursuant to section 43-4331 a summary of all cases reviewed pursuant to this subsection.

Source: Laws 2014, LB853, § 4.

Effective date July 18, 2014.

28-713 Reports of child abuse or neglect; law enforcement agency; department; duties.

Unless an intake is assigned to alternative response, upon the receipt of a call reporting child abuse and neglect as required by section 28-711:

(1) It is the duty of the law enforcement agency to investigate the report, to take immediate steps to protect the child, and to institute legal proceedings if appropriate. In situations of alleged out-of-home child abuse or neglect if the person or persons to be notified have not already been notified and the person to be notified is not the subject of the report of child abuse or neglect, the law enforcement agency shall immediately notify the person or persons having custody of each child who has allegedly been abused or neglected that such report of alleged child abuse or neglect has been made and shall provide such person or persons with information of the nature of the alleged child abuse or neglect. The law enforcement agency may request assistance from the department during the investigation and shall, by the next working day, notify either the hotline or the department of receipt of the report, including whether or not an investigation is being undertaken by the law enforcement agency. A copy of all reports, whether or not an investigation is being undertaken, shall be provided to the department;

(2) In situations of alleged out-of-home child abuse or neglect if the person or persons to be notified have not already been notified and the person to be notified is not the subject of the report of child abuse or neglect, the department shall immediately notify the person or persons having custody of each child who has allegedly been abused or neglected that such report of alleged child abuse or neglect has been made and shall provide such person or persons with information of the nature of the alleged child abuse or neglect and any other information that the department deems necessary. The department shall investigate for the purpose of assessing each report of child abuse or neglect to determine the risk of harm to the child involved. The department shall also provide such social services as are necessary and appropriate under the circumstances to protect and assist the child and to preserve the family;

(3) The department may make a request for further assistance from the appropriate law enforcement agency or take such legal action as may be appropriate under the circumstances;

(4) The department shall, by the next working day after receiving a report of child abuse or neglect under subdivision (1) of this section, make a written report or a summary on forms provided by the department to the proper law enforcement agency in the county and enter in the tracking system of child protection cases maintained pursuant to section 28-715 all reports of child abuse or neglect opened for investigation and any action taken; and

(5) The department shall, upon request, make available to the appropriate investigating law enforcement agency and the county attorney a copy of all reports relative to a case of suspected child abuse or neglect.

Source: Laws 1977, LB 38, § 152; Laws 1979, LB 505, § 4; Laws 1982, LB 522, § 5; Laws 1988, LB 463, § 45; Laws 1992, LB 1184, § 10; Laws 1996, LB 1044, § 72; Laws 1997, LB 119, § 2; Laws 1997, LB 307, § 13; Laws 2005, LB 116, § 3; Laws 2007, LB296, § 37; Laws 2014, LB853, § 5.
Effective date July 18, 2014.

28-713.01 Cases of child abuse or neglect; completion of investigation; notice; when; right to amend or expunge information.

(1) Upon completion of the investigation pursuant to section 28-713:

(a) In situations of alleged out-of-home child abuse or neglect, the person or persons having custody of the allegedly abused or neglected child or children shall be given written notice of the results of the investigation and any other information the law enforcement agency or department deems necessary. Such notice and information shall be sent by first-class mail; and

(b) The subject of the report of child abuse or neglect shall be given written notice of the determination of the case and whether the subject of the report of child abuse or neglect will be entered into the central registry of child protection cases maintained pursuant to section 28-718 under the criteria provided in section 28-720.

(2) If the subject of the report will be entered into the central registry, the notice to the subject shall be sent by certified mail with return receipt requested or first-class mail to the last-known address of the subject of the report of child abuse or neglect and shall include:

(a) The nature of the report;

(b) The classification of the report under section 28-720; and

(c) Notification of the right of the subject of the report of child abuse or neglect to request the department to amend or expunge identifying information from the report or to remove the substantiated report from the central registry in accordance with section 28-723.

(3) If the subject of the report will not be entered into the central registry, the notice to the subject shall be sent by first-class mail and shall include:

(a) The nature of the report; and

(b) The classification of the report under section 28-720.

Source: Laws 1994, LB 1035, § 3; Laws 1997, LB 119, § 3; Laws 2005, LB 116, § 4; Laws 2012, LB1051, § 17; Laws 2014, LB853, § 6.
Effective date July 18, 2014.

28-718 Child protection cases; central registry; name-change order; treatment.

(1) There shall be a central registry of child protection cases maintained in the department containing records of all reports of child abuse or neglect opened for investigation as provided in section 28-713 and classified as either court substantiated or agency substantiated as provided in section 28-720.

(2) The department shall determine whether a name-change order received from the clerk of a district court pursuant to section 25-21,271 is for a person on the central registry of child protection cases and, if so, shall include the changed name with the former name in the registry and file or cross-reference the information under both names.

Source: Laws 1979, LB 505, § 6; Laws 2005, LB 116, § 9; Laws 2009, LB122, § 1; Laws 2010, LB147, § 3; Laws 2014, LB853, § 7.
Effective date July 18, 2014.

28-719 Child abuse and neglect records; access; when.

Upon complying with identification requirements established by regulation of the department, or when ordered by a court of competent jurisdiction, any person legally authorized by section 28-722, 28-726, or 28-727 to have access to

records relating to child abuse and neglect may request and shall be immediately provided the information requested in accordance with the requirements of the Child Protection and Family Safety Act. Such information shall not include the name and address of the person making the report of child abuse or neglect. The names and other identifying data and the dates and the circumstances of any persons requesting or receiving information from the central registry of child protection cases maintained pursuant to section 28-718 shall be entered in the central registry record.

Source: Laws 1979, LB 505, § 7; Laws 2005, LB 116, § 10; Laws 2014, LB853, § 8.

Effective date July 18, 2014.

28-720 Cases; central registry; classification.

All cases entered into the central registry of child protection cases maintained pursuant to section 28-718 shall be classified as one of the following:

(1) Court substantiated, if a court of competent jurisdiction has entered a judgment of guilty against the subject of the report of child abuse or neglect upon a criminal complaint, indictment, or information or there has been an adjudication of jurisdiction of a juvenile court over the child under subdivision (3)(a) of section 43-247 which relates or pertains to the report of child abuse or neglect;

(2) Court pending, if a criminal complaint, indictment, or information or a juvenile petition under subdivision (3)(a) of section 43-247, which relates or pertains to the subject of the report of abuse or neglect, has been filed and is pending in a court of competent jurisdiction; or

(3) Agency substantiated, if the department's determination of child abuse or neglect against the subject of the report of child abuse or neglect was supported by a preponderance of the evidence and based upon an investigation pursuant to section 28-712.01 or 28-713.

Source: Laws 1979, LB 505, § 8; Laws 2005, LB 116, § 11; Laws 2009, LB122, § 2; Laws 2014, LB853, § 9.

Effective date July 18, 2014.

28-720.01 Unfounded reports; how treated.

All reports of child abuse or neglect which are not under subdivision (1), (2), or (3) of section 28-720 shall be considered unfounded and shall be maintained only in the tracking system of child protection cases pursuant to section 28-715 and not in the central registry of child protection cases maintained pursuant to section 28-718.

Source: Laws 2005, LB 116, § 12; Laws 2014, LB853, § 10.

Effective date July 18, 2014.

28-721 Central registry; record; amend, expunge, or remove.

At any time, the department may amend, expunge, or remove from the central registry of child protection cases maintained pursuant to section 28-718

any record upon good cause shown and upon notice to the subject of the report of child abuse or neglect.

Source: Laws 1979, LB 505, § 9; Laws 2005, LB 116, § 13; Laws 2007, LB296, § 38; Laws 2014, LB853, § 11.
Effective date July 18, 2014.

28-722 Central registry; subject of report; access to information.

Upon request, a subject of the report of child abuse or neglect or, if such subject is a minor or otherwise legally incompetent, the guardian or guardian ad litem of the subject, shall be entitled to receive a copy of all information contained in the central registry of child protection cases maintained pursuant to section 28-718 pertaining to his or her case. The department shall not release data that would be harmful or detrimental or that would identify or locate a person who, in good faith, made a report of child abuse or neglect or cooperated in a subsequent investigation unless ordered to do so by a court of competent jurisdiction.

Source: Laws 1979, LB 505, § 10; Laws 2005, LB 116, § 14; Laws 2014, LB853, § 12.
Effective date July 18, 2014.

28-723 Subject of report; request to amend, expunge, or remove information; denied; hearing; decision; appeal.

At any time subsequent to the completion of the department's investigation, the subject of the report of child abuse or neglect may request the department to amend, expunge identifying information from, or remove the record of the report from the central registry of child protection cases maintained pursuant to section 28-718. If the department refuses to do so or does not act within thirty days, the subject of the report of child abuse or neglect shall have the right to a fair hearing within the department to determine whether the record of the report of child abuse or neglect should be amended, expunged, or removed on the grounds that it is inaccurate or that it is being maintained in a manner inconsistent with the Child Protection and Family Safety Act. Such fair hearing shall be held within a reasonable time after the subject's request and at a reasonable place and hour. In such hearings, the burden of proving the accuracy and consistency of the record shall be on the department. A juvenile court finding of child abuse or child neglect shall be presumptive evidence that the report was not unfounded. The hearing shall be conducted by the chief executive officer of the department or his or her designated agent, who is hereby authorized and empowered to order the amendment, expunction, or removal of the record to make it accurate or consistent with the requirements of the act. The decision shall be made in writing, at the close of the hearing or within thirty days thereof, and shall state the reasons upon which it is based. Decisions of the department may be appealed under the Administrative Procedure Act.

Source: Laws 1979, LB 505, § 11; Laws 1982, LB 522, § 6; Laws 2005, LB 116, § 15; Laws 2014, LB853, § 13.
Effective date July 18, 2014.

Cross References

Administrative Procedure Act, see section 84-920.

28-724 Record; amendment, expunction, or removal; notice.

Written notice of any amendment, expunction, or removal of any record in the central registry of child protection cases maintained pursuant to section 28-718 shall be served upon the subject of the report of child abuse or neglect. The department shall inform any other individuals or agencies which received such record of any amendment, expunction, or removal of such record.

Source: Laws 1979, LB 505, § 12; Laws 1982, LB 522, § 7; Laws 2005, LB 116, § 16; Laws 2014, LB853, § 14.
Effective date July 18, 2014.

28-725 Information, report; confidential; violation; penalty.

All information of the department concerning reports of child abuse or neglect of noninstitutional children, including information in the tracking system of child protection cases maintained pursuant to section 28-715 or records in the central registry of child protection cases maintained pursuant to section 28-718, and all information of the department generated as a result of such reports or records, shall be confidential and shall not be disclosed except as specifically authorized by the Child Protection and Family Safety Act and section 81-3126 or other applicable law. The subject of the report of child abuse or neglect may authorize any individual or organization to receive the following information from the central registry of child protection cases maintained pursuant to section 28-718 which relates or pertains to him or her: (1) The date of the alleged child abuse or neglect; and (2) the classification of the case pursuant to section 28-720. Permitting, assisting, or encouraging the unauthorized release of any information contained in such reports or records shall be a Class V misdemeanor.

Source: Laws 1979, LB 505, § 13; Laws 1982, LB 522, § 8; Laws 2002, LB 642, § 7; Laws 2005, LB 116, § 17; Laws 2008, LB782, § 2; Laws 2014, LB853, § 15.
Effective date July 18, 2014.

28-726 Information; access.

Except as provided in this section and sections 28-722 and 81-3126, no person, official, or agency shall have access to information in the tracking system of child protection cases maintained pursuant to section 28-715 or in records in the central registry of child protection cases maintained pursuant to section 28-718 unless in furtherance of purposes directly connected with the administration of the Child Protection and Family Safety Act. Such persons, officials, and agencies having access to such information shall include, but not be limited to:

(1) A law enforcement agency investigating a report of known or suspected child abuse or neglect;

(2) A county attorney in preparation of a child abuse or neglect petition or termination of parental rights petition;

(3) A physician who has before him or her a child whom he or she reasonably suspects may be abused or neglected;

(4) An agency having the legal responsibility or authorization to care for, treat, or supervise an abused or neglected child or a parent, a guardian, or

other person responsible for the abused or neglected child's welfare who is the subject of the report of child abuse or neglect;

(5) Any person engaged in bona fide research or auditing. No information identifying the subjects of the report of child abuse or neglect shall be made available to the researcher or auditor;

(6) The Foster Care Review Office and the designated local foster care review board when the information relates to a child in a foster care placement as defined in section 43-1301. The information provided to the office and local board shall not include the name or identity of any person making a report of suspected child abuse or neglect;

(7) The designated protection and advocacy system authorized pursuant to the Developmental Disabilities Assistance and Bill of Rights Act of 2000, 42 U.S.C. 15001, as the act existed on January 1, 2005, and the Protection and Advocacy for Mentally Ill Individuals Act, 42 U.S.C. 10801, as the act existed on September 1, 2001, acting upon a complaint received from or on behalf of a person with developmental disabilities or mental illness;

(8) The person or persons having custody of the abused or neglected child in situations of alleged out-of-home child abuse or neglect;

(9) For purposes of licensing providers of child care programs, the Department of Health and Human Services; and

(10) A probation officer administering juvenile intake services pursuant to section 29-2260.01, conducting court-ordered predispositional investigations prior to disposition, or supervising a juvenile upon disposition.

Source: Laws 1979, LB 505, § 14; Laws 1982, LB 522, § 9; Laws 1988, LB 463, § 47; Laws 1990, LB 1222, § 1; Laws 1992, LB 643, § 2; Laws 1994, LB 1035, § 7; Laws 1997, LB 119, § 4; Laws 2001, LB 214, § 2; Laws 2002, LB 642, § 8; Laws 2005, LB 116, § 18; Laws 2007, LB296, § 39; Laws 2008, LB782, § 3; Laws 2012, LB998, § 1; Laws 2013, LB561, § 1; Laws 2014, LB853, § 16. Effective date July 18, 2014.

28-728 Legislative findings and intent; child abuse and neglect investigation team; child advocacy center; child abuse and neglect treatment team; powers and duties.

(1) The Legislature finds that child abuse and neglect are community problems requiring a coordinated response by law enforcement, child advocacy centers, prosecutors, the Department of Health and Human Services, and other agencies or entities designed to protect children. It is the intent of the Legislature to create a child abuse and neglect investigation team in each county or contiguous group of counties and to create a child abuse and neglect treatment team in each county or contiguous group of counties.

(2) Each county or contiguous group of counties will be assigned by the Department of Health and Human Services to a child advocacy center. The purpose of a child advocacy center is to provide a child-focused location for conducting forensic interviews and medical evaluations for alleged child victims of abuse and neglect and for coordinating a multidisciplinary team response that supports the physical, emotional, and psychological needs of children who are alleged victims of abuse or neglect. Each child advocacy center shall meet accreditation criteria set forth by the National Children's

Alliance. Nothing in this section shall prevent a child from receiving treatment or other services at a child advocacy center which has received or is in the process of receiving accreditation.

(3) Each county attorney or the county attorney representing a contiguous group of counties is responsible for convening the child abuse and neglect investigation team and ensuring that protocols are established and implemented. A representative of the child advocacy center assigned to the team shall assist the county attorney in facilitating case review, developing and updating protocols, and arranging training opportunities for the team. Each team must have protocols which, at a minimum, shall include procedures for:

(a) Mandatory reporting of child abuse and neglect as outlined in section 28-711 to include training to professionals on identification and reporting of abuse;

(b) Assigning roles and responsibilities between law enforcement and the Department of Health and Human Services for the initial response;

(c) Outlining how reports will be shared between law enforcement and the Department of Health and Human Services under sections 28-712.01 and 28-713;

(d) Coordinating the investigative response including, but not limited to:

(i) Defining cases that require a priority response;

(ii) Contacting the reporting party;

(iii) Arranging for a video-recorded forensic interview at a child advocacy center for children who are three to eighteen years of age and are alleged to be victims of sexual abuse or serious physical abuse or neglect, have witnessed a violent crime, are found in a drug-endangered environment, or have been recovered from a kidnapping;

(iv) Assessing the need for and arranging, when indicated, a medical evaluation of the alleged child victim;

(v) Assessing the need for and arranging, when indicated, appropriate mental health services for the alleged child victim or nonoffender caregiver;

(vi) Conducting collateral interviews with other persons with information pertinent to the investigation including other potential victims;

(vii) Collecting, processing, and preserving physical evidence including photographing the crime scene as well as any physical injuries as a result of the alleged child abuse and neglect; and

(viii) Interviewing the alleged perpetrator;

(e) Reducing the risk of harm to alleged child abuse and neglect victims;

(f) Ensuring that the child is in safe surroundings, including removing the perpetrator when necessary or arranging for temporary custody of the child when the child is seriously endangered in his or her surroundings and immediate removal appears to be necessary for the child's protection as provided in section 43-248;

(g) Sharing of case information between team members; and

(h) Outlining what cases will be reviewed by the investigation team including, but not limited to:

(i) Cases of sexual abuse, serious physical abuse and neglect, drug-endangered children, and serious or ongoing domestic violence;

(ii) Cases determined by the Department of Health and Human Services to be high or very high risk for further maltreatment; and

(iii) Any other case referred by a member of the team when a system-response issue has been identified.

(4) Each county attorney or the county attorney representing a contiguous group of counties is responsible for convening the child abuse and neglect treatment team and ensuring that protocols are established and implemented. A representative of the child advocacy center appointed to the team shall assist the county attorney in facilitating case review, developing and updating protocols, and arranging training opportunities for the team. Each team must have protocols which, at a minimum, shall include procedures for:

(a) Case coordination and assistance, including the location of services available within the area;

(b) Case staffings and the coordination, development, implementation, and monitoring of treatment or safety plans particularly in those cases in which ongoing services are provided by the Department of Health and Human Services or a contracted agency but the juvenile court is not involved;

(c) Reducing the risk of harm to child abuse and neglect victims;

(d) Assisting those child abuse and neglect victims who are abused and neglected by perpetrators who do not reside in their homes; and

(e) Working with multiproblem status offenders and delinquent youth.

(5) For purposes of this section, forensic interview means a video-recorded interview of an alleged child victim conducted at a child advocacy center by a professional with specialized training designed to elicit details about alleged incidents of abuse or neglect, and such interview may result in intervention in criminal or juvenile court.

Source: Laws 1992, LB 1184, § 1; Laws 1996, LB 1044, § 73; Laws 1999, LB 594, § 6; Laws 2006, LB 1113, § 24; Laws 2007, LB296, § 40; Laws 2012, LB993, § 1; Laws 2014, LB853, § 17.
Effective date July 18, 2014.

28-729 Teams; members; training; child advocacy center; duties; meetings.

(1) A child abuse and neglect investigation team shall include a representative from the county attorney's office, a representative from the Division of Children and Family Services of the Department of Health and Human Services, a representative from each law enforcement agency which has jurisdiction within the county or contiguous group of counties, a representative from the child advocacy center, and representatives from such other agencies as determined by the team.

(2) A child abuse and neglect treatment team shall include a representative from the Division of Children and Family Services of the Department of Health and Human Services, a juvenile probation officer, a representative from each of the mental health profession and the medical profession actively practicing within the county or contiguous group of counties, a representative from each school district which provides services within the county or contiguous group of counties, a representative from the child advocacy center, and representatives from such other agencies as determined by the team. For purposes of this subsection, more than one school district may be represented by the same individual.

(3) The teams established pursuant to this section and section 28-728 shall be encouraged to expand their membership to include the various relevant disciplines which exist within the county or contiguous group of counties. The additional members shall have the requisite experience necessary as determined by the core members of the teams. Consistent with requirements set out by the teams, all members of both teams shall attend child abuse and neglect training on an annual basis. Such training shall be no less than eight hours annually and consist of the following components:

- (a) Child abuse and neglect investigation procedures;
- (b) Legal requirements and procedures for successful prosecution of child abuse and neglect cases;
- (c) Roles and responsibilities of child protective services, law enforcement agencies, county attorneys, child advocacy centers, the Attorney General, and judges;
- (d) Characteristics of child development and family dynamics;
- (e) Recognition of various types of abuse and neglect;
- (f) Duty of public and private individuals and agencies, including schools, governmental agencies, physicians, and child advocates, to report suspected or known child abuse;
- (g) Multidisciplinary approaches to providing services to children; and
- (h) Continually identifying and improving weaknesses in the current child protection system and developing ongoing best practices.

(4) The representative of the child advocacy center shall report the name and address of each team member and the number of times the team met within a calendar year to the Nebraska Commission on Law Enforcement and Criminal Justice.

(5) Each team shall meet at a location agreed to by the team. The number of meetings of the team shall be secondary to the caseload of the team, but each team shall meet at least quarterly. Each team may substitute a telephone conference call among team members in lieu of meeting in person. If a team fails to convene, the commission shall notify the Child Protection Division of the office of the Attorney General and the division shall appoint the team members or convene the team pursuant to sections 28-728 to 28-730. Nothing in this section shall relieve the county attorney from ensuring that the teams meet as required by this section.

Source: Laws 1992, LB 1184, § 2; Laws 1996, LB 1044, § 74; Laws 2006, LB 1113, § 25; Laws 2012, LB993, § 2.

28-732 Repealed. Laws 2012, LB 993, § 4.

28-733 Repealed. Laws 2012, LB 993, § 4.

ARTICLE 8

OFFENSES RELATING TO MORALS

Section

28-801. Prostitution; penalty; affirmative defense; immunity from prosecution; law enforcement officer; duties.

28-801.01. Solicitation of prostitution; penalty; affirmative defense.

28-802. Pandering; penalty.

Section

- 28-804. Keeping a place of prostitution; penalty.
 28-813.01. Sexually explicit conduct; visual depiction; unlawful; penalty; affirmative defense.
 28-830. Human trafficking; forced labor or services; terms, defined.
 28-831. Human trafficking; labor trafficking or sex trafficking; labor trafficking of a minor or sex trafficking of a minor; prohibited acts; penalties.
 28-832. Repealed. Laws 2013, LB 1, § 3.

28-801 Prostitution; penalty; affirmative defense; immunity from prosecution; law enforcement officer; duties.

(1) Except as provided in subsection (5) of this section, any person who performs, offers, or agrees to perform any act of sexual contact or sexual penetration, as those terms are defined in section 28-318, with any person not his or her spouse, in exchange for money or other thing of value, commits prostitution.

(2) Any person convicted of violating subsection (1) of this section shall be punished as follows:

(a) If such person has had no prior convictions or has had one prior conviction, such person shall be guilty of a Class II misdemeanor. If the court places such person on probation, such order of probation shall include, as one of its conditions, that such person shall satisfactorily attend and complete an appropriate mental health and substance abuse assessment conducted by a licensed mental health professional or substance abuse professional authorized to complete such assessment; and

(b) If such person has had two or more prior convictions, such person shall be guilty of a Class I misdemeanor. If the court places such person on probation, such order of probation shall include, as one of its conditions, that such person shall satisfactorily attend and complete an appropriate mental health and substance abuse assessment conducted by a licensed mental health professional or substance abuse professional authorized to complete such assessment.

(3) It is an affirmative defense to prosecution under this section that such person was a trafficking victim as defined in section 28-830.

(4) For purposes of this section, prior conviction means any conviction on or after July 14, 2006, for violation of subsection (1) of this section or any conviction on or after July 14, 2006, for violation of a city or village ordinance relating to prostitution.

(5) If the law enforcement officer determines, after a reasonable detention for investigative purposes, that a person suspected of or charged with a violation of subsection (1) of this section is a person under eighteen years of age, such person shall be immune from prosecution for a prostitution offense under this section and shall be subject to temporary custody under section 43-248 and further disposition under the Nebraska Juvenile Code. A law enforcement officer who takes a person under eighteen years of age into custody under this section shall immediately report an allegation of a violation of section 28-831 to the Department of Health and Human Services which shall commence an investigation within twenty-four hours under the Child Protection and Family Safety Act.

Source: Laws 1977, LB 38, § 157; Laws 1985, LB 19, § 1; Laws 1987, LB 176, § 1; Laws 1989, LB 116, § 1; Laws 2006, LB 1086, § 7; Laws 2013, LB255, § 2; Laws 2014, LB853, § 18.
 Effective date July 18, 2014.

Cross References

Child Protection and Family Safety Act, see section 28-710.

Nebraska Juvenile Code, see section 43-2,129.

28-801.01 Solicitation of prostitution; penalty; affirmative defense.

(1) Any person who solicits another person not his or her spouse to perform any act of sexual contact or sexual penetration, as those terms are defined in section 28-318, in exchange for money or other thing of value, commits solicitation of prostitution.

(2) Any person convicted of violating subsection (1) of this section shall be punished as follows:

(a) If such person has had no prior convictions, such person shall be guilty of a Class I misdemeanor and pay a fine of not less than two hundred fifty dollars, unless the person solicited is under the age of eighteen years, in which case such person violating this section shall be guilty of a Class IV felony. If the court places such person on probation, such order of probation shall include, as one of its conditions, the payment of a fine of not less than two hundred fifty dollars and such person shall satisfactorily attend and complete an appropriate mental health and substance abuse assessment conducted by a licensed mental health professional or substance abuse professional authorized to complete such assessment; and

(b) If such person has had one or more prior convictions, such person shall be guilty of a Class IV felony and pay a fine of not less than five hundred dollars. If the court places such person on probation, such order of probation shall include, as one of its conditions, the payment of a fine of not less than five hundred dollars and such person shall satisfactorily attend and complete an appropriate mental health and substance abuse assessment conducted by a licensed mental health professional or substance abuse professional authorized to complete such assessment.

(3) It is an affirmative defense to prosecution under this section that such person was a trafficking victim as defined in section 28-830.

Source: Laws 2006, LB 1086, § 8; Laws 2013, LB255, § 3.

28-802 Pandering; penalty.

(1) A person commits pandering if such person:

(a) Entices another person to become a prostitute; or

(b) Procures or harbors therein an inmate for a house of prostitution or for any place where prostitution is practiced or allowed; or

(c) Inveigles, entices, persuades, encourages, or procures any person to come into or leave this state for the purpose of prostitution or debauchery; or

(d) Receives or gives or agrees to receive or give any money or other thing of value for procuring or attempting to procure any person to become a prostitute or commit an act of prostitution or come into this state or leave this state for the purpose of prostitution or debauchery.

(2) Pandering is a Class IV felony for a first offense, unless the person being enticed, procured, harbored, or otherwise persuaded to become a prostitute is under the age of eighteen years, in which case pandering is a Class III felony

for a first offense. Pandering is a Class III felony for a second or subsequent offense.

Source: Laws 1977, LB 38, § 158; Laws 2012, LB1145, § 1; Laws 2013, LB255, § 4.

Cross References

Registration of sex offenders, see sections 29-4001 to 29-4014.

28-804 Keeping a place of prostitution; penalty.

(1) Any person who has or exercises control over the use of any place which offers seclusion or shelter for the practice of prostitution and who knowingly grants or permits the use of such place for the purpose of prostitution commits the offense of keeping a place of prostitution.

(2) Keeping a place of prostitution is a Class I misdemeanor, unless any person using such place for the practice of prostitution is under the age of eighteen years, in which case any person convicted of keeping a place of prostitution shall be guilty of a Class IV felony.

Source: Laws 1977, LB 38, § 160; Laws 2013, LB255, § 5.

28-813.01 Sexually explicit conduct; visual depiction; unlawful; penalty; affirmative defense.

(1) It shall be unlawful for a person to knowingly possess any visual depiction of sexually explicit conduct, as defined in section 28-1463.02, which has a child, as defined in such section, as one of its participants or portrayed observers.

(2)(a) Any person who is under nineteen years of age at the time he or she violates this section shall be guilty of a Class IV felony for each offense.

(b) Any person who is nineteen years of age or older at the time he or she violates this section shall be guilty of a Class III felony for each offense.

(c) Any person who violates this section and has previously been convicted of a violation of this section or section 28-308, 28-309, 28-310, 28-311, 28-313, 28-314, 28-315, 28-319, 28-319.01, 28-320.01, 28-833, 28-1463.03, or 28-1463.05 or subsection (1) or (2) of section 28-320 shall be guilty of a Class IC felony for each offense.

(3) It shall be an affirmative defense to a charge made pursuant to this section that:

(a) The visual depiction portrays no person other than the defendant; or

(b)(i) The defendant was less than nineteen years of age; (ii) the visual depiction of sexually explicit conduct portrays a child who is fifteen years of age or older; (iii) the visual depiction was knowingly and voluntarily generated by the child depicted therein; (iv) the visual depiction was knowingly and voluntarily provided by the child depicted in the visual depiction; (v) the visual depiction contains only one child; (vi) the defendant has not provided or made available the visual depiction to another person except the child depicted who originally sent the visual depiction to the defendant; and (vii) the defendant did not coerce the child in the visual depiction to either create or send the visual depiction.

Source: Laws 1988, LB 117, § 6; Laws 2003, LB 111, § 1; Laws 2009, LB97, § 15.

28-830 Human trafficking; forced labor or services; terms, defined.

For purposes of sections 28-830 and 28-831, the following definitions apply:

(1) Actor means a person who solicits, procures, or supervises the services or labor of another person;

(2) Commercial sexual activity means any sex act on account of which anything of value is given, promised to, or received by any person;

(3) Debt bondage means inducing another person to provide:

(a) Commercial sexual activity in payment toward or satisfaction of a real or purported debt; or

(b) Labor or services in payment toward or satisfaction of a real or purported debt if:

(i) The reasonable value of the labor or services is not applied toward the liquidation of the debt; or

(ii) The length of the labor or services is not limited and the nature of the labor or services is not defined;

(4) Financial harm means theft by extortion as described by section 28-513;

(5) Forced labor or services means labor or services that are performed or provided by another person and are obtained or maintained through:

(a) Inflicting or threatening to inflict serious personal injury, as defined by section 28-318, on another person;

(b) Physically restraining or threatening to physically restrain the other person;

(c) Abusing or threatening to abuse the legal process against another person to cause arrest or deportation for violation of federal immigration law;

(d) Controlling or threatening to control another person's access to a controlled substance listed in Schedule I, II or III of section 28-405;

(e) Exploiting another person's substantial functional impairment as defined in section 28-368 or substantial mental impairment as defined in section 28-369;

(f) Knowingly destroying, concealing, removing, confiscating, or possessing any actual or purported passport or other immigration document or any other actual or purported government identification document of the other person; or

(g) Causing or threatening to cause financial harm to another person, including debt bondage;

(6) Labor means work of economic or financial value;

(7) Labor trafficking means knowingly recruiting, enticing, harboring, transporting, providing, or obtaining by any means or attempting to recruit, entice, harbor, transport, provide, or obtain by any means a person eighteen years of age or older intending or knowing that the person will be subjected to forced labor or services;

(8) Labor trafficking of a minor means knowingly recruiting, enticing, harboring, transporting, providing, or obtaining by any means or attempting to recruit, entice, harbor, transport, provide, or obtain by any means a minor intending or knowing that the minor will be subjected to forced labor or services;

(9) Maintain means, in relation to labor or services, to secure continued performance thereof, regardless of any initial agreement by the other person to perform such type of service;

(10) Minor means a person younger than eighteen years of age;

(11) Obtain means, in relation to labor or services, to secure performance thereof;

(12) Services means an ongoing relationship between the actor and another person in which the person performs activities under the supervision of or for the benefit of the actor. Commercial sexual activity and sexually-explicit performances are forms of services under this section. Nothing in this subdivision shall be construed to legalize prostitution;

(13) Sex trafficking means knowingly recruiting, enticing, harboring, transporting, providing, or obtaining by any means or knowingly attempting to recruit, entice, harbor, transport, provide, or obtain by any means a person eighteen years of age or older for the purpose of having such person engage in commercial sexual activity, sexually explicit performance, or the production of pornography or to cause or attempt to cause a person eighteen years of age or older to engage in commercial sexual activity, sexually explicit performance, or the production of pornography;

(14) Sex trafficking of a minor means knowingly recruiting, enticing, harboring, transporting, providing, or obtaining by any means or knowingly attempting to recruit, entice, harbor, transport, provide, or obtain by any means a minor for the purpose of having such minor engage in commercial sexual activity, sexually explicit performance, or the production of pornography or to cause or attempt to cause a minor to engage in commercial sexual activity, sexually explicit performance, or the production of pornography;

(15) Sexually-explicit performance means a live or public play, dance, show, or other exhibition intended to arouse or gratify sexual desire or to appeal to prurient interests; and

(16) Trafficking victim means a person subjected to any act or acts prohibited by section 28-831.

Source: Laws 2006, LB 1086, § 10; Laws 2013, LB1, § 1; Laws 2013, LB255, § 6; Laws 2014, LB998, § 4.
Effective date April 10, 2014.

28-831 Human trafficking; labor trafficking or sex trafficking; labor trafficking of a minor or sex trafficking of a minor; prohibited acts; penalties.

(1) No person shall knowingly engage in labor trafficking or sex trafficking.

(2) If an actor knowingly engages in labor trafficking or sex trafficking by:

(a) Inflicting or threatening to inflict serious personal injury, as defined by section 28-318, on another person, the actor is guilty of a Class III felony;

(b) Physically restraining or threatening to physically restrain the other person, the actor is guilty of a Class III felony;

(c) Abusing or threatening to abuse the legal process against another person to cause arrest or deportation for violation of federal immigration law, the actor is guilty of a Class IV felony;

(d) Controlling or threatening to control another person's access to a controlled substance listed in Schedule I, II or III of section 28-405, the actor is guilty of a Class IV felony;

(e) Exploiting another person's substantial functional impairment as defined in section 28-368 or substantial mental impairment as defined in section 28-369, the actor is guilty of a Class IV felony;

(f) Knowingly destroying, concealing, removing, confiscating, or possessing any actual or purported passport or other immigration document, or any other actual or purported government identification document, of the other person, the actor is guilty of a Class IV felony; or

(g) Causing or threatening to cause financial harm to another person, including debt bondage, the actor is guilty of a Class I misdemeanor.

(3) No person shall engage in labor trafficking of a minor or sex trafficking of a minor. An actor who engages in labor trafficking of a minor or sex trafficking of a minor shall be punished as follows:

(a) In cases in which the actor uses overt force or the threat of force against the trafficking victim, the actor is guilty of a Class II felony;

(b) In cases in which the trafficking victim has not attained the age of fifteen years, the actor is guilty of a Class II felony; or

(c) In cases involving a trafficking victim between the ages of fifteen and eighteen years, and the actor does not use overt force or threat of force against the trafficking victim, the actor is guilty of a Class III felony.

(4) Any person who benefits, financially or by receiving anything of value, from participation in a venture which has, as part of the venture, an act that is in violation of this section, is guilty of a Class IV felony.

Source: Laws 2006, LB 1086, § 11; Laws 2013, LB255, § 7; Laws 2014, LB998, § 5.

Effective date April 10, 2014.

28-832 Repealed. Laws 2013, LB 1, § 3.

ARTICLE 9

OFFENSES INVOLVING INTEGRITY AND EFFECTIVENESS OF GOVERNMENT OPERATION

Section

- 28-906. Obstructing a peace officer; penalty.
- 28-915.01. False statement under oath or affirmation; penalty; applicability of section.
- 28-929. Assault on an officer, emergency responder, certain employees, or a health care professional in the first degree; penalty.
- 28-929.01. Assault on out-of-hospital emergency care provider or a health care professional; terms, defined.
- 28-929.02. Assault on a health care professional; hospital and health clinic; sign required.
- 28-930. Assault on an officer, emergency responder, certain employees, or a health care professional in the second degree; penalty.
- 28-931. Assault on an officer, emergency responder, certain employees, or a health care professional in the third degree; penalty.
- 28-931.01. Assault on an officer, emergency responder, certain employees, or a health care professional using a motor vehicle; penalty.
- 28-932. Confined person; person in legal custody of Department of Correctional Services; dangerous sex offender; assault; penalty; sentence.

Section

- 28-933. Confined person; person in legal custody of Department of Correctional Services; dangerous sex offender; offenses against another person; penalty; sentence.
- 28-934. Assault with a bodily fluid against a public safety officer; penalty; order to collect evidence.
- 28-935. Fraudulently filing a financing statement, lien, or document; penalty.

28-906 Obstructing a peace officer; penalty.

(1) A person commits the offense of obstructing a peace officer, when, by using or threatening to use violence, force, physical interference, or obstacle, he or she intentionally obstructs, impairs, or hinders (a) the enforcement of the penal law or the preservation of the peace by a peace officer or judge acting under color of his or her official authority or (b) a police animal assisting a peace officer acting pursuant to the peace officer's official authority.

(2) For purposes of this section, police animal means a horse or dog owned or controlled by the State of Nebraska or any county, city, or village for the purpose of assisting a peace officer acting pursuant to his or her official authority.

(3) Obstructing a peace officer is a Class I misdemeanor.

Source: Laws 1977, LB 38, § 191; Laws 1995, LB 283, § 1; Laws 2012, LB721, § 1.

28-915.01 False statement under oath or affirmation; penalty; applicability of section.

(1) A person who makes a false statement under oath or equivalent affirmation, or swears or affirms the truth of such a statement previously made, when he or she does not believe the statement to be true, is guilty of a Class I misdemeanor if the falsification:

- (a) Occurs in an official proceeding; or
- (b) Is intended to mislead a public servant in performing his or her official function.

(2) A person who makes a false statement under oath or equivalent affirmation, or swears or affirms the truth of such a statement previously made, when he or she does not believe the statement to be true, is guilty of a Class II misdemeanor if the statement is one which is required by law to be sworn or affirmed before a notary or other person authorized to administer oaths.

(3) Subsections (4) through (7) of section 28-915 shall apply to subsections (1) and (2) of this section.

(4) This section shall not apply to reports, statements, affidavits, or other documents made or filed pursuant to the Nebraska Political Accountability and Disclosure Act.

Source: Laws 1987, LB 451, § 4; Laws 2007, LB464, § 1; Laws 2013, LB79, § 1.

Cross References

Nebraska Political Accountability and Disclosure Act, see section 49-1401.

28-929 Assault on an officer, emergency responder, certain employees, or a health care professional in the first degree; penalty.

(1) A person commits the offense of assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional in the first degree if:

(a) He or she intentionally or knowingly causes serious bodily injury:

(i) To a peace officer, a probation officer, a firefighter, an out-of-hospital emergency care provider, or an employee of the Department of Correctional Services;

(ii) To an employee of the Department of Health and Human Services if the person committing the offense is committed as a dangerous sex offender under the Sex Offender Commitment Act; or

(iii) To a health care professional; and

(b) The offense is committed while such officer, firefighter, out-of-hospital emergency care provider, or employee is engaged in the performance of his or her official duties or while the health care professional is on duty at a hospital or a health clinic.

(2) Assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional in the first degree shall be a Class ID felony.

Source: Laws 1982, LB 465, § 3; Laws 2005, LB 538, § 1; Laws 2009, LB63, § 7; Laws 2010, LB771, § 4; Laws 2012, LB677, § 1; Laws 2014, LB811, § 17.

Effective date July 18, 2014.

Cross References

Sex Offender Commitment Act, see section 71-1201.

28-929.01 Assault on out-of-hospital emergency care provider or a health care professional; terms, defined.

For purposes of sections 28-929, 28-929.02, 28-930, 28-931, and 28-931.01:

(1) Health care professional means a physician or other health care practitioner who is licensed, certified, or registered to perform specified health services consistent with state law who practices at a hospital or a health clinic;

(2) Health clinic has the definition found in section 71-416;

(3) Hospital has the definition found in section 71-419; and

(4) Out-of-hospital emergency care provider means (a) an emergency medical responder; (b) an emergency medical technician; (c) an advanced emergency medical technician; or (d) a paramedic, as those persons are licensed and classified under the Emergency Medical Services Practice Act.

Source: Laws 2012, LB677, § 4; Laws 2014, LB811, § 18.

Effective date July 18, 2014.

Cross References

Emergency Medical Services Practice Act, see section 38-1201.

28-929.02 Assault on a health care professional; hospital and health clinic; sign required.

Every hospital and health clinic shall display at all times in a prominent place a printed sign with a minimum height of twenty inches and a minimum width

of fourteen inches, with each letter to be a minimum of one-fourth inch in height, which shall read as follows:

WARNING: ASSAULTING A HEALTH CARE PROFESSIONAL WHO IS ENGAGED IN THE PERFORMANCE OF HIS OR HER OFFICIAL DUTIES IS A FELONY.

Source: Laws 2012, LB677, § 5.

28-930 Assault on an officer, emergency responder, certain employees, or a health care professional in the second degree; penalty.

(1) A person commits the offense of assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional in the second degree if:

(a) He or she:

(i) Intentionally or knowingly causes bodily injury with a dangerous instrument:

(A) To a peace officer, a probation officer, a firefighter, an out-of-hospital emergency care provider, or an employee of the Department of Correctional Services;

(B) To an employee of the Department of Health and Human Services if the person committing the offense is committed as a dangerous sex offender under the Sex Offender Commitment Act; or

(C) To a health care professional; or

(ii) Recklessly causes bodily injury with a dangerous instrument:

(A) To a peace officer, a probation officer, a firefighter, an out-of-hospital emergency care provider, or an employee of the Department of Correctional Services;

(B) To an employee of the Department of Health and Human Services if the person committing the offense is committed as a dangerous sex offender under the Sex Offender Commitment Act; or

(C) To a health care professional; and

(b) The offense is committed while such officer, firefighter, out-of-hospital emergency care provider, or employee is engaged in the performance of his or her official duties or while the health care professional is on duty at a hospital or a health clinic.

(2) Assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional in the second degree shall be a Class II felony.

Source: Laws 1982, LB 465, § 4; Laws 2005, LB 538, § 2; Laws 2009, LB63, § 8; Laws 2010, LB771, § 5; Laws 2012, LB677, § 2; Laws 2014, LB811, § 19.

Effective date July 18, 2014.

Cross References

Sex Offender Commitment Act, see section 71-1201.

28-931 Assault on an officer, emergency responder, certain employees, or a health care professional in the third degree; penalty.

(1) A person commits the offense of assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional in the third degree if:

(a) He or she intentionally, knowingly, or recklessly causes bodily injury:

(i) To a peace officer, a probation officer, a firefighter, an out-of-hospital emergency care provider, or an employee of the Department of Correctional Services;

(ii) To an employee of the Department of Health and Human Services if the person committing the offense is committed as a dangerous sex offender under the Sex Offender Commitment Act; or

(iii) To a health care professional; and

(b) The offense is committed while such officer, firefighter, out-of-hospital emergency care provider, or employee is engaged in the performance of his or her official duties or while the health care professional is on duty at a hospital or a health clinic.

(2) Assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional in the third degree shall be a Class IIIA felony.

Source: Laws 1982, LB 465, § 5; Laws 1997, LB 364, § 11; Laws 2005, LB 538, § 3; Laws 2010, LB771, § 6; Laws 2012, LB677, § 3; Laws 2014, LB811, § 20.

Effective date July 18, 2014.

Cross References

Sex Offender Commitment Act, see section 71-1201.

28-931.01 Assault on an officer, emergency responder, certain employees, or a health care professional using a motor vehicle; penalty.

(1) A person commits the offense of assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional using a motor vehicle if:

(a) By using a motor vehicle to run over or to strike an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional or by using a motor vehicle to collide with an officer's, an emergency responder's, a state correctional employee's, a Department of Health and Human Services employee's, or a health care professional's motor vehicle, he or she intentionally and knowingly causes bodily injury:

(i) To a peace officer, a probation officer, a firefighter, an out-of-hospital emergency care provider, or an employee of the Department of Correctional Services;

(ii) To an employee of the Department of Health and Human Services if the person committing the offense is committed as a dangerous sex offender under the Sex Offender Commitment Act; or

(iii) To a health care professional; and

(b) The offense is committed while such officer, firefighter, out-of-hospital emergency care provider, or employee is engaged in the performance of his or her official duties or while the health care professional is on duty at a hospital or a health clinic.

(2) Assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional using a motor vehicle shall be a Class IIIA felony.

Source: Laws 1995, LB 371, § 31; Laws 1997, LB 364, § 12; Laws 2005, LB 538, § 4; Laws 2010, LB771, § 7; Laws 2014, LB811, § 21. Effective date July 18, 2014.

Cross References

Sex Offender Commitment Act, see section 71-1201.

28-932 Confined person; person in legal custody of Department of Correctional Services; dangerous sex offender; assault; penalty; sentence.

(1) Any person (a)(i) who is legally confined in a jail or an adult correctional or penal institution, (ii) who is otherwise in legal custody of the Department of Correctional Services, or (iii) who is committed as a dangerous sex offender under the Sex Offender Commitment Act and (b) who intentionally, knowingly, or recklessly causes bodily injury to another person shall be guilty of a Class IIIA felony, except that if a deadly or dangerous weapon is used to commit such assault he or she shall be guilty of a Class III felony.

(2) Sentences imposed under subsection (1) of this section shall be consecutive to any sentence or sentences imposed for violations committed prior to the violation of subsection (1) of this section and shall not include any credit for time spent in custody prior to sentencing unless the time in custody is solely related to the offense for which the sentence is being imposed under this section.

Source: Laws 1982, LB 465, § 6; Laws 1997, LB 364, § 13; Laws 2010, LB771, § 8.

Cross References

Sex Offender Commitment Act, see section 71-1201.

28-933 Confined person; person in legal custody of Department of Correctional Services; dangerous sex offender; offenses against another person; penalty; sentence.

(1) Any person (a)(i) who is legally confined in a jail or an adult correctional or penal institution, (ii) who is otherwise in legal custody of the Department of Correctional Services, or (iii) who is committed as a dangerous sex offender under the Sex Offender Commitment Act and (b) who commits (i) assault in the first, second, or third degree as defined in sections 28-308 to 28-310, (ii) terroristic threats as defined in section 28-311.01, (iii) kidnapping as defined in section 28-313, or (iv) false imprisonment in the first or second degree as defined in sections 28-314 and 28-315, against any person for the purpose of compelling or inducing the performance of any act by such person or any other person shall be guilty of a Class II felony.

(2) Sentences imposed under subsection (1) of this section shall be served consecutive to any sentence or sentences imposed for violations committed prior to the violation of subsection (1) of this section and shall not include any credit for time spent in custody prior to sentencing unless the time in custody is

solely related to the offense for which the sentence is being imposed under this section.

Source: Laws 1982, LB 465, § 7; Laws 1986, LB 956, § 13; Laws 2010, LB771, § 9.

Cross References

Sex Offender Commitment Act, see section 71-1201.

28-934 Assault with a bodily fluid against a public safety officer; penalty; order to collect evidence.

(1) Any person who knowingly and intentionally strikes any public safety officer with any bodily fluid is guilty of assault with a bodily fluid against a public safety officer.

(2) Except as provided in subsection (3) of this section, assault with a bodily fluid against a public safety officer is a Class I misdemeanor.

(3) Assault with a bodily fluid against a public safety officer is a Class IIIA felony if the person committing the offense strikes with a bodily fluid the eyes, mouth, or skin of a public safety officer and knew the source of the bodily fluid was infected with the human immunodeficiency virus, hepatitis B, or hepatitis C at the time the offense was committed.

(4) Upon a showing of probable cause by affidavit to a judge of this state that an offense as defined in subsection (1) of this section has been committed and that identifies the probable source of the bodily fluid or bodily fluids used to commit the offense, the judge shall grant an order or issue a search warrant authorizing the collection of any evidence, including any bodily fluid or medical records or the performance of any medical or scientific testing or analysis, that may assist with the determination of whether or not the person committing the offense or the person from whom the person committing the offense obtained the bodily fluid or bodily fluids is infected with the human immunodeficiency virus, hepatitis B, or hepatitis C.

(5) As used in this section:

(a) Bodily fluid means any naturally produced secretion or waste product generated by the human body and shall include, but not be limited to, any quantity of human blood, urine, saliva, mucus, vomitus, seminal fluid, or feces; and

(b) Public safety officer includes any of the following persons who are engaged in the performance of their official duties at the time of the offense: A peace officer; a probation officer; a firefighter; an out-of-hospital emergency care provider as defined in section 28-929.01; an employee of a county, city, or village jail; an employee of the Department of Correctional Services; an employee of the secure youth confinement facility operated by the Department of Correctional Services, if the person committing the offense is committed to such facility; an employee of the Youth Rehabilitation and Treatment Center-Geneva or the Youth Rehabilitation and Treatment Center-Kearney; or an employee of the Department of Health and Human Services if the person committing the offense is committed as a dangerous sex offender under the Sex Offender Commitment Act.

Source: Laws 2011, LB226, § 2; Laws 2014, LB811, § 22.
Effective date July 18, 2014.

Cross References

Sex Offender Commitment Act, see section 71-1201.

28-935 Fraudulently filing a financing statement, lien, or document; penalty.

(1) A person commits the offense of fraudulently filing a financing statement, lien, or document if the person directly, or through an intermediary, submits for filing or recording in the public record, as defined in section 28-911:

(a) Any document purporting to create a nonconsensual common-law lien, as defined in section 52-1901, knowing or having reason to know that the lien is a nonconsensual common-law lien;

(b) A financing statement pursuant to article 9, Uniform Commercial Code, knowing or having reason to know that the financing statement is not based on a bona fide security agreement or was not authorized or authenticated by the alleged debtor identified in the financing statement or an authorized representative of the alleged debtor; or

(c) Any document filed in an attempt to harass an entity, individual, or public official or obstruct a government operation or judicial proceeding, knowing or having reason to know such document contained false information.

(2) Fraudulently filing a financing statement, lien, or document is a Class IV felony.

(3) Lack of belief in the jurisdiction or authority of the state or of the government of the United States is no defense to prosecution under this section.

Source: Laws 2013, LB3, § 2.

ARTICLE 10

OFFENSES AGAINST ANIMALS

Section

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28-1005 Dogfighting, cockfighting, bearbaiting, or pitting an animal against another; prohibited acts; penalty.

(1) No person shall knowingly:

(a) Promote, engage in, or be employed at dogfighting, cockfighting, bearbaiting, or pitting an animal against another;

(b) Receive money for the admission of another person to a place kept for such purpose;

(c) Own, use, train, sell, or possess an animal for such purpose; or

(d) Permit any act as described in this subsection to occur on any premises owned or controlled by him or her.

(2) Any person violating subsection (1) of this section shall be guilty of a Class IV felony and shall also be subject to section 28-1019.

(3) No person shall knowingly and willingly be present at and witness as a spectator dogfighting, cockfighting, bearbaiting, or the pitting of an animal against another as prohibited in subsection (1) of this section. Any person who violates any provision of this subsection shall be guilty of a Class IV felony and shall also be subject to section 28-1019.

Source: Laws 1988, LB 170, § 3; Laws 2003, LB 273, § 3; Laws 2013, LB329, § 1.

28-1005.01 Ownership or possession of animal fighting paraphernalia; penalty.

(1) No person shall knowingly or intentionally own or possess animal fighting paraphernalia with the intent to commit a violation of section 28-1005.

(2)(a) For purposes of this section, except as provided in subdivision (b) of this subsection, animal fighting paraphernalia means equipment, products, and materials of any kind that are used, intended for use, or designed for use in the training, preparation, conditioning, or furtherance of the pitting of an animal against another as defined in section 28-1004. Animal fighting paraphernalia includes, but is not limited to, the following:

(i) A breaking stick, which means a device designed for insertion behind the molars of a dog for the purpose of breaking the dog's grip on another animal or object;

(ii) A cat mill, which means a device that rotates around a central support with one arm designed to secure a dog and one arm designed to secure a cat, rabbit, or other small animal beyond the grasp of the dog;

(iii) A treadmill, which means an exercise device consisting of an endless belt on which the animal walks or runs without changing place;

(iv) A fighting pit, which means a walled area designed to contain an animal fight;

(v) A springpole, which means a biting surface attached to a stretchable device, suspended at a height sufficient to prevent a dog from reaching the biting surface while touching the ground;

(vi) A heel, which means any edged or pointed instrument designed to be attached to the leg of a fowl;

(vii) A boxing glove or muff, which means a fitted protective covering for the spurs of a fowl; and

(viii) Any other instrument commonly used in the furtherance of pitting an animal against another.

(b) Animal fighting paraphernalia does not include equipment, products, or materials of any kind used by a veterinarian licensed to practice veterinary medicine and surgery in this state.

(3) Any person violating subsection (1) of this section is guilty of a Class I misdemeanor and may also be subject to section 28-1019.

Source: Laws 2010, LB252, § 2; Laws 2013, LB329, § 2.

28-1006 Investigation; arrest; seizure of property; reimbursement of expenses.

(1) It shall be the duty of the sheriff, a police officer, or the Nebraska State Patrol to make prompt investigation of and arrest for any violation of section 28-1005 or 28-1005.01.

(2) Any animal, equipment, device, or other property or things involved in any violation of section 28-1005 or 28-1005.01 shall be subject to seizure, and disposition may be made in accordance with the method of disposition directed for contraband in sections 29-818 and 29-820.

(3) Any animal involved in any violation of section 28-1005 or 28-1005.01 shall be subject to seizure. Distribution or disposition shall be made as provided in section 29-818 and in such manner as the court may direct. The court may give preference to adoption alternatives through humane societies or comparable institutions and to the protection of such animal's welfare. For a humane society or comparable institution to be considered as an adoption alternative under this subsection, it must first be licensed by the Department of Agriculture as having passed the inspection requirements in the Commercial Dog and Cat Operator Inspection Act and paid the fee for inspection under the act. The court may prohibit an adopting or purchasing party from selling such animal for a period not to exceed one year.

(4) In addition to any other sentence given for a violation of section 28-1005 or 28-1005.01, the sentencing court may order the defendant to reimburse a public or private agency for expenses incurred in conjunction with the care, impoundment, or disposal, including adoption, of an animal involved in the violation of section 28-1005 or 28-1005.01. Whenever the court believes that such reimbursement may be a proper sentence or the prosecuting attorney requests, the court shall order that the presentence investigation report include documentation regarding the nature and amount of the expenses incurred. The court may order that reimbursement be made immediately, in specified installments, or within a specified period of time, not to exceed five years after the date of judgment.

Source: Laws 1988, LB 170, § 4; Laws 1997, LB 551, § 1; Laws 2002, LB 82, § 5; Laws 2010, LB252, § 3; Laws 2010, LB712, § 11.

Cross References

Commercial Dog and Cat Operator Inspection Act, see section 54-625.

28-1007 Sections, how construed.

Sections 28-1004 to 28-1006 shall not be construed to amend or in any manner change the authority of the Game and Parks Commission under the

Game Law, to prohibit any conduct authorized or permitted in the Game Law, or to prohibit the training of animals for any purpose not prohibited by law.

Source: Laws 1988, LB 170, § 5; Laws 1998, LB 922, § 393; Laws 2010, LB252, § 4.

Cross References

Game Law, see section 37-201.

28-1008 Terms, defined.

For purposes of sections 28-1008 to 28-1017, 28-1019, and 28-1020:

(1) Abandon means to leave any animal in one's care, whether as owner or custodian, for any length of time without making effective provision for its food, water, or other care as is reasonably necessary for the animal's health;

(2) Animal means any vertebrate member of the animal kingdom. Animal does not include an uncaptured wild creature or a livestock animal as defined in section 54-902;

(3) Cruelly mistreat means to knowingly and intentionally kill, maim, disfigure, torture, beat, mutilate, burn, scald, or otherwise inflict harm upon any animal;

(4) Cruelly neglect means to fail to provide any animal in one's care, whether as owner or custodian, with food, water, or other care as is reasonably necessary for the animal's health;

(5) Humane killing means the destruction of an animal by a method which causes the animal a minimum of pain and suffering;

(6) Law enforcement officer means any member of the Nebraska State Patrol, any county or deputy sheriff, any member of the police force of any city or village, or any other public official authorized by a city or village to enforce state or local animal control laws, rules, regulations, or ordinances. Law enforcement officer also includes any inspector under the Commercial Dog and Cat Operator Inspection Act to the extent that such inspector may exercise the authority of a law enforcement officer under section 28-1012 while in the course of performing inspection activities under the Commercial Dog and Cat Operator Inspection Act;

(7) Mutilation means intentionally causing permanent injury, disfigurement, degradation of function, incapacitation, or imperfection to an animal. Mutilation does not include conduct performed by a veterinarian licensed to practice veterinary medicine and surgery in this state or conduct that conforms to accepted veterinary practices;

(8) Police animal means a horse or dog owned or controlled by the State of Nebraska or any county, city, or village for the purpose of assisting a law enforcement officer in the performance of his or her official enforcement duties;

(9) Repeated beating means intentional successive strikes to an animal by a person resulting in serious bodily injury or death to the animal;

(10) Serious injury or illness includes any injury or illness to any animal which creates a substantial risk of death or which causes broken bones, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ; and

(11) Torture means intentionally subjecting an animal to extreme pain, suffering, or agony. Torture does not include conduct performed by a veterinarian licensed to practice veterinary medicine and surgery in this state or conduct that conforms to accepted veterinary practices.

Source: Laws 1990, LB 50, § 1; Laws 1995, LB 283, § 2; Laws 2003, LB 273, § 4; Laws 2006, LB 856, § 11; Laws 2007, LB227, § 1; Laws 2008, LB764, § 2; Laws 2008, LB1055, § 2; Laws 2009, LB494, § 1; Laws 2010, LB865, § 13; Laws 2012, LB721, § 2.

Cross References

Commercial Dog and Cat Operator Inspection Act, see section 54-625.

28-1009 Abandonment; cruel neglect; harassment of a police animal; penalty.

(1) A person who intentionally, knowingly, or recklessly abandons or cruelly neglects an animal is guilty of a Class I misdemeanor unless the abandonment or cruel neglect results in serious injury or illness or death of the animal, in which case it is a Class IV felony.

(2)(a) Except as provided in subdivision (b) of this subsection, a person who cruelly mistreats an animal is guilty of a Class I misdemeanor for the first offense and a Class IV felony for any subsequent offense.

(b) A person who cruelly mistreats an animal is guilty of a Class IV felony if such cruel mistreatment involves the knowing and intentional torture, repeated beating, or mutilation of the animal.

(3) A person commits harassment of a police animal if he or she knowingly and intentionally teases or harasses a police animal in order to distract, agitate, or harm the police animal for the purpose of preventing such animal from performing its legitimate official duties. Harassment of a police animal is a Class IV misdemeanor unless the harassment is the proximate cause of the death of the police animal, in which case it is a Class IV felony.

(4) A person convicted of a Class I misdemeanor under this section may also be subject to section 28-1019. A person convicted of a Class IV felony under this section shall also be subject to section 28-1019.

Source: Laws 1990, LB 50, § 2; Laws 1995, LB 283, § 3; Laws 2002, LB 82, § 6; Laws 2003, LB 273, § 5; Laws 2007, LB227, § 2; Laws 2013, LB329, § 3; Laws 2014, LB674, § 1.
Effective date July 18, 2014.

28-1009.02 Repealed. Laws 2010, LB 865, § 17.

28-1009.03 Repealed. Laws 2010, LB 865, § 17.

28-1010 Indecency with an animal; penalty.

A person commits indecency with an animal when such person subjects an animal to sexual penetration as defined in section 28-318. Indecency with an animal is a Class III misdemeanor. A person convicted under this section may also be subject to section 28-1019.

Source: Laws 1977, LB 38, § 216; Laws 1978, LB 748, § 16; R.S.1943, (1989), § 28-1003; Laws 1990, LB 50, § 3; Laws 2009, LB97, § 16; Laws 2013, LB329, § 4.

28-1012 Law enforcement officer; powers; immunity; seizure; court powers.

(1) Any law enforcement officer who has reason to believe that an animal has been abandoned or is being cruelly neglected or cruelly mistreated may seek a warrant authorizing entry upon private property to inspect, care for, or impound the animal.

(2) Any law enforcement officer who has reason to believe that an animal has been abandoned or is being cruelly neglected or cruelly mistreated may issue a citation to the owner as prescribed in sections 29-422 to 29-429.

(3) Any animal, equipment, device, or other property or things involved in a violation of section 28-1009 or 28-1010 shall be subject to seizure and distribution or disposition shall be made under section 29-818 and in such manner as the court may direct.

(4) Any animal involved in a violation of section 28-1009 or 28-1010 shall be subject to seizure. Distribution or disposition shall be made under section 29-818 and in such manner as the court may direct. The court may consider adoption alternatives through humane societies or comparable institutions and the protection of such animal's welfare. For a humane society or comparable institution to be considered as an adoption alternative under this subsection, it must first be licensed by the Department of Agriculture as having passed the inspection requirements in the Commercial Dog and Cat Operator Inspection Act and paid the fee for inspection under the act. The court may prohibit an adopting or purchasing party from selling such animal for a period not to exceed one year.

(5) Any law enforcement officer acting under this section shall not be liable for damage to property if such damage is not the result of the officer's negligence.

Source: Laws 1990, LB 50, § 4; Laws 1997, LB 551, § 3; Laws 2002, LB 82, § 7; Laws 2010, LB712, § 12.

Cross References

Commercial Dog and Cat Operator Inspection Act, see section 54-625.

28-1013 Sections; exemptions.

Sections 28-1008 to 28-1017 and 28-1019 shall not apply to:

(1) Care or treatment of an animal or other conduct by a veterinarian or veterinary technician licensed under the Veterinary Medicine and Surgery Practice Act that occurs within the scope of his or her employment, that occurs while acting in his or her professional capacity, or that conforms to commonly accepted veterinary practices;

(2) Commonly accepted care or treatment of a police animal by a law enforcement officer in the normal course of his or her duties;

(3) Research activity carried on by any research facility currently meeting the standards of the federal Animal Welfare Act, 7 U.S.C. 2131 et seq., as such act existed on January 1, 2010;

(4) Commonly accepted practices of hunting, fishing, or trapping;

(5) Humane killing of an animal by the owner or by his or her agent or a veterinarian upon the owner's request;

(6) Use of reasonable force against an animal, other than a police animal, which is working, including killing, capture, or restraint, if the animal is

outside the owned or rented property of its owner or custodian and is injuring or posing an immediate threat to any person or other animal;

- (7) Killing of house or garden pests; and
- (8) Commonly accepted animal training practices.

Source: Laws 1990, LB 50, § 6; Laws 1995, LB 283, § 4; Laws 2003, LB 273, § 6; Laws 2007, LB463, § 1127; Laws 2008, LB764, § 5; Laws 2008, LB1055, § 4; Laws 2009, LB494, § 2; Laws 2010, LB865, § 14.

Cross References

Veterinary Medicine and Surgery Practice Act, see section 38-3301.

28-1013.01 Repealed. Laws 2010, LB 865, § 17.

28-1013.02 Repealed. Laws 2010, LB 865, § 17.

28-1014 Local regulation; authorized.

Any city, village, or county may adopt and promulgate rules, regulations, and ordinances which are not inconsistent with the provisions of sections 28-1008 to 28-1017, 28-1019, and 28-1020 for the protection of the public, public health, and animals within its jurisdiction.

Source: Laws 1990, LB 50, § 7; Laws 2003, LB 273, § 7; Laws 2008, LB764, § 8; Laws 2008, LB1055, § 5; Laws 2009, LB494, § 3.

28-1015 Ownership by child; applicability of penalties.

When an animal is owned by a minor child, the parent of such minor child with whom the child resides or legal guardian with whom the child resides shall be subject to the penalties provided under sections 28-1008 to 28-1017, 28-1019, and 28-1020 if the animal is abandoned or cruelly neglected.

Source: Laws 1990, LB 50, § 8; Laws 2003, LB 273, § 8; Laws 2008, LB764, § 9; Laws 2008, LB1055, § 6; Laws 2009, LB494, § 4.

28-1016 Game and Parks Commission; Game Law; sections, how construed.

Nothing in sections 28-1008 to 28-1017, 28-1019, and 28-1020 shall be construed as amending or changing the authority of the Game and Parks Commission as established in the Game Law or to prohibit any conduct authorized or permitted by such law.

Source: Laws 1990, LB 50, § 9; Laws 2003, LB 273, § 9; Laws 2008, LB764, § 10; Laws 2008, LB1055, § 7; Laws 2009, LB494, § 5.

Cross References

Game Law, see section 37-201.

28-1017 Animal abandonment, cruel neglect, or cruel mistreatment; report required by certain employees; violation; penalty.

(1) For purposes of this section:

(a) Reasonably suspects means a basis for reporting knowledge or a set of facts that would lead a person of ordinary care and prudence to believe and conscientiously entertain a strong suspicion that criminal activity is at hand or that a crime has been committed; and

(b) Employee means any employee of a governmental agency dealing with child or adult protective services, animal control, or animal abuse.

(2) Any employee, while acting in his or her professional capacity or within the scope of his or her employment, who observes or is involved in an incident which leads the employee to reasonably suspect that an animal has been abandoned, cruelly neglected, or cruelly mistreated shall report such to the entity or entities that investigate such reports in that jurisdiction.

(3) The report of an employee shall be made within two working days of acquiring the information concerning the animal by facsimile transmission of a written report presented in the form described in subsection (6) of this section or by telephone. When an immediate response is necessary to protect the health and safety of the animal or others, the report of an employee shall be made by telephone as soon as possible.

(4) Nothing in this section shall be construed to impose a duty to investigate observed or reasonably suspected animal abandonment, cruel neglect, or cruel mistreatment. Any person making a report under this section is immune from liability except for false statements of fact made with malicious intent.

(5) A report made by an employee pursuant to this section shall include:

(a) The reporter's name and title, business address, and telephone number;

(b) The name, if known, of the animal owner or custodian, whether a business or individual;

(c) A description of the animal or animals involved, person or persons involved, and location of the animal or animals and the premises; and

(d) The date, time, and a description of the observation or incident which led the reporter to reasonably suspect animal abandonment, cruel neglect, or cruel mistreatment and any other information the reporter believes may be relevant.

(6) A report made by an employee pursuant to this section may be made on preprinted forms prepared by the entity or entities that investigate reports of animal abandonment, cruel neglect, or cruel mistreatment in that jurisdiction. The form shall include space for the information required under subsection (5) of this section.

(7) When two or more employees jointly have observed or reasonably suspected animal abandonment, cruel neglect, or cruel mistreatment and there is agreement between or among them, a report may be made by one person by mutual agreement. Any such reporter who has knowledge that the person designated to report has failed to do so shall thereafter make the report.

(8) Any employee failing to report under this section shall be guilty of an infraction.

Source: Laws 2003, LB 273, § 1; Laws 2009, LB494, § 6.

28-1018 Sale of puppy or kitten; prohibited acts; penalty.

(1) A person, other than an animal control facility, animal rescue, or animal shelter, who sells a puppy or kitten under eight weeks of age without its mother is guilty of a Class V misdemeanor.

(2) For purposes of this section:

(a) Animal control facility means a facility operated by the state or any political subdivision of the state for the purpose of impounding or harboring seized, stray, homeless, abandoned, or unwanted animals;

(b) Animal rescue means a person or group of persons who hold themselves out as an animal rescue, accept or solicit for dogs or cats with the intention of finding permanent adoptive homes or providing lifelong care for such dogs or cats, or who use foster homes as defined in section 54-626 as the primary means of housing dogs or cats; and

(c) Animal shelter means a facility used to house or contain dogs or cats and owned, operated, or maintained by an incorporated humane society, animal welfare society, society for the prevention of cruelty to animals, or other nonprofit organization devoted to the welfare, protection, and humane treatment of such animals.

Source: Laws 2003, LB 17, § 5; Laws 2006, LB 856, § 12; Laws 2010, LB910, § 1.

28-1019 Conviction; order prohibiting ownership, possession, or residing with animal; duration; violation; penalty; seizure of animal.

(1)(a) If a person is convicted of a Class IV felony under section 28-1005 or 28-1009, the sentencing court shall order such person not to own, possess, or reside with any animal for at least five years after the date of conviction, but such time restriction shall not exceed fifteen years. Any person violating such court order shall be guilty of a Class I misdemeanor.

(b) If a person is convicted of a Class I misdemeanor under section 28-1005.01 or 28-1009 or a Class III misdemeanor under section 28-1010, the sentencing court may order such person not to own, possess, or reside with any animal after the date of conviction, but such time restriction, if any, shall not exceed five years. Any person violating such court order shall be guilty of a Class IV misdemeanor.

(c) Any animal involved in a violation of a court order under subdivision (a) or (b) of this subsection shall be subject to seizure by law enforcement. Distribution or disposition shall be made under section 29-818.

(2) This section shall not apply to any person convicted under section 28-1005, 28-1005.01, or 28-1009 if a licensed physician confirms in writing that ownership or possession of or residence with an animal is essential to the health of such person.

Source: Laws 2008, LB1055, § 3; Laws 2010, LB252, § 5; Laws 2010, LB712, § 13; Laws 2014, LB674, § 2.
Effective date July 18, 2014.

28-1020 Animal abandonment, cruel neglect, or cruel mistreatment; report required by animal health care professional; immunity from liability.

(1) Any animal health care professional, while acting in his or her professional capacity or within the scope of his or her employment, who observes or is involved in an incident which leads the animal health care professional to reasonably suspect that an animal has been abandoned, cruelly neglected, or cruelly mistreated, shall report such treatment to an entity that investigates such reports in the appropriate jurisdiction.

(2) Nothing in this section shall be construed to impose a duty to investigate observed or reasonably suspected abandonment, cruel neglect, or cruel mistreatment of an animal. Any person making a report under this section is

immune from liability except for false statements of fact made with malicious intent.

(3) For purposes of this section, an animal health care professional means a licensed veterinarian as defined in section 38-3310 or a licensed veterinary technician as defined in section 38-3311.

Source: Laws 2009, LB494, § 7.

ARTICLE 12

OFFENSES AGAINST PUBLIC HEALTH AND SAFETY

Section

- 28-1201. Terms, defined.
- 28-1202. Carrying concealed weapon; penalty; affirmative defense.
- 28-1204. Unlawful possession of a handgun; exceptions; penalty.
- 28-1204.01. Unlawful transfer of a firearm to a juvenile; exceptions; penalty; county attorney; duty.
- 28-1204.03. Firearms and violence; legislative findings.
- 28-1204.04. Unlawful possession of a firearm at a school; penalty; exceptions; confiscation of certain firearms; disposition.
- 28-1205. Use of a deadly weapon to commit a felony; possession of a deadly weapon during the commission of a felony; penalty; separate and distinct offense; proof of possession.
- 28-1206. Possession of a deadly weapon by a prohibited person; penalty.
- 28-1207. Possession of a defaced firearm; penalty.
- 28-1208. Defacing a firearm; penalty.
- 28-1211. Repealed. Laws 2014, LB 699, § 8.
- 28-1212.01. Unlawful discharge of firearm; terms, defined.
- 28-1212.02. Unlawful discharge of firearm; penalty.
- 28-1212.03. Stolen firearm; prohibited acts; violation; penalty.
- 28-1212.04. Discharge of firearm in certain cities and counties; prohibited acts; penalty.
- 28-1213. Explosives, destructive devices, other terms; defined.
- 28-1239.01. Fireworks display; permit required; fee; sale of display fireworks; regulation.
- 28-1241. Fireworks; definitions.
- 28-1243. Fireworks item deemed unsafe; quarantined; testing; test results; effect.
- 28-1244. Fireworks; unlawful acts.
- 28-1246. Fireworks; sale; license required; fees.
- 28-1247. Repealed. Laws 2010, LB 880, § 13.
- 28-1248. Fireworks; importation into state; duties of licensees; retention of packing list for inspection.
- 28-1249. Sale of consumer fireworks; limitations.
- 28-1250. Fireworks; prohibited acts; violations; penalties; license suspension, cancellation, or revocation; appeal.
- 28-1252. Fireworks; State Fire Marshal; rules and regulations; enforcement of sections.
- 28-1254. Motor vehicle operation with person under age of sixteen years; prohibited acts; violation; penalty.

28-1201 Terms, defined.

For purposes of sections 28-1201 to 28-1212.04, unless the context otherwise requires:

(1) Firearm means any weapon which is designed to or may readily be converted to expel any projectile by the action of an explosive or frame or receiver of any such weapon;

(2) Fugitive from justice means any person who has fled or is fleeing from any peace officer to avoid prosecution or incarceration for a felony;

(3) Handgun means any firearm with a barrel less than sixteen inches in length or any firearm designed to be held and fired by the use of a single hand;

(4) Juvenile means any person under the age of eighteen years;

(5) Knife means any dagger, dirk, knife, or stiletto with a blade over three and one-half inches in length or any other dangerous instrument capable of inflicting cutting, stabbing, or tearing wounds;

(6) Knuckles and brass or iron knuckles means any instrument that consists of finger rings or guards made of a hard substance and that is designed, made, or adapted for the purpose of inflicting serious bodily injury or death by striking a person with a fist enclosed in the knuckles;

(7) Machine gun means any firearm, whatever its size and usual designation, that shoots automatically more than one shot, without manual reloading, by a single function of the trigger;

(8) School means a public, private, denominational, or parochial elementary, vocational, or secondary school, a private postsecondary career school as defined in section 85-1603, a community college, a public or private college, a junior college, or a university;

(9) Short rifle means a rifle having a barrel less than sixteen inches long or an overall length of less than twenty-six inches; and

(10) Short shotgun means a shotgun having a barrel or barrels less than eighteen inches long or an overall length of less than twenty-six inches.

Source: Laws 1977, LB 38, § 233; Laws 1994, LB 988, § 2; Laws 2009, LB63, § 9; Laws 2009, LB430, § 6.

28-1202 Carrying concealed weapon; penalty; affirmative defense.

(1)(a) Except as otherwise provided in this section, any person who carries a weapon or weapons concealed on or about his or her person, such as a handgun, a knife, brass or iron knuckles, or any other deadly weapon, commits the offense of carrying a concealed weapon.

(b) It is an affirmative defense that the defendant was engaged in any lawful business, calling, or employment at the time he or she was carrying any weapon or weapons and the circumstances in which such person was placed at the time were such as to justify a prudent person in carrying the weapon or weapons for the defense of his or her person, property, or family.

(2) This section does not apply to a person who is the holder of a valid permit issued under the Concealed Handgun Permit Act if the concealed weapon the defendant is carrying is a handgun.

(3) Carrying a concealed weapon is a Class I misdemeanor.

(4) In the case of a second or subsequent conviction under this section, carrying a concealed weapon is a Class IV felony.

Source: Laws 1977, LB 38, § 234; Laws 1984, LB 1095, § 1; Laws 2006, LB 454, § 22; Laws 2009, LB63, § 10.

Cross References

Concealed Handgun Permit Act, see section 69-2427.

28-1204 Unlawful possession of a handgun; exceptions; penalty.

(1) Any person under the age of eighteen years who possesses a handgun commits the offense of unlawful possession of a handgun.

(2) This section does not apply to the issuance of handguns to members of the armed forces of the United States, active or reserve, National Guard of this state, or Reserve Officers Training Corps, when on duty or training, or to the temporary loan of handguns for instruction under the immediate supervision of a parent or guardian or adult instructor.

(3) Unlawful possession of a handgun is a Class I misdemeanor.

Source: Laws 1977, LB 38, § 236; Laws 1978, LB 748, § 18; Laws 2009, LB63, § 11.

28-1204.01 Unlawful transfer of a firearm to a juvenile; exceptions; penalty; county attorney; duty.

(1) Any person who knowingly and intentionally does or attempts to sell, provide, loan, deliver, or in any other way transfer the possession of a firearm to a juvenile commits the offense of unlawful transfer of a firearm to a juvenile. The county attorney shall have a copy of the petition served upon the owner of the firearm, if known, in person or by registered or certified mail at his or her last-known address.

(2) This section does not apply to the transfer of a firearm, other than a handgun, to a juvenile:

(a) From a person related to such juvenile within the second degree of consanguinity or affinity if the transfer of physical possession of such firearm does not occur until such time as express permission has been obtained from the juvenile's parent or guardian;

(b) For a legitimate and lawful sporting purpose; or

(c) Who is under direct adult supervision in an appropriate educational program.

(3) This section applies to the transfer of a handgun except as specifically provided in subsection (2) of section 28-1204.

(4) Unlawful transfer of a firearm to a juvenile is a Class III felony.

Source: Laws 1994, LB 988, § 4; Laws 2009, LB63, § 12.

28-1204.03 Firearms and violence; legislative findings.

The Legislature finds that:

(1) Increased violence at schools has become a national, state, and local problem;

(2) Increased violence and the threat of violence has a grave and detrimental impact on the educational process in Nebraska schools;

(3) Increased violence has caused fear and concern among not only the schools and students but the public at large;

(4) Firearms have contributed greatly to the increase of fear and concern among our citizens;

(5) Schools have a duty to protect their students and provide an environment which promotes and provides an education in a nonthreatening manner;

(6) An additional danger of firearms at schools is the risk of accidental discharge and harm to students and staff;

(7) Firearms are an immediate and inherently dangerous threat to the safety and well-being of an educational setting; and

(8) The ability to confiscate and remove firearms quickly from school grounds is a legitimate and necessary tool to protect students and the educational process.

Source: Laws 1994, LB 988, § 5; Laws 2009, LB430, § 7.

28-1204.04 Unlawful possession of a firearm at a school; penalty; exceptions; confiscation of certain firearms; disposition.

(1) Any person who possesses a firearm in a school, on school grounds, in a school-owned vehicle, or at a school-sponsored activity or athletic event is guilty of the offense of unlawful possession of a firearm at a school. Unlawful possession of a firearm at a school is a Class IV felony. This subsection shall not apply to (a) the issuance of firearms to or possession by members of the armed forces of the United States, active or reserve, National Guard of this state, or Reserve Officers Training Corps or peace officers or other duly authorized law enforcement officers when on duty or training, (b) the possession of firearms by peace officers or other duly authorized law enforcement officers when contracted by a school to provide school security or school event control services, (c) firearms which may lawfully be possessed by the person receiving instruction, for instruction under the immediate supervision of an adult instructor, (d) firearms which may lawfully be possessed by a member of a college or university rifle team, within the scope of such person's duties as a member of the team, (e) firearms which may lawfully be possessed by a person employed by a college or university in this state as part of an agriculture or a natural resources program of such college or university, within the scope of such person's employment, (f) firearms contained within a private vehicle operated by a nonstudent adult which are not loaded and (i) are encased or (ii) are in a locked firearm rack that is on a motor vehicle, (g) firearms which may lawfully be possessed by a person for the purpose of using them, with the approval of the school, in a historical reenactment, in a hunter education program, or as part of an honor guard, or (h) a handgun carried as a concealed handgun by a valid holder of a permit issued under the Concealed Handgun Permit Act in a vehicle or on his or her person while riding in or on a vehicle into or onto any parking area, which is open to the public and used by a school if, prior to exiting the vehicle, the handgun is locked inside the glove box, trunk, or other compartment of the vehicle, a storage box securely attached to the vehicle, or, if the vehicle is a motorcycle, a hardened compartment securely attached to the motorcycle while the vehicle is in or on such parking area, except as prohibited by federal law. For purposes of this subsection, encased means enclosed in a case that is expressly made for the purpose of containing a firearm and that is completely zipped, snapped, buckled, tied, or otherwise fastened with no part of the firearm exposed.

(2) Any firearm possessed in violation of subsection (1) of this section shall be confiscated without warrant by a peace officer or may be confiscated without warrant by school administrative or teaching personnel. Any firearm confiscated by school administrative or teaching personnel shall be delivered to a peace officer as soon as practicable.

(3) Any firearm confiscated by or given to a peace officer pursuant to subsection (2) of this section shall be declared a common nuisance and shall be

held by the peace officer prior to his or her delivery of the firearm to the property division of the law enforcement agency which employs the peace officer. The property division of such law enforcement agency shall hold such firearm for as long as the firearm is needed as evidence. After the firearm is no longer needed as evidence, it shall be destroyed in such manner as the court may direct.

(4) Whenever a firearm is confiscated and held pursuant to this section or section 28-1204.02, the peace officer who received such firearm shall cause to be filed within ten days after the confiscation a petition for destruction of such firearm. The petition shall be filed in the district court of the county in which the confiscation is made. The petition shall describe the firearm held, state the name of the owner, if known, allege the essential elements of the violation which caused the confiscation, and conclude with a prayer for disposition and destruction in such manner as the court may direct. At any time after the confiscation of the firearm and prior to court disposition, the owner of the firearm seized may petition the district court of the county in which the confiscation was made for possession of the firearm. The court shall release the firearm to such owner only if the claim of ownership can reasonably be shown to be true and either (a) the owner of the firearm can show that the firearm was taken from his or her property or place of business unlawfully or without the knowledge and consent of the owner and that such property or place of business is different from that of the person from whom the firearm was confiscated or (b) the owner of the firearm is acquitted of the charge of unlawful possession of a handgun in violation of section 28-1204, unlawful transfer of a firearm to a juvenile, or unlawful possession of a firearm at a school. No firearm having significant antique value or historical significance as determined by the Nebraska State Historical Society shall be destroyed. If a firearm has significant antique value or historical significance, it shall be sold at auction and the proceeds shall be remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 1994, LB 988, § 6; Laws 2002, LB 82, § 8; Laws 2009, LB63, § 13; Laws 2009, LB430, § 8; Laws 2011, LB512, § 1; Laws 2014, LB390, § 1.
Effective date July 18, 2014.

Cross References

Concealed Handgun Permit Act, see section 69-2427.

28-1205 Use of a deadly weapon to commit a felony; possession of a deadly weapon during the commission of a felony; penalty; separate and distinct offense; proof of possession.

(1)(a) Any person who uses a firearm, a knife, brass or iron knuckles, or any other deadly weapon to commit any felony which may be prosecuted in a court of this state commits the offense of use of a deadly weapon to commit a felony.

(b) Use of a deadly weapon, other than a firearm, to commit a felony is a Class II felony.

(c) Use of a deadly weapon, which is a firearm, to commit a felony is a Class IC felony.

(2)(a) Any person who possesses a firearm, a knife, brass or iron knuckles, or a destructive device during the commission of any felony which may be

prosecuted in a court of this state commits the offense of possession of a deadly weapon during the commission of a felony.

(b) Possession of a deadly weapon, other than a firearm, during the commission of a felony is a Class III felony.

(c) Possession of a deadly weapon, which is a firearm, during the commission of a felony is a Class II felony.

(3) The crimes defined in this section shall be treated as separate and distinct offenses from the felony being committed, and sentences imposed under this section shall be consecutive to any other sentence imposed.

(4) Possession of a deadly weapon may be proved through evidence demonstrating either actual or constructive possession of a firearm, a knife, brass or iron knuckles, or a destructive device during, immediately prior to, or immediately after the commission of a felony.

(5) For purposes of this section:

(a) Destructive device has the same meaning as in section 28-1213; and

(b) Use of a deadly weapon includes the discharge, employment, or visible display of any part of a firearm, a knife, brass or iron knuckles, any other deadly weapon, or a destructive device during, immediately prior to, or immediately after the commission of a felony or communication to another indicating the presence of a firearm, a knife, brass or iron knuckles, any other deadly weapon, or a destructive device during, immediately prior to, or immediately after the commission of a felony, regardless of whether such firearm, knife, brass or iron knuckles, deadly weapon, or destructive device was discharged, actively employed, or displayed.

Source: Laws 1977, LB 38, § 237; Laws 1995, LB 371, § 8; Laws 2009, LB63, § 14.

28-1206 Possession of a deadly weapon by a prohibited person; penalty.

(1)(a) Any person who possesses a firearm, a knife, or brass or iron knuckles and who has previously been convicted of a felony, who is a fugitive from justice, or who is the subject of a current and validly issued domestic violence protection order and is knowingly violating such order, or (b) any person who possesses a firearm or brass or iron knuckles and who has been convicted within the past seven years of a misdemeanor crime of domestic violence, commits the offense of possession of a deadly weapon by a prohibited person.

(2) The felony conviction may have been had in any court in the United States, the several states, territories, or possessions, or the District of Columbia.

(3)(a) Possession of a deadly weapon which is not a firearm by a prohibited person is a Class III felony.

(b) Possession of a deadly weapon which is a firearm by a prohibited person is a Class ID felony for a first offense and a Class IB felony for a second or subsequent offense.

(4)(a)(i) For purposes of this section, misdemeanor crime of domestic violence means:

(A)(I) A crime that is classified as a misdemeanor under the laws of the United States or the District of Columbia or the laws of any state, territory, possession, or tribe;

(II) A crime that has, as an element, the use or attempted use of physical force or the threatened use of a deadly weapon; and

(III) A crime that is committed by another against his or her spouse, his or her former spouse, a person with whom he or she has a child in common whether or not they have been married or lived together at any time, or a person with whom he or she is or was involved in a dating relationship as defined in section 28-323; or

(B)(I) Assault in the third degree under section 28-310, stalking under subsection (1) of section 28-311.04, false imprisonment in the second degree under section 28-315, or first offense domestic assault in the third degree under subsection (1) of section 28-323 or any attempt or conspiracy to commit one of these offenses; and

(II) The crime is committed by another against his or her spouse, his or her former spouse, a person with whom he or she has a child in common whether or not they have been married or lived together at any time, or a person with whom he or she is or was involved in a dating relationship as defined in section 28-323.

(ii) A person shall not be considered to have been convicted of a misdemeanor or crime of domestic violence unless:

(A) The person was represented by counsel in the case or knowingly and intelligently waived the right to counsel in the case; and

(B) In the case of a prosecution for a misdemeanor crime of domestic violence for which a person was entitled to a jury trial in the jurisdiction in which the case was tried, either:

(I) The case was tried to a jury; or

(II) The person knowingly and intelligently waived the right to have the case tried to a jury.

(b) For purposes of this section, subject of a current and validly issued domestic violence protection order pertains to a current court order that was validly issued pursuant to section 28-311.09 or 42-924 or that meets or exceeds the criteria set forth in section 28-311.10 regarding protection orders issued by a court in any other state or a territory, possession, or tribe.

Source: Laws 1977, LB 38, § 238; Laws 1978, LB 748, § 19; Laws 1995, LB 371, § 9; Laws 2009, LB63, § 15; Laws 2010, LB771, § 10.

28-1207 Possession of a defaced firearm; penalty.

(1) Any person who knowingly possesses, receives, sells, or leases, other than by delivery to law enforcement officials, any firearm from which the manufacturer's identification mark or serial number has been removed, defaced, altered, or destroyed, commits the offense of possession of a defaced firearm.

(2) Possession of a defaced firearm is a Class III felony.

Source: Laws 1977, LB 38, § 239; Laws 2009, LB63, § 16.

28-1208 Defacing a firearm; penalty.

(1) Any person who intentionally removes, defaces, covers, alters, or destroys the manufacturer's identification mark or serial number or other distinguishing numbers on any firearm commits the offense of defacing a firearm.

(2) Defacing a firearm is a Class III felony.

Source: Laws 1977, LB 38, § 240; Laws 2009, LB63, § 17.

28-1211 Repealed. Laws 2014, LB 699, § 8.

28-1212.01 Unlawful discharge of firearm; terms, defined.

For purposes of sections 28-1212.02 and 28-1212.04:

(1) Aircraft means any contrivance intended for and capable of transporting persons through the airspace;

(2) Inhabited means currently being used for dwelling purposes; and

(3) Occupied means that a person is physically present in a building, motor vehicle, or aircraft.

Source: Laws 1990, LB 1018, § 3; Laws 1995, LB 371, § 10; Laws 2010, LB771, § 11.

28-1212.02 Unlawful discharge of firearm; penalty.

Any person who unlawfully and intentionally discharges a firearm at an inhabited dwelling house, occupied building, occupied motor vehicle, occupied aircraft, inhabited motor home as defined in section 71-4603, or inhabited camper unit as defined in section 60-1801 shall be guilty of a Class ID felony.

Source: Laws 1990, LB 1018, § 2; Laws 1995, LB 371, § 11; Laws 2009, LB63, § 18.

28-1212.03 Stolen firearm; prohibited acts; violation; penalty.

Any person who possesses, receives, retains, or disposes of a stolen firearm knowing that it has been or believing that it has been stolen shall be guilty of a Class III felony unless the firearm is possessed, received, retained, or disposed of with intent to restore it to the owner.

Source: Laws 1991, LB 477, § 1; Laws 2009, LB63, § 19.

28-1212.04 Discharge of firearm in certain cities and counties; prohibited acts; penalty.

Any person, within the territorial boundaries of any city of the first class or county containing a city of the metropolitan class or primary class, who unlawfully, knowingly, and intentionally or recklessly discharges a firearm, while in any motor vehicle or in the proximity of any motor vehicle that such person has just exited, at or in the general direction of any person, dwelling, building, structure, occupied motor vehicle, occupied aircraft, inhabited motor home as defined in section 71-4603, or inhabited camper unit as defined in section 60-1801, is guilty of a Class IC felony.

Source: Laws 2009, LB63, § 20; Laws 2010, LB771, § 12; Laws 2010, LB817, § 3.

28-1213 Explosives, destructive devices, other terms; defined.

For purposes of sections 28-1213 to 28-1239, unless the context otherwise requires:

(1) Person means any individual, corporation, company, association, firm, partnership, limited liability company, society, or joint-stock company;

(2) Business enterprise means any corporation, partnership, limited liability company, company, or joint-stock company;

(3) Explosive materials means explosives, blasting agents, and detonators;

(4) Explosives means any chemical compound, mixture, or device, the primary or common purpose of which is to function by explosion, including, but not limited to, dynamite and other high explosives, black powder, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cord, ignited cord, igniters, display fireworks as defined in section 28-1241, and firecrackers or devices containing more than one hundred thirty milligrams of explosive composition, but does not include consumer fireworks as defined in such section, gasoline, kerosene, naphtha, turpentine, benzine, acetone, ethyl ether, benzol, fixed ammunition and primers for small arms, safety fuses, or matches;

(5) Blasting agent means any material or mixture intended for blasting which meets the requirements of 49 C.F.R. part 173, subpart C, Definitions, Classification and Packaging for Class I, as such subpart existed on January 1, 2010;

(6) Detonator means any device containing an initiating or primary explosive that is used for initiating detonation. Excluding ignition or delay charges, a detonator shall not contain more than ten grams of explosive material per unit. Detonator includes an electric detonator of instantaneous or delay type, a detonator for use with safety fuses, a detonating cord delay connector, and a nonelectric detonator of instantaneous or delay type which consists of detonating cord, shock tube, or any other replacement for electric leg wires;

(7)(a) Destructive devices means:

(i) Any explosive, incendiary, chemical or biological poison, or poison gas (A) bomb, (B) grenade, (C) rocket having a propellant charge of more than four ounces, (D) missile having an explosive or incendiary charge of more than one-quarter ounce, (E) mine, (F) booby trap, (G) Molotov cocktail, (H) bottle bomb, (I) vessel or container intentionally caused to rupture or mechanically explode by expanding pressure from any gas, acid, dry ice, or other chemical mixture, or (J) any similar device, the primary or common purpose of which is to explode and to be used as a weapon against any person or property; or

(ii) Any combination of parts either designed or intended for use in converting any device into a destructive device as defined in subdivision (7)(a)(i) of this section from which a destructive device may be readily assembled.

(b) The term destructive device does not include (i) any device which is neither designed nor redesigned for use as a weapon to be used against person or property, (ii) any device, although originally designed for use as a weapon, which is redesigned for use as a signaling, pyrotechnic, line-throwing, safety, or similar device, (iii) surplus ordnance sold, loaned, or given by the Secretary of the Army pursuant to 10 U.S.C. 4684(2), 4685, or 4686, as such sections existed on March 7, 2006, (iv) any other device which the Nebraska State Patrol finds is not likely to be used as a weapon or is an antique, or (v) any other device possessed under circumstances negating an intent that the device be used as a weapon against any person or property;

(8) Federal permittee means any lawful user of explosive materials who has obtained a federal user permit under 18 U.S.C. chapter 40, as such chapter existed on January 1, 2010;

(9) Federal licensee means any importer, manufacturer, or dealer in explosive materials who has obtained a federal importers', manufacturers', or dealers' license under 18 U.S.C. chapter 40, as such chapter existed on January 1, 2010; and

(10) Smokeless propellants means solid propellants commonly called smokeless powders in the trade and used in small arms ammunition.

Source: Laws 1977, LB 38, § 245; Laws 1988, LB 893, § 1; Laws 1989, LB 215, § 1; Laws 1993, LB 121, § 180; Laws 1993, LB 163, § 1; Laws 1999, LB 131, § 1; Laws 2002, LB 82, § 9; Laws 2006, LB 1007, § 1; Laws 2010, LB880, § 1.

28-1239.01 Fireworks display; permit required; fee; sale of display fireworks; regulation.

(1) No person shall conduct a public exhibition or display of display fireworks without first procuring a display permit from the State Fire Marshal. Such application for a display permit shall be accompanied by a fee of ten dollars to be deposited in the State Fire Marshal Cash Fund.

(2) No display fireworks shall be sold or delivered by a licensed distributor to any person who is not in possession of an approved display permit. Sales of display fireworks to persons without an approved display permit shall be subject to sections 28-1213 to 28-1239.

Source: Laws 1986, LB 969, § 4; Laws 1993, LB 251, § 1; Laws 1997, LB 752, § 82; Laws 2010, LB880, § 2; Laws 2012, LB805, § 1.

28-1241 Fireworks; definitions.

As used in sections 28-1239.01 and 28-1241 to 28-1252, unless the context otherwise requires:

(1) Distributor means any person engaged in the business of making sales of fireworks at wholesale in this state to any person engaged in the business of making sales of fireworks either as a jobber or as a retailer or both;

(2) Jobber means any person engaged in the business of making sales of fireworks at wholesale to any other person engaged in the business of making sales at retail;

(3) Retailer means any person engaged in the business of making sales of fireworks at retail to consumers or to persons other than distributors or jobbers;

(4) Sale includes barter, exchange, or gift or offer therefor and each such transaction made by any person, whether as principal, proprietor, agent, servant, or employee;

(5) Fireworks means any composition or device designed for the purpose of producing a visible or audible effect by combustion, deflagration, or detonation and which meets the definition of consumer or special fireworks set forth by the United States Department of Transportation in Title 49 of the Code of Federal Regulations;

(6)(a) Consumer fireworks means any of the following devices that (i) meet the requirements set forth in 16 C.F.R. parts 1500 and 1507, as such regulations existed on January 1, 2010, and (ii) are tested and approved by a nationally recognized testing facility or by the State Fire Marshal:

(A) Any small firework device designed to produce visible effects by combustion and which is required to comply with the construction, chemical composition, and labeling regulations of the United States Consumer Product Safety Commission set forth in 16 C.F.R., as such regulations existed on January 1, 2010;

(B) Any small device designed to produce audible effects such as a whistling device;

(C) Any ground device or firecracker containing fifty milligrams or less of explosive composition; or

(D) Any aerial device containing one hundred thirty milligrams or less of explosive composition.

(b) Class C explosives as classified by the United States Department of Transportation shall be considered consumer fireworks.

(c) Consumer fireworks does not include:

(i) Rockets that are mounted on a stick or wire and project into the air when ignited, with or without report;

(ii) Wire sparklers, except that silver and gold sparklers are deemed to be consumer fireworks until January 1, 2014;

(iii) Nighttime parachutes;

(iv) Fireworks that are shot into the air and after coming to the ground cause automatic ignition due to sufficient temperature;

(v) Firecrackers that contain more than fifty milligrams of explosive composition; and

(vi) Fireworks that have been tested by the State Fire Marshal as a response to complaints and have been deemed to be unsafe; and

(7) Display fireworks means those materials manufactured exclusively for use in public exhibitions or displays of fireworks designed to produce visible or audible effects by combustion, deflagration, or detonation. Display fireworks includes, but is not limited to, firecrackers containing more than one hundred thirty milligrams of explosive composition, aerial shells containing more than forty grams of explosive composition, and other display pieces which exceed the limits for classification as consumer fireworks. Class B explosives, also known as 1.3G explosives, as classified by the United States Department of Transportation in 49 C.F.R. 172.101, as such regulation existed on January 1, 2010, shall be considered display fireworks. Display fireworks shall be considered an explosive as defined in section 28-1213 and shall be subject to sections 28-1213 to 28-1239, except that display fireworks may be purchased, received, and discharged by the holder of an approved display permit issued pursuant to section 28-1239.01.

Source: Laws 1977, LB 38, § 273; Laws 1986, LB 969, § 2; Laws 1988, LB 893, § 3; Laws 2006, LB 1007, § 2; Laws 2010, LB880, § 3.

28-1243 Fireworks item deemed unsafe; quarantined; testing; test results; effect.

(1) If the State Fire Marshal deems any fireworks item to be unsafe pursuant to subdivision (6)(c)(vi) of section 28-1241, such fireworks item shall be quarantined from other fireworks. Any licensed distributor, jobber, or retailer may request, at the distributor's, jobber's, or retailer's expense, that such fireworks

item be tested by an independent, nationally recognized testing facility to determine if such fireworks item meets the requirements set forth by the United States Consumer Product Safety Commission for consumer fireworks, also known as 1.4G explosives, as classified by the United States Department of Transportation in 49 C.F.R. 172.101, as such regulation existed on January 1, 2010. A copy of the results of all testing done pursuant to this section shall be provided to the State Fire Marshal.

(2) If such fireworks item is in compliance with such requirements and otherwise permitted under section 28-1241, such fireworks item that was determined to be unsafe pursuant to subdivision (6)(c)(vi) of section 28-1241 shall be deemed a consumer firework and be permitted for retail sale or distribution.

(3) If such fireworks item is in compliance with such requirements but is otherwise not deemed consumer fireworks, such fireworks item shall not be sold at retail or distributed to retailers for sale in this state, but a distributor, jobber, or retailer may sell such fireworks item to another distributor or retailer in a state that permits the sale of such fireworks item.

(4) If such fireworks item is not in compliance with such requirements, then the distributor, jobber, or retailer shall destroy such fireworks item under the supervision of the State Fire Marshal. If such fireworks item is not destroyed under the supervision of the State Fire Marshal, notarized documentation shall be provided to the State Fire Marshal detailing and confirming the fireworks item's destruction.

Source: Laws 2010, LB880, § 4.

28-1244 Fireworks; unlawful acts.

Except as provided in section 28-1245, it shall be unlawful for any person to possess, sell, offer for sale, bring into this state, or discharge any fireworks other than consumer fireworks.

Source: Laws 1977, LB 38, § 276; Laws 2010, LB880, § 5.

28-1246 Fireworks; sale; license required; fees.

(1) It shall be unlawful for any person to sell, hold for sale, or offer for sale as a distributor, jobber, or retailer any fireworks in this state unless such person has first obtained a license as a distributor, jobber, or retailer. Application for each such license shall be made to the State Fire Marshal on forms prescribed by him or her. Each application shall be accompanied by the required fee, which shall be five hundred dollars for a distributor's license, two hundred dollars for a jobber's license, and twenty-five dollars for a retailer's license. Each application for a retailer's license shall be received by the State Fire Marshal at least ten business days prior to the sales period, as set forth in section 28-1249, in which the retailer wishes to sell consumer fireworks. A retailer's license shall be good only for the specific sales period listed on the application and within the calendar year in which issued. The retailer's license shall at all times be displayed at the place of business of the holder thereof.

(2) The funds received pursuant to this section shall be remitted to the State Treasurer for credit to the State Fire Marshal Cash Fund.

Source: Laws 1977, LB 38, § 278; Laws 1982, LB 928, § 22; Laws 1986, LB 853, § 1; Laws 1993, LB 251, § 3; Laws 1997, LB 752, § 83; Laws 2010, LB880, § 6; Laws 2012, LB805, § 2.

28-1247 Repealed. Laws 2010, LB 880, § 13.**28-1248 Fireworks; importation into state; duties of licensees; retention of packing list for inspection.**

(1) It shall be unlawful for any person not licensed as a distributor or as a jobber under sections 28-1241 to 28-1252 to bring any fireworks into this state.

(2) It shall be unlawful for any retailer or jobber in this state to sell any fireworks in this state which have not been purchased from a distributor licensed under sections 28-1241 to 28-1252.

(3) Any person licensed under sections 28-1239.01 and 28-1241 to 28-1252 shall keep, available for inspection by the State Fire Marshal or his or her agents, a copy of each packing list for fireworks purchased as long as any fireworks included on such packing list are held in his or her possession. The packing list shall show the license number of the distributor or jobber from which the purchase was made.

Source: Laws 1977, LB 38, § 280; Laws 2010, LB880, § 7.

28-1249 Sale of consumer fireworks; limitations.

It shall be unlawful to sell any consumer fireworks at retail within this state, outside the limits of any incorporated city or village. Consumer fireworks may be sold at retail only between June 24 and July 5 and between December 28 and January 1 of each year.

Source: Laws 1977, LB 38, § 281; Laws 1999, LB 621, § 1; Laws 2004, LB 1091, § 2; Laws 2010, LB880, § 8.

28-1250 Fireworks; prohibited acts; violations; penalties; license suspension, cancellation, or revocation; appeal.

(1) Any person who violates any of the provisions of sections 28-1244 to 28-1249 commits a Class III misdemeanor. If such person is a licensed distributor or jobber, the State Fire Marshal may suspend, cancel, or revoke the license for up to three years. The suspension, cancellation, or revocation shall become effective upon the failure to timely appeal the decision under the Administrative Procedure Act or upon an order of the Nebraska Fire Safety Appeals Board upholding the decision pursuant to a hearing under the Administrative Procedure Act.

(2) It shall be unlawful for any person, association, partnership, limited liability company, or corporation to have in his, her, or its possession any fireworks in violation of any of the provisions of sections 28-1244 to 28-1249. If any person shall have in his, her, or its possession any fireworks in violation of such sections, a warrant may be issued for the seizure of such fireworks and when the warrant is executed by the seizure of such fireworks, such fireworks shall be safely kept by the magistrate to be used as evidence. Upon conviction of the offender, the fireworks shall be destroyed, but if the offender is discharged, the fireworks shall be returned to the person in whose possession they were found. Nothing in such sections shall apply to the transportation of fireworks by regulated carriers.

Source: Laws 1977, LB 38, § 282; Laws 1993, LB 121, § 183; Laws 2010, LB880, § 9.

Cross References

Administrative Procedure Act, see section 84-920.

28-1252 Fireworks; State Fire Marshal; rules and regulations; enforcement of sections.

The State Fire Marshal shall adopt and promulgate reasonable rules and regulations for the enforcement of sections 28-1239.01 and 28-1241 to 28-1252 and, together with all peace officers of the state and its political subdivisions, shall be charged with the enforcement of sections 28-1239.01 and 28-1243 to 28-1252.

Source: Laws 1977, LB 38, § 284; Laws 1989, LB 215, § 17; Laws 2010, LB880, § 10.

28-1254 Motor vehicle operation with person under age of sixteen years; prohibited acts; violation; penalty.

(1) It shall be unlawful for any person to operate or be in the actual physical control of a motor vehicle with a person under the age of sixteen years as a passenger:

(a) While the person operating or in the actual physical control of the motor vehicle is under the influence of alcoholic liquor or any drug;

(b) When the person operating or in the actual physical control of the motor vehicle has a concentration of eight-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood;

(c) When the person operating or in the actual physical control of the motor vehicle has a concentration of eight-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath; or

(d) If the person operating or in the actual physical control of the motor vehicle refuses to submit to a chemical test or tests when directed to do so by a peace officer pursuant to section 60-6,197.

(2) A violation of this section shall be a Class I misdemeanor.

(3) The crime punishable under this section shall be treated as a separate and distinct offense from any other offense arising out of acts alleged to have been committed while the person was in violation of this section.

Source: Laws 2011, LB667, § 2.

ARTICLE 13

MISCELLANEOUS OFFENSES

(g) LOCKS AND KEYS

Section

28-1316. Unlawful use of locks and keys; penalty; exceptions.

(h) PICKETING

28-1320.02. Unlawful picketing of a funeral; terms, defined.

(n) SHOOTING FROM HIGHWAY OR BRIDGE

28-1335. Discharging any firearm or weapon from any public highway, road, or bridge; penalty; exception.

(r) UNLAWFUL MEMBERSHIP RECRUITMENT

28-1351. Unlawful membership recruitment into an organization or association; penalty.

Section

(s) PUBLIC PROTECTION ACT

- 28-1352. Act, how cited.
 28-1353. Act; how construed.
 28-1354. Terms, defined.
 28-1355. Pattern of racketeering activity or collection of an unlawful debt; prohibited acts.
 28-1356. Violation; penalty.
 28-1357. Sale of novelty lighter without child safety feature; penalty.

(g) LOCKS AND KEYS

28-1316 Unlawful use of locks and keys; penalty; exceptions.

(1) A person commits the offense of unlawful use of locks and keys if he or she:

(a) Sells, offers to sell, or gives to any person other than a law enforcement agency, dealer licensed under the Motor Vehicle Industry Regulation Act, motor vehicle manufacturer, or person regularly carrying on the profession of a locksmith any try-out key, manipulation key, wiggle key, or any other device designed to be used in place of the normal change key of any motor vehicle; or

(b) Has in his or her possession any try-out key, wiggle key, manipulation key, or any other device designed to be used in place of the normal change key of any motor vehicle unless he or she is a locksmith, locksmith manufacturer, dealer licensed under the Motor Vehicle Industry Regulation Act, motor vehicle manufacturer, or law enforcement agency; or

(c) Duplicates a master key for anyone unless written permission has been granted by the person who has legal control of the master key. All master keys shall be stamped with the words DO NOT DUPLICATE. All duplications of master keys shall also be stamped with the words DO NOT DUPLICATE.

(2) Nothing in subsection (1) of this section shall be construed to make it unlawful if:

(a) The owner of two or more vehicles possesses a change key that can be used on two or more vehicles that he or she owns; or

(b) Such owner changes the locks on such vehicle so that they are keyed alike; or

(c) Any person makes or duplicates the original change keys for such an owner; or

(d) Anyone stamps any other type of key with the words DO NOT DUPLICATE.

(3) Unlawful use of locks and keys is a Class III misdemeanor.

Source: Laws 1977, LB 38, § 300; Laws 2010, LB816, § 2.

Cross References

Motor Vehicle Industry Regulation Act, see section 60-1401.

(h) PICKETING

28-1320.02 Unlawful picketing of a funeral; terms, defined.

For purposes of sections 28-1320.01 to 28-1320.03, the following definitions apply:

(1) Funeral means the ceremonies and memorial services held in connection with the burial or cremation of the dead but does not include funeral processions on public streets or highways; and

(2) Picketing of a funeral means protest activities engaged in by a person or persons located within five hundred feet of a cemetery, mortuary, church, or other place of worship during a funeral.

Source: Laws 2006, LB 287, § 2; Laws 2011, LB284, § 1.

(n) SHOOTING FROM HIGHWAY OR BRIDGE

28-1335 Discharging any firearm or weapon from any public highway, road, or bridge; penalty; exception.

A person commits a Class III misdemeanor if such person discharges any firearm or weapon using any form of compressed gas as a propellant from any public highway, road, or bridge in this state, unless otherwise allowed by statute. Upon conviction, the mandatory minimum fine shall be one hundred dollars.

Source: Laws 1977, LB 38, § 319; Laws 2009, LB105, § 1.

(r) UNLAWFUL MEMBERSHIP RECRUITMENT

28-1351 Unlawful membership recruitment into an organization or association; penalty.

(1) A person commits the offense of unlawful membership recruitment into an organization or association when he or she knowingly and intentionally coerces, intimidates, threatens, or inflicts bodily harm upon another person in order to entice that other person to join or prevent that other person from leaving any organization, group, enterprise, or association whose members, individually or collectively, engage in or have engaged in any of the following criminal acts for the benefit of, at the direction of, or on behalf of the organization, group, enterprise, or association or any of its members:

(a) Robbery under section 28-324;

(b) Arson in the first, second, or third degree under section 28-502, 28-503, or 28-504, respectively;

(c) Burglary under section 28-507;

(d) Murder in the first degree, murder in the second degree, or manslaughter under section 28-303, 28-304, or 28-305, respectively;

(e) Violations of the Uniform Controlled Substances Act that involve possession with intent to deliver, distribution, delivery, or manufacture of a controlled substance;

(f) Unlawful use, possession, or discharge of a firearm or other deadly weapon under sections 28-1201 to 28-1212.04;

(g) Assault in the first degree or assault in the second degree under section 28-308 or 28-309, respectively;

(h) Assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional in the first, second, or third degree under section 28-929, 28-930, or 28-931, respectively, or assault on an officer, an emergency responder,

er, a state correctional employee, a Department of Health and Human Services employee, or a health care professional using a motor vehicle under section 28-931.01;

- (i) Theft by unlawful taking or disposition under section 28-511;
 - (j) Theft by receiving stolen property under section 28-517;
 - (k) Theft by deception under section 28-512;
 - (l) Theft by extortion under section 28-513;
 - (m) Kidnapping under section 28-313;
 - (n) Any forgery offense under sections 28-602 to 28-605;
 - (o) Criminal impersonation under section 28-638;
 - (p) Tampering with a publicly exhibited contest under section 28-614;
 - (q) Unauthorized use of a financial transaction device or criminal possession of a financial transaction device under section 28-620 or 28-621, respectively;
 - (r) Pandering under section 28-802;
 - (s) Bribery, bribery of a witness, or bribery of a juror under section 28-917, 28-918, or 28-920, respectively;
 - (t) Tampering with a witness or an informant or jury tampering under section 28-919;
 - (u) Unauthorized application of graffiti under section 28-524;
 - (v) Dogfighting, cockfighting, bearbaiting, or pitting an animal against another under section 28-1005; or
 - (w) Promoting gambling in the first degree under section 28-1102.
- (2) Unlawful membership recruitment into an organization or association is a Class IV felony.

Source: Laws 2009, LB63, § 21; Laws 2014, LB811, § 23.
Effective date July 18, 2014.

Cross References

Uniform Controlled Substances Act, see section 28-401.01.

(s) PUBLIC PROTECTION ACT

28-1352 Act, how cited.

Sections 28-1352 to 28-1356 shall be known and may be cited as the Public Protection Act.

Source: Laws 2009, LB155, § 2.

28-1353 Act; how construed.

(1) The provisions of the Public Protection Act shall be liberally construed to effectuate its remedial purposes.

(2) Nothing in the act shall supersede any provision of federal, state, or other law imposing criminal penalties or affording civil remedies in addition to those provided for in the act.

Source: Laws 2009, LB155, § 3.

28-1354 Terms, defined.

For purposes of the Public Protection Act:

(1) Enterprise means any individual, sole proprietorship, partnership, corporation, trust, association, or any legal entity, union, or group of individuals associated in fact although not a legal entity, and shall include illicit as well as licit enterprises as well as other entities;

(2) Pattern of racketeering activity means a cumulative loss for one or more victims or gains for the enterprise of not less than one thousand five hundred dollars resulting from at least two acts of racketeering activity, one of which occurred after August 30, 2009, and the last of which occurred within ten years, excluding any period of imprisonment, after the commission of a prior act of racketeering activity;

(3) Person means any individual or entity, as defined in section 21-214, holding or capable of holding a legal, equitable, or beneficial interest in property;

(4) Prosecutor includes the Attorney General of the State of Nebraska, the deputy attorney general, assistant attorneys general, a county attorney, a deputy county attorney, or any person so designated by the Attorney General, a county attorney, or a court of the state to carry out the powers conferred by the act;

(5) Racketeering activity includes the commission of, criminal attempt to commit, conspiracy to commit, aiding and abetting in the commission of, aiding in the consummation of, acting as an accessory to the commission of, or the solicitation, coercion, or intimidation of another to commit or aid in the commission of any of the following:

(a) Offenses against the person which include: Murder in the first degree under section 28-303; murder in the second degree under section 28-304; manslaughter under section 28-305; assault in the first degree under section 28-308; assault in the second degree under section 28-309; assault in the third degree under section 28-310; terroristic threats under section 28-311.01; kidnapping under section 28-313; false imprisonment in the first degree under section 28-314; false imprisonment in the second degree under section 28-315; sexual assault in the first degree under section 28-319; and robbery under section 28-324;

(b) Offenses relating to controlled substances which include: To unlawfully manufacture, distribute, deliver, dispense, or possess with intent to manufacture, distribute, deliver, or dispense a controlled substance under subsection (1) of section 28-416; possession of marijuana weighing more than one pound under subsection (12) of section 28-416; possession of money used or intended to be used to facilitate a violation of subsection (1) of section 28-416 prohibited under subsection (17) of section 28-416; any violation of section 28-418; to unlawfully manufacture, distribute, deliver, or possess with intent to distribute or deliver an imitation controlled substance under section 28-445; possession of anhydrous ammonia with the intent to manufacture methamphetamine under section 28-451; and possession of ephedrine, pseudoephedrine, or phenylpropanolamine with the intent to manufacture methamphetamine under section 28-452;

(c) Offenses against property which include: Arson in the first degree under section 28-502; arson in the second degree under section 28-503; arson in the third degree under section 28-504; burglary under section 28-507; theft by unlawful taking or disposition under section 28-511; theft by shoplifting under section 28-511.01; theft by deception under section 28-512; theft by extortion

under section 28-513; theft of services under section 28-515; theft by receiving stolen property under section 28-517; criminal mischief under section 28-519; and unlawfully depriving or obtaining property or services using a computer under section 28-1344;

(d) Offenses involving fraud which include: Burning to defraud an insurer under section 28-505; forgery in the first degree under section 28-602; forgery in the second degree under section 28-603; criminal possession of a forged instrument under section 28-604; criminal possession of forgery devices under section 28-605; criminal impersonation under section 28-638; identity theft under section 28-639; identity fraud under section 28-640; false statement or book entry under section 28-612; tampering with a publicly exhibited contest under section 28-614; issuing a false financial statement for purposes of obtaining a financial transaction device under section 28-619; unauthorized use of a financial transaction device under section 28-620; criminal possession of a financial transaction device under section 28-621; unlawful circulation of a financial transaction device in the first degree under section 28-622; unlawful circulation of a financial transaction device in the second degree under section 28-623; criminal possession of a blank financial transaction device under section 28-624; criminal sale of a blank financial transaction device under section 28-625; criminal possession of a forgery device under section 28-626; unlawful manufacture of a financial transaction device under section 28-627; laundering of sales forms under section 28-628; unlawful acquisition of sales form processing services under section 28-629; unlawful factoring of a financial transaction device under section 28-630; and fraudulent insurance acts under section 28-631;

(e) Offenses involving governmental operations which include: Abuse of public records under section 28-911; perjury or subornation of perjury under section 28-915; bribery under section 28-917; bribery of a witness under section 28-918; tampering with a witness or informant or jury tampering under section 28-919; bribery of a juror under section 28-920; assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional in the first degree under section 28-929; assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional in the second degree under section 28-930; assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional in the third degree under section 28-931; and assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional using a motor vehicle under section 28-931.01;

(f) Offenses involving gambling which include: Promoting gambling in the first degree under section 28-1102; possession of gambling records under section 28-1105; gambling debt collection under section 28-1105.01; and possession of a gambling device under section 28-1107;

(g) Offenses relating to firearms, weapons, and explosives which include: Carrying a concealed weapon under section 28-1202; transportation or possession of machine guns, short rifles, or short shotguns under section 28-1203; unlawful possession of a handgun under section 28-1204; unlawful transfer of a firearm to a juvenile under section 28-1204.01; using a deadly weapon to commit a felony or possession of a deadly weapon during the commission of a

felony under section 28-1205; possession of a deadly weapon by a prohibited person under section 28-1206; possession of a defaced firearm under section 28-1207; defacing a firearm under section 28-1208; unlawful discharge of a firearm under section 28-1212.02; possession, receipt, retention, or disposition of a stolen firearm under section 28-1212.03; unlawful possession of explosive materials in the first degree under section 28-1215; unlawful possession of explosive materials in the second degree under section 28-1216; unlawful sale of explosives under section 28-1217; use of explosives without a permit under section 28-1218; obtaining an explosives permit through false representations under section 28-1219; possession of a destructive device under section 28-1220; threatening the use of explosives or placing a false bomb under section 28-1221; using explosives to commit a felony under section 28-1222; using explosives to damage or destroy property under section 28-1223; and using explosives to kill or injure any person under section 28-1224;

(h) Any violation of the Securities Act of Nebraska pursuant to section 8-1117;

(i) Any violation of the Nebraska Revenue Act of 1967 pursuant to section 77-2713;

(j) Offenses relating to public health and morals which include: Prostitution under section 28-801; pandering under section 28-802; keeping a place of prostitution under section 28-804; labor trafficking, sex trafficking, labor trafficking of a minor, or sex trafficking of a minor under section 28-831; a violation of section 28-1005; and any act relating to the visual depiction of sexually explicit conduct prohibited in the Child Pornography Prevention Act; and

(k) A violation of the Computer Crimes Act;

(6) State means the State of Nebraska or any political subdivision or any department, agency, or instrumentality thereof; and

(7) Unlawful debt means a debt of at least one thousand five hundred dollars:

(a) Incurred or contracted in gambling activity which was in violation of federal law or the law of the state or which is unenforceable under state or federal law in whole or in part as to principal or interest because of the laws relating to usury; or

(b) Which was incurred in connection with the business of gambling in violation of federal law or the law of the state or the business of lending money or a thing of value at a rate usurious under state law if the usurious rate is at least twice the enforceable rate.

Source: Laws 2009, LB155, § 4; Laws 2010, LB771, § 13; Laws 2013, LB255, § 8; Laws 2014, LB749, § 277; Laws 2014, LB811, § 24.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB749, section 277, with LB811, section 24, to reflect all amendments.

Note: Changes made by LB811 became effective July 18, 2014. Changes made by LB749 became operative January 1, 2016.

Cross References

Child Pornography Prevention Act, see section 28-1463.01.

Computer Crimes Act, see section 28-1341.

Nebraska Revenue Act of 1967, see section 77-2701.

Securities Act of Nebraska, see section 8-1123.

28-1355 Pattern of racketeering activity or collection of an unlawful debt; prohibited acts.

(1) It shall be unlawful for any person who has received any proceeds that such person knew were derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt to use or invest, whether directly or indirectly, any part of such proceeds, or the proceeds derived from the investment or use thereof, in the acquisition of any right, interest, or equity in real property or in the establishment or operation of any enterprise. A purchase of securities on the open market for purposes of investment, and without the intention of controlling or participating in the control of the issuer or of assisting another to do so, shall not be unlawful under this subsection if the securities of the issuer held by the purchaser, the members of his or her immediate family, and his or her or their accomplices in any pattern of racketeering activity or the collection of an unlawful debt after such purchase do not amount in the aggregate to one percent of the outstanding securities of any one class and do not confer, either in law or in fact, the power to elect one or more directors of the issuer.

(2) It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise or real property.

(3) It shall be unlawful for any person employed by or associated with any enterprise to conduct or participate in, directly or indirectly, the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

(4) It shall be unlawful for any person to conspire or attempt to violate any of the provisions of subsection (1), (2), or (3) of this section.

Source: Laws 2009, LB155, § 5.

28-1356 Violation; penalty.

(1) A person who violates section 28-1355 shall be guilty of a Class III felony; however, such person shall be guilty of a Class IB felony if the violation is based upon racketeering activity which is punishable as a Class I, IA, or IB felony.

(2) In lieu of the fine authorized by section 28-105, any person convicted of engaging in conduct in violation of section 28-1355, through which pecuniary value was derived, or by which personal injury or property damage or other loss was caused, may be sentenced to pay a fine that does not exceed three times the gross value gained or three times the gross loss caused, whichever is greater, plus court costs and the costs of investigation and prosecution reasonably incurred. Any fine collected under this subsection shall be remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 2009, LB155, § 6.

28-1357 Sale of novelty lighter without child safety feature; penalty.

(1) For purposes of this section:

(a) Novelty lighter means a mechanical or electrical device that is typically used for lighting cigarettes, cigars, or pipes, that has only one button or function, and that (i) is designed to resemble a cartoon character, a toy, a gun, a watch, a musical instrument, a vehicle, an animal, a food or beverage

container, or a similar item, (ii) plays musical notes, or (iii) has flashing lights; and

(b) Novelty lighter does not include:

(i) A lighter manufactured prior to January 1, 1980;

(ii) A lighter incapable of being fueled or lacking a device necessary to produce combustion or a flame; or

(iii) A standard disposable or refillable lighter that is printed or decorated with a logo, label, decal, artwork, or heat shrinkable sleeve.

(2) It shall be unlawful to sell at retail, offer for retail sale, or distribute for retail sale or promotion in this state a novelty lighter manufactured on or after July 18, 2014, without a child safety feature.

(3) Any person who violates this section shall be guilty of a Class IV misdemeanor.

(4) This section does not apply to the transportation of novelty lighters through the state or the storage of novelty lighters in a warehouse or distribution center in this state that is closed to the public for purposes of retail sales.

Source: Laws 2014, LB403, § 2.

Effective date July 18, 2014.

ARTICLE 14

NONCODE PROVISIONS

(b) JUSTIFICATION FOR USE OF FORCE

Section

28-1416. Justification an affirmative defense; available in certain civil actions.

(c) TOBACCO, VAPOR PRODUCTS, OR ALTERNATIVE NICOTINE PRODUCTS

28-1418. Tobacco; vapor products or alternative nicotine products; use by minors; penalty.

28-1418.01. Terms, defined.

28-1419. Tobacco; vapor products; alternative nicotine products; sale to minors; penalty.

28-1425. Licensees; sale of tobacco, vapor products, or alternative nicotine products to persons under the age of eighteen years; penalty.

28-1427. Minor misrepresenting age to obtain tobacco, vapor products, or alternative nicotine products; penalty.

28-1429.02. Vending machines; restrictions on use; violation; penalty; local ordinances; authorized.

28-1429.03. Self-service display; restrictions on use; violation; penalty.

(f) DRUGS

28-1437. Legend drugs; unlawful acts; definition; prescription by facsimile or electronic transmission.

28-1438.01. Transferred to section 28-414.06.

28-1439. Transferred to section 28-414.07.

(k) CHILD PORNOGRAPHY PREVENTION ACT

28-1463.02. Terms, defined.

28-1463.03. Visual depiction of sexually explicit conduct; prohibited acts; affirmative defense.

28-1463.04. Violation; penalty.

28-1463.05. Visual depiction of sexually explicit acts related to possession; violation; penalty.

(b) JUSTIFICATION FOR USE OF FORCE

28-1416 Justification an affirmative defense; available in certain civil actions.

(1) In any prosecution based on conduct which is justifiable under sections 28-1406 to 28-1416, justification is an affirmative defense.

(2) The justification defenses provided for under sections 28-1406 to 28-1416 shall be available in any civil action for assault and battery or intentional wrongful death and, where applicable, shall be a bar to recovery.

Source: Laws 1972, LB 895, § 11; R.R.S.1943, § 28-843, (1975); Laws 2012, LB804, § 1.

(c) TOBACCO, VAPOR PRODUCTS, OR ALTERNATIVE NICOTINE PRODUCTS

28-1418 Tobacco; vapor products or alternative nicotine products; use by minors; penalty.

Whoever, being a minor under the age of eighteen years, shall smoke cigarettes or cigars, use vapor products or alternative nicotine products, or use tobacco in any form whatever, in this state, shall be guilty of a Class V misdemeanor. Any minor charged with a violation of this section may be free from prosecution if he or she furnishes evidence for the conviction of the person or persons selling or giving him or her the cigarettes, cigars, vapor products, alternative nicotine products, or tobacco.

Source: Laws 1911, c. 181, §§ 1, 2, 3, p. 561; R.S.1913, § 8846; C.S.1922, § 9847; C.S.1929, § 28-1021; R.S.1943, § 28-1020; Laws 1977, LB 40, § 103; R.R.S.1943, § 28-1020, (1975); Laws 2014, LB863, § 16.

Effective date April 10, 2014.

28-1418.01 Terms, defined.

For purposes of sections 28-1418 to 28-1429.03:

(1) Alternative nicotine product means any noncombustible product containing nicotine that is intended for human consumption, whether chewed, absorbed, dissolved, or ingested by any other means. Alternative nicotine product does not include any vapor product, cigarette, cigar, or other tobacco product, or any product regulated as a drug or device by the United States Food and Drug Administration under Chapter V of the federal Food, Drug, and Cosmetic Act;

(2) Self-service display means a retail display that contains a tobacco product, a tobacco-derived product, a vapor product, or an alternative nicotine product and is located in an area openly accessible to a retailer's customers and from which such customers can readily access the product without the assistance of a salesperson. Self-service display does not include a display case that holds tobacco products, vapor products, or alternative nicotine products behind locked doors;

(3) Tobacco specialty store means a retail store that (a) derives at least seventy-five percent of its revenue from tobacco products, tobacco-derived products, vapor products, or alternative nicotine products and (b) does not

permit minors under the age of eighteen years to enter the premises unless accompanied by a parent or legal guardian; and

(4) Vapor product means any noncombustible product containing nicotine that employs a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size, that can be used to produce vapor from nicotine in a solution or other form. Vapor product includes any electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device and any vapor cartridge or other container of nicotine in a solution or other form that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device. Vapor product does not include an alternative nicotine product, cigarette, cigar, or other tobacco product, or any product regulated as a drug or device by the United States Food and Drug Administration under Chapter V of the federal Food, Drug, and Cosmetic Act.

Source: Laws 2014, LB863, § 17.

Effective date April 10, 2014.

28-1419 Tobacco; vapor products; alternative nicotine products; sale to minors; penalty.

Whoever shall sell, give, or furnish, in any way, any tobacco in any form whatever, or any cigarettes, cigarette paper, vapor products, or alternative nicotine products, to any minor under eighteen years of age, is guilty of a Class III misdemeanor for each offense.

Source: Laws 1885, c. 105, §§ 1, 2, p. 394; Laws 1903, c. 138, § 1, p. 643; R.S.1913, § 8847; C.S.1922, § 9848; C.S.1929, § 28-1022; R.S. 1943, § 28-1021; Laws 1977, LB 40, § 104; R.R.S.1943, § 28-1021, (1975); Laws 2014, LB863, § 18.

Effective date April 10, 2014.

28-1425 Licensees; sale of tobacco, vapor products, or alternative nicotine products to persons under the age of eighteen years; penalty.

Any licensee who shall sell, give, or furnish in any way to any person under the age of eighteen years, or who shall willingly allow to be taken from his or her place of business by any person under the age of eighteen years, any cigars, tobacco, cigarettes, cigarette material, vapor products, or alternative nicotine products is guilty of a Class III misdemeanor. Any officer, director, or manager having charge or control, either separately or jointly with others, of the business of any corporation which violates sections 28-1418.01, 28-1420 to 28-1429, and 28-1429.03, if he or she has knowledge of such violation, shall be subject to the penalties provided in this section. In addition to the penalties provided in this section, such licensee shall be subject to the additional penalty of a revocation and forfeiture of his, her, their, or its license, at the discretion of the court before whom the complaint for violation of such sections may be heard. If such license is revoked and forfeited, all rights under such license shall at once cease and terminate.

Source: Laws 1919, c. 180, § 6, p. 402; C.S.1922, § 9854; C.S.1929, § 28-1028; R.S.1943, § 28-1027; Laws 1957, c. 100, § 3, p. 360; Laws 1977, LB 40, § 106; R.R.S.1943, § 28-1027, (1975); Laws 2014, LB863, § 19.

Effective date April 10, 2014.

28-1427 Minor misrepresenting age to obtain tobacco, vapor products, or alternative nicotine products; penalty.

Any person under the age of eighteen years who shall obtain cigars, tobacco, cigarettes, cigarette material, vapor products, or alternative nicotine products from a licensee by representing that he or she is of the age of eighteen years or over is guilty of a Class V misdemeanor.

Source: Laws 1919, c. 180, § 8, p. 403; C.S.1922, § 9856; C.S.1929, § 28-1030; R.S.1943, § 28-1029; Laws 1947, c. 98, § 1, p. 281; Laws 1977, LB 40, § 107; R.R.S.1943, § 28-1029, (1975); Laws 2014, LB863, § 20.
Effective date April 10, 2014.

28-1429.02 Vending machines; restrictions on use; violation; penalty; local ordinances; authorized.

(1) Except as provided in subsection (2) of this section, it shall be unlawful to dispense cigarettes, other tobacco products, vapor products, or alternative nicotine products from a vending machine or similar device. Any person violating this section is guilty of a Class III misdemeanor. In addition, upon conviction for a second offense, the court shall order a six-month suspension of the offender's license to sell tobacco, if any, and, upon conviction for a third or subsequent offense, the court shall order the permanent revocation of the offender's license to sell tobacco, if any.

(2) Cigarettes, other tobacco products, vapor products, or alternative nicotine products may be dispensed from a vending machine or similar device when such machine or device is located in an area, office, business, plant, or factory which is not open to the general public or on the licensed premises of any establishment having a license issued under the Nebraska Liquor Control Act for the sale of alcoholic liquor for consumption on the premises when such machine or device is located in the same room in which the alcoholic liquor is dispensed.

(3) Nothing in this section shall be construed to restrict or prohibit a governing body of a city or village from establishing and enforcing ordinances at least as stringent as or more stringent than the provisions of this section.

Source: Laws 1992, LB 130, § 2; Laws 2014, LB863, § 21.
Effective date April 10, 2014.

Cross References

Nebraska Liquor Control Act, see section 53-101.

28-1429.03 Self-service display; restrictions on use; violation; penalty.

(1) Except as provided in subsection (2) of this section and section 28-1429.02, it shall be unlawful to sell or distribute cigarettes, cigars, vapor products, alternative nicotine products, or tobacco in any form whatever through a self-service display. Any person violating this section is guilty of a Class III misdemeanor. In addition, upon conviction for a second or subsequent offense within a twelve-month period, the court shall order a six-month suspension of the license issued under section 28-1421.

(2) Cigarettes, cigars, vapor products, alternative nicotine products, or tobacco in any form whatever may be sold or distributed in a self-service display that

is located in a tobacco specialty store or cigar bar as defined in section 53-103.08.

Source: Laws 2014, LB863, § 22.
Effective date April 10, 2014.

(f) DRUGS

28-1437 Legend drugs; unlawful acts; definition; prescription by facsimile or electronic transmission.

(1) It shall be unlawful for any person knowingly or intentionally to possess or to acquire or obtain or to attempt to acquire or obtain by means of misrepresentation, fraud, forgery, deception, or subterfuge possession of any drug substance not classified as a controlled substance under the Uniform Controlled Substances Act, but which can only be lawfully distributed, under federal statutes in effect on January 1, 2014, upon the written or oral order of a practitioner authorized to prescribe such substances.

(2) Such substances as referred to in subsection (1) of this section shall be known as legend drug substances, which shall be defined as including all drug substances not classified as controlled substances under the Uniform Controlled Substances Act, but which require a written or oral prescription from a practitioner authorized to prescribe such substances and which may only be lawfully dispensed by a duly licensed pharmacist, in accordance with the provisions of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301 to 392, in effect on January 1, 2014.

(3) A prescription for a legend drug may be transmitted by the practitioner or the practitioner's agent to a pharmacy by facsimile or electronic transmission. Except as otherwise provided in sections 28-414 to 28-414.05 for prescriptions for Schedule II, III, IV, or V controlled substances, the facsimile or electronic transmission shall serve as the original prescription for purposes of this section.

Source: Laws 1976, LB 485, § 1; R.R.S.1943, § 28-476.01, (1975); Laws 1988, LB 1100, § 1; Laws 1996, LB 1108, § 5; Laws 2005, LB 382, § 4; Laws 2014, LB811, § 25.
Effective date July 18, 2014.

Cross References

Uniform Controlled Substances Act, see section 28-401.01.

28-1438.01 Transferred to section 28-414.06.

28-1439 Transferred to section 28-414.07.

(k) CHILD PORNOGRAPHY PREVENTION ACT

28-1463.02 Terms, defined.

As used in the Child Pornography Prevention Act, unless the context otherwise requires:

(1) Child, in the case of a participant, means any person under the age of eighteen years and, in the case of a portrayed observer, means any person under the age of sixteen years;

(2) Erotic fondling means touching a person's clothed or unclothed genitals or pubic area, breasts if the person is a female, or developing breast area if the

person is a female child, for the purpose of real or simulated overt sexual gratification or sexual stimulation of one or more persons involved. Erotic fondling shall not be construed to include physical contact, even if affectionate, which is not for the purpose of real or simulated overt sexual gratification or sexual stimulation of one or more of the persons involved;

(3) Erotic nudity means the display of the human male or female genitals or pubic area, the human female breasts, or the developing breast area of the human female child, for the purpose of real or simulated overt sexual gratification or sexual stimulation of one or more of the persons involved;

(4) Sadoomasochistic abuse means flagellation or torture by or upon a nude person or a person clad in undergarments, a mask, or bizarre costume, or the condition of being fettered, bound, or otherwise physically restrained when performed to predominantly appeal to the morbid interest;

(5) Sexually explicit conduct means: (a) Real or simulated intercourse, whether genital-genital, oral-genital, anal-genital, or oral-anal between persons of the same or opposite sex or between a human and an animal or with an artificial genital; (b) real or simulated masturbation; (c) real or simulated sadoomasochistic abuse; (d) erotic fondling; (e) erotic nudity; or (f) real or simulated defecation or urination for the purpose of sexual gratification or sexual stimulation of one or more of the persons involved; and

(6) Visual depiction means live performance or photographic representation and includes any undeveloped film or videotape or data stored on a computer disk or by other electronic means which is capable of conversion into a visual image and also includes any photograph, film, video, picture, digital image, or computer-displayed image, video, or picture, whether made or produced by electronic, mechanical, computer, digital, or other means.

Source: Laws 1985, LB 668, § 2; Laws 1986, LB 788, § 1; Laws 2009, LB97, § 17.

28-1463.03 Visual depiction of sexually explicit conduct; prohibited acts; affirmative defense.

(1) It shall be unlawful for a person to knowingly make, publish, direct, create, provide, or in any manner generate any visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers.

(2) It shall be unlawful for a person knowingly to purchase, rent, sell, deliver, distribute, display for sale, advertise, trade, or provide to any person any visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers.

(3) It shall be unlawful for a person to knowingly employ, force, authorize, induce, or otherwise cause a child to engage in any visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers.

(4) It shall be unlawful for a parent, stepparent, legal guardian, or any person with custody and control of a child, knowing the content thereof, to consent to such child engaging in any visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers.

(5) It shall be an affirmative defense to a charge brought pursuant to subsection (1) of this section if the defendant was less than eighteen years of

age at the time the visual depiction was created and the visual depiction of sexually explicit conduct includes no person other than the defendant.

(6) It shall be an affirmative defense to a charge brought pursuant to subsection (2) of this section if (a) the defendant was less than eighteen years of age, (b) the visual depiction of sexually explicit conduct includes no person other than the defendant, (c) the defendant had a reasonable belief at the time the visual depiction was sent to another that it was being sent to a willing recipient, and (d) the recipient was at least fifteen years of age at the time the visual depiction was sent.

Source: Laws 1978, LB 829, § 1; R.S.1943, (1979), § 28-1463; Laws 1985, LB 668, § 3; Laws 2009, LB97, § 18.

Cross References

Registration of sex offenders, see sections 29-4001 to 29-4014.

28-1463.04 Violation; penalty.

(1) Any person who is under nineteen years of age at the time he or she violates section 28-1463.03 shall be guilty of a Class III felony for each offense.

(2) Any person who is nineteen years of age or older at the time he or she violates section 28-1463.03 shall be guilty of a Class ID felony for each offense.

(3) Any person who violates section 28-1463.03 and has previously been convicted of a violation of section 28-1463.03 or section 28-308, 28-309, 28-310, 28-311, 28-313, 28-314, 28-315, 28-319, 28-319.01, 28-320.01, 28-813, 28-833, or 28-1463.05 or subsection (1) or (2) of section 28-320 shall be guilty of a Class IC felony for each offense.

Source: Laws 1978, LB 829, § 2; R.S.1943, (1979), § 28-1464; Laws 1985, LB 668, § 5; Laws 2009, LB97, § 19.

Cross References

Registration of sex offenders, see sections 29-4001 to 29-4014.

28-1463.05 Visual depiction of sexually explicit acts related to possession; violation; penalty.

(1) It shall be unlawful for a person to knowingly possess with intent to rent, sell, deliver, distribute, trade, or provide to any person any visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers.

(2)(a) Any person who is under nineteen years of age at the time he or she violates this section shall be guilty of a Class IIIA felony for each offense.

(b) Any person who is nineteen years of age or older at the time he or she violates this section shall be guilty of a Class III felony for each offense.

(c) Any person who violates this section and has previously been convicted of a violation of this section or section 28-308, 28-309, 28-310, 28-311, 28-313, 28-314, 28-315, 28-319, 28-319.01, 28-320.01, 28-813, 28-833, or 28-1463.03 or subsection (1) or (2) of section 28-320 shall be guilty of a Class IC felony for each offense.

Source: Laws 1985, LB 668, § 4; Laws 1986, LB 788, § 2; Laws 2004, LB 943, § 7; Laws 2009, LB97, § 20.

Cross References

Registration of sex offenders, see sections 29-4001 to 29-4014.

ARTICLE 15

NEBRASKA JUSTICE REINVESTMENT WORKING GROUP

Section

28-1501. Nebraska Justice Reinvestment Working Group; created; members; study; issues; report.

28-1501 Nebraska Justice Reinvestment Working Group; created; members; study; issues; report.

(1) The Legislature finds that while serious crime in the State of Nebraska has not increased in the past five years, the prison population continues to increase as does the amount spent on correctional issues. The Legislature further finds that a need exists to closely examine the criminal justice system of the State of Nebraska in order to increase public safety while concurrently reducing correctional spending and reinvesting in strategies that decrease crime and strengthen Nebraska communities.

(2) The State of Nebraska shall work cooperatively with the Council of State Governments Justice Center to study and identify innovative solutions and evidence-based practices to develop a data-driven approach to reduce correctional spending and reinvest savings in strategies that can decrease recidivism and increase public safety. The Nebraska Justice Reinvestment Working Group is created under the authority of the executive, legislative, and judicial branches of Nebraska state government to work with the Council of State Governments Justice Center in this process.

(3) The Governor, the Executive Board of the Legislative Council, and the Chief Justice of the Supreme Court are authorized to take any necessary actions to engage the Council of State Governments Justice Center in this process and to ensure that the report required by subsection (6) of this section is delivered. Upon delivery of the report, the working group shall be dissolved and discharged of any further duties.

(4) The working group shall be comprised of four members selected by the Governor, four members selected by the Speaker of the Legislature, four members selected by the Chief Justice of the Supreme Court, and four representatives of local governments selected jointly by the Governor, the Speaker of the Legislature, and the Chief Justice. The Governor, Speaker of the Legislature, and Chief Justice shall serve as co-chairpersons of the working group.

(5) The study undertaken in accordance with this section shall include a broad range of issues, including:

- (a) Courts, specialty courts, and sentencing trends;
- (b) Development of a process to determine the impact of pending legislation on the criminal justice system;
- (c) Analysis of the prison population and its growth;
- (d) Reported crimes and arrests;
- (e) Alternatives to incarceration;
- (f) Effectiveness of all available offender programs, including prison programs and community-based programs;

- (g) Reentry programming and transition;
- (h) Prison programming;
- (i) Community services;
- (j) Probation and parole services;
- (k) Prison admissions and length of stay; and
- (l) Recidivism rates of offenders released from prison, jail, parole, probation, and other community-based programs.

(6) The Council of State Governments Justice Center shall make a final report that includes a summary of the issues studied as required by subsection (5) of this section, potential legislative solutions for the problems associated with prison overcrowding, and an estimate of the cost savings for all policies recommended by the center. The Council of State Governments Justice Center shall electronically deliver the report to the Governor, the Clerk of the Legislature, and the Chief Justice of the Supreme Court by September 1, 2015.

Source: Laws 2014, LB907, § 11.

Operative date April 17, 2014.



CHAPTER 29

CRIMINAL PROCEDURE

Article.

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ARTICLE 1

DEFINITIONS AND GENERAL RULES OF PROCEDURE

Section

- 29-110. Prosecutions; complaint, indictment, or information; filing; time limitations; exceptions.
- 29-119. Plea agreement; terms, defined.
- 29-121. Leaving child at a hospital; no prosecution for crime; hospital; duty.
- 29-122. Criminal responsibility; intoxication; not a defense; exceptions.

29-110 Prosecutions; complaint, indictment, or information; filing; time limitations; exceptions.

(1) Except as otherwise provided by law, no person shall be prosecuted for any felony unless the indictment is found by a grand jury within three years next after the offense has been done or committed or unless a complaint for the same is filed before the magistrate within three years next after the offense has

been done or committed and a warrant for the arrest of the defendant has been issued.

(2) Except as otherwise provided by law, no person shall be prosecuted, tried, or punished for any misdemeanor or other indictable offense below the grade of felony or for any fine or forfeiture under any penal statute unless the suit, information, or indictment for such offense is instituted or found within one year and six months from the time of committing the offense or incurring the fine or forfeiture or within one year for any offense the punishment of which is restricted by a fine not exceeding one hundred dollars and to imprisonment not exceeding three months.

(3) Except as otherwise provided by law, no person shall be prosecuted for kidnapping under section 28-313, false imprisonment under section 28-314 or 28-315, child abuse under section 28-707, pandering under section 28-802, debauching a minor under section 28-805, or an offense under section 28-813, 28-813.01, or 28-1463.03 when the victim is under sixteen years of age at the time of the offense (a) unless the indictment for such offense is found by a grand jury within seven years next after the offense has been committed or within seven years next after the victim's sixteenth birthday, whichever is later, or (b) unless a complaint for such offense is filed before the magistrate within seven years next after the offense has been committed or within seven years next after the victim's sixteenth birthday, whichever is later, and a warrant for the arrest of the defendant has been issued.

(4) No person shall be prosecuted for a violation of the Securities Act of Nebraska under section 8-1117 unless the indictment for such offense is found by a grand jury within five years next after the offense has been done or committed or unless a complaint for such offense is filed before the magistrate within five years next after the offense has been done or committed and a warrant for the arrest of the defendant has been issued.

(5) No person shall be prosecuted for criminal impersonation under section 28-638, identity theft under section 28-639, or identity fraud under section 28-640 unless the indictment for such offense is found by a grand jury within five years next after the offense has been done or committed or unless a complaint for such offense is filed before the magistrate within five years next after the offense has been done or committed and a warrant for the arrest of the defendant has been issued.

(6) No person shall be prosecuted for a violation of section 68-1017 if the aggregate value of all funds and other benefits obtained or attempted to be obtained is five hundred dollars or more unless the indictment for such offense is found by a grand jury within five years next after the offense has been done or committed or unless a complaint for such offense is filed before the magistrate within five years next after the offense has been done or committed and a warrant for the arrest of the defendant has been issued.

(7) There shall not be any time limitations for prosecution or punishment for treason, murder, arson, forgery, sexual assault in the first or second degree under section 28-319 or 28-320, sexual assault of a child in the second or third degree under section 28-320.01, incest under section 28-703, or sexual assault of a child in the first degree under section 28-319.01; nor shall there be any time limitations for prosecution or punishment for sexual assault in the third degree under section 28-320 when the victim is under sixteen years of age at the time of the offense.

(8) The time limitations prescribed in this section shall include all inchoate offenses pursuant to the Nebraska Criminal Code and compounding a felony pursuant to section 28-301.

(9) The time limitations prescribed in this section shall not extend to any person fleeing from justice.

(10) When any suit, information, or indictment for any crime or misdemeanor is limited by any statute to be brought or exhibited within any other time than is limited by this section, then the suit, information, or indictment shall be brought or exhibited within the time limited by such statute.

(11) If any suit, information, or indictment is quashed or the proceedings set aside or reversed on writ of error, the time during the pendency of such suit, information, or indictment so quashed, set aside, or reversed shall not be reckoned within this statute so as to bar any new suit, information, or indictment for the same offense.

(12) The changes made to this section by Laws 2004, LB 943, shall apply to offenses committed prior to April 16, 2004, for which the statute of limitations has not expired as of such date and to offenses committed on or after such date.

(13) The changes made to this section by Laws 2005, LB 713, shall apply to offenses committed prior to September 4, 2005, for which the statute of limitations has not expired as of such date and to offenses committed on or after such date.

(14) The changes made to this section by Laws 2009, LB 97, and Laws 2006, LB 1199, shall apply to offenses committed prior to May 21, 2009, for which the statute of limitations has not expired as of such date and to offenses committed on or after such date.

(15) The changes made to this section by Laws 2010, LB809, shall apply to offenses committed prior to July 15, 2010, for which the statute of limitations has not expired as of such date and to offenses committed on or after such date.

Source: G.S.1873, c. 58, § 256, p. 783; R.S.1913, § 8910; C.S.1922, § 9931; C.S.1929, § 29-110; R.S.1943, § 29-110; Laws 1965, c. 147, § 1, p. 489; Laws 1989, LB 211, § 1; Laws 1990, LB 1246, § 10; Laws 1993, LB 216, § 10; Laws 2004, LB 943, § 8; Laws 2005, LB 713, § 2; Laws 2006, LB 1199, § 10; Laws 2009, LB97, § 21; Laws 2009, LB155, § 17; Laws 2010, LB809, § 1.

Cross References

Nebraska Criminal Code, see section 28-101.

Securities Act of Nebraska, see section 8-1123.

29-119 Plea agreement; terms, defined.

For purposes of this section and sections 23-1201, 29-120, and 29-2261, unless the context otherwise requires:

(1) A plea agreement means that as a result of a discussion between the defense counsel and the prosecuting attorney:

(a) A charge is to be dismissed or reduced; or

(b) A defendant, if he or she pleads guilty to a charge, may receive less than the maximum penalty permitted by law; and

(2)(a) Victim means a person who, as a result of a homicide under sections 28-302 to 28-306, a first degree sexual assault under section 28-319, a first

degree assault under section 28-308, a sexual assault of a child in the second or third degree under section 28-320.01, a sexual assault of a child in the first degree under section 28-319.01, a second degree assault under section 28-309, a first degree false imprisonment under section 28-314, a second degree sexual assault under section 28-320, or a robbery under section 28-324, has had a personal confrontation with the offender and also includes a person who has suffered serious bodily injury as defined in section 28-109 as a result of a motor vehicle accident when the driver was charged with a violation of section 60-6,196 or 60-6,197 or with a violation of a city or village ordinance enacted in conformance with either section.

(b) In the case of a homicide, victim means the nearest surviving relative under the law as provided by section 30-2303 but does not include the alleged perpetrator of the homicide.

(c) In the case of a violation of section 28-813.01, 28-1463.03, 28-1463.04, or 28-1463.05, victim means a person who was a child as defined in section 28-1463.02 and a participant or portrayed observer in the visual depiction of sexually explicit conduct which is the subject of the violation and who has been identified and can be reasonably notified.

(d) In the case of a sexual assault of a child, a possession offense of a visual depiction of sexually explicit conduct, or a distribution offense of a visual depiction of sexually explicit conduct, victim means the child victim and the parents, guardians, or duly appointed legal representative of the child victim but does not include the alleged perpetrator of the crime.

Source: Laws 1983, LB 78, § 1; Laws 1990, LB 87, § 2; Laws 1993, LB 370, § 10; Laws 1998, LB 309, § 2; Laws 2004, LB 270, § 3; Laws 2006, LB 1199, § 11; Laws 2010, LB728, § 8.

29-121 Leaving child at a hospital; no prosecution for crime; hospital; duty.

No person shall be prosecuted for any crime based solely upon the act of leaving a child thirty days old or younger in the custody of an employee on duty at a hospital licensed by the State of Nebraska. The hospital shall promptly contact appropriate authorities to take custody of the child.

Source: Laws 2008, LB157, § 1; Laws 2008, First Spec. Sess., LB1, § 1.

29-122 Criminal responsibility; intoxication; not a defense; exceptions.

A person who is intoxicated is criminally responsible for his or her conduct. Intoxication is not a defense to any criminal offense and shall not be taken into consideration in determining the existence of a mental state that is an element of the criminal offense unless the defendant proves, by clear and convincing evidence, that he or she did not (1) know that it was an intoxicating substance when he or she ingested, inhaled, injected, or absorbed the substance causing the intoxication or (2) ingest, inhale, inject, or absorb the intoxicating substance voluntarily.

Source: Laws 2011, LB100, § 1.

ARTICLE 2

POWERS AND DUTIES OF CERTAIN OFFICERS

Section

29-215. Law enforcement officers; jurisdiction; powers; contracts authorized.

29-215 Law enforcement officers; jurisdiction; powers; contracts authorized.

(1) A law enforcement officer has the power and authority to enforce the laws of this state and of the political subdivision which employs the law enforcement officer or otherwise perform the functions of that office anywhere within his or her primary jurisdiction.

(2) Any law enforcement officer who is within this state, but beyond his or her primary jurisdiction, has the power and authority to enforce the laws of this state or any legal ordinance of any city or incorporated village or otherwise perform the functions of his or her office, including the authority to arrest and detain suspects, as if enforcing the laws or performing the functions within his or her primary jurisdiction in the following cases:

(a) Any such law enforcement officer, if in a fresh attempt to apprehend a person suspected of committing a felony, may follow such person into any other jurisdiction in this state and there arrest and detain such person and return such person to the law enforcement officer's primary jurisdiction;

(b) Any such law enforcement officer, if in a fresh attempt to apprehend a person suspected of committing a misdemeanor or a traffic infraction, may follow such person anywhere in an area within twenty-five miles of the boundaries of the law enforcement officer's primary jurisdiction and there arrest and detain such person and return such person to the law enforcement officer's primary jurisdiction;

(c) Any such law enforcement officer shall have such enforcement and arrest and detention authority when responding to a call in which a local, state, or federal law enforcement officer is in need of assistance. A law enforcement officer in need of assistance shall mean (i) a law enforcement officer whose life is in danger or (ii) a law enforcement officer who needs assistance in making an arrest and the suspect (A) will not be apprehended unless immediately arrested, (B) may cause injury to himself or herself or others or damage to property unless immediately arrested, or (C) may destroy or conceal evidence of the commission of a crime; and

(d) Any municipality or county may, under the provisions of the Interlocal Cooperation Act or the Joint Public Agency Act, enter into a contract with any other municipality or county for law enforcement services or joint law enforcement services. Under such an agreement, law enforcement personnel may have such enforcement authority within the jurisdiction of each of the participating political subdivisions if provided for in the agreement. Unless otherwise provided in the agreement, each participating political subdivision shall provide liability insurance coverage for its own law enforcement personnel as provided in section 13-1802.

(3) When probable cause exists to believe that a person is operating or in the actual physical control of any motor vehicle, motorboat, personal watercraft, or aircraft while under the influence of alcoholic liquor or of any drug or otherwise in violation of section 28-1465, 28-1466, 28-1472, 37-1254.01, 37-1254.02, 60-4,163, 60-4,164, 60-6,196, 60-6,197, 60-6,211.01, or 60-6,211.02, the law enforcement officer has the power and authority to do any of the following or any combination thereof:

(a) Transport such person to a facility outside of the law enforcement officer's primary jurisdiction for appropriate chemical testing of the person;

(b) Administer outside of the law enforcement officer's primary jurisdiction any post-arrest test advisement to the person; or

(c) With respect to such person, perform other procedures or functions outside of the law enforcement officer's primary jurisdiction which are directly and solely related to enforcing the laws that concern a person operating or being in the actual physical control of any motor vehicle, motorboat, personal watercraft, or aircraft while under the influence of alcoholic liquor or of any other drug or otherwise in violation of section 28-1465, 28-1466, 28-1472, 37-1254.01, 37-1254.02, 60-4,163, 60-4,164, 60-6,196, 60-6,197, 60-6,211.01, or 60-6,211.02.

(4) For purposes of this section:

(a) Law enforcement officer has the same meaning as peace officer as defined in section 49-801 and also includes conservation officers of the Game and Parks Commission; and

(b) Primary jurisdiction means the geographic area within the territorial limits of the state or political subdivision which employs the law enforcement officer.

Source: Laws 1994, LB 254, § 1; Laws 1999, LB 87, § 68; Laws 2003, LB 17, § 9; Laws 2011, LB667, § 5.

Cross References

Interlocal Cooperation Act, see section 13-801.

Joint Public Agency Act, see section 13-2501.

Motor vehicle pursuit, see section 29-211.

Uniform Act on Fresh Pursuit, see section 29-421.

ARTICLE 4

WARRANT AND ARREST OF ACCUSED

Section

29-401. Law violators; arrest by sheriff or other peace officer; juvenile under eighteen years; requirements.

29-404. Complaint; filing; procedure; warrant; issuance.

29-431. Infraction, defined.

29-401 Law violators; arrest by sheriff or other peace officer; juvenile under eighteen years; requirements.

Every sheriff, deputy sheriff, marshal, deputy marshal, security guard, police officer, or peace officer as defined in subdivision (15) of section 49-801 shall arrest and detain any person found violating any law of this state or any legal ordinance of any city or incorporated village until a legal warrant can be obtained, except that (1) any such law enforcement officer taking a juvenile under the age of eighteen years into his or her custody for any violation herein defined shall proceed as set forth in sections 43-248, 43-248.01, 43-250, 43-251, 43-251.01, and 43-253 and (2) the court in which the juvenile is to appear shall not accept a plea from the juvenile until finding that the parents of the juvenile have been notified or that reasonable efforts to notify such parents have been made as provided in section 43-250.

Source: G.S.1873, c. 58, § 283, p. 789; R.S.1913, § 8937; C.S.1922, § 9961; C.S.1929, § 29-401; R.S.1943, § 29-401; Laws 1967, c. 175, § 1, p. 490; Laws 1972, LB 1403, § 1; Laws 1981, LB 346, § 86; Laws 1988, LB 1030, § 23; Laws 1994, LB 451, § 1; Laws 2009, LB63, § 22; Laws 2010, LB771, § 14.

29-404 Complaint; filing; procedure; warrant; issuance.

No complaint shall be filed with the magistrate unless such complaint is in writing and signed by the prosecuting attorney or by any other complainant. If the complainant is a person other than the prosecuting attorney or a city or village attorney prosecuting the violation of a municipal ordinance, he or she shall either have the consent of the prosecuting attorney or shall furnish to the magistrate a bond with good and sufficient sureties in such amount as the magistrate shall determine to indemnify the person complained against for wrongful or malicious prosecution. Whenever a complaint shall be filed with the magistrate, charging any person with the commission of an offense against the laws of this state, it shall be the duty of such magistrate to issue a warrant for the arrest of the person accused, if he or she has reasonable grounds to believe that the offense charged has been committed. The prosecuting attorney shall consent to the filing of such complaint if he or she is in possession of sufficient evidence to warrant the belief that the person named as defendant in such complaint is guilty of the crime alleged and can be convicted thereof. The Attorney General shall have the same power to consent to the filing of complaints as the prosecuting attorneys have in their respective counties.

Source: G.S.1873, c. 58, § 286, p. 790; R.S.1913, § 8940; C.S.1922, § 9964; C.S.1929, § 29-404; R.S.1943, § 29-404; Laws 1965, c. 148, § 1, p. 490; Laws 1975, LB 168, § 2; Laws 1977, LB 497, § 1; Laws 2011, LB669, § 21.

29-431 Infraction, defined.

As used in sections 28-416, 29-422, 29-424, 29-425, 29-431 to 29-434, and 48-1231, unless the context otherwise requires, infraction means the violation of any law, ordinance, order, rule, or regulation, not including those related to traffic, which is not otherwise declared to be a misdemeanor or a felony. Infraction includes violations of section 60-6,267.

Source: Laws 1978, LB 808, § 1; Laws 1979, LB 534, § 1; Laws 1983, LB 306, § 1; Laws 1993, LB 370, § 14; Laws 2010, LB884, § 1.

Cross References

Child passenger restraint system, violation, see sections 60-6,267 and 60-6,268.

ARTICLE 8**SEARCH AND SEIZURE****(b) DISPOSITION OF SEIZED PROPERTY**

Section

29-818. Seized property; custody; pet animal; additional procedures; hearing; order to pay expenses; delinquent payments; hearing; notice; appeal.

29-820. Seized property; disposition.

(b) DISPOSITION OF SEIZED PROPERTY

29-818 Seized property; custody; pet animal; additional procedures; hearing; order to pay expenses; delinquent payments; hearing; notice; appeal.

(1) Except for pet animals as provided in subsection (2) of this section, property seized under a search warrant or validly seized without a warrant shall be safely kept by the officer seizing the same, unless otherwise directed by

the judge or magistrate, and shall be so kept so long as necessary for the purpose of being produced as evidence on any trial. Property seized may not be taken from the officer having it in custody by replevin or other writ so long as it is or may be required as evidence in any trial, nor may it be so taken in any event where a complaint has been filed in connection with which the property was or may be used as evidence, and the court in which such complaint was filed shall have exclusive jurisdiction for disposition of the property or funds and to determine rights therein, including questions respecting the title, possession, control, and disposition thereof.

(2)(a) Any pet animal seized under a search warrant or validly seized without a warrant may be kept by the officer seizing the same on the property of the person who owns, keeps, harbors, maintains, or controls such pet animal.

(b) When any pet animal is seized under this subsection, the court shall provide the person who owns, keeps, harbors, maintains, or controls such pet animal with notice that a hearing will be had and specify the date, time, and place of such hearing. Such notice shall be served by personal or residential service or by certified mail. If such notice cannot be served by such methods, service may be made by publication in the county where such pet animal was seized. Such publication shall be made after application and order of the court. Unless otherwise determined and ordered by the court, the date of such hearing shall be no later than ten days after the seizure.

(c) At the hearing, the court shall determine the disposition of the pet animal, and if the court determines that any pet animal shall not be returned, the court shall order the person from whom the pet animal was seized to pay all expenses for the support and maintenance of the pet animal, including expenses for shelter, food, veterinary care, and board, necessitated by the possession of the pet animal. At the hearing, the court shall also consider the person's ability to pay for the expenses of the pet animal and the amount of such payments. Payments shall be for a succeeding thirty-day period with the first payment due on or before the tenth day following the hearing. Payments for each subsequent succeeding thirty-day period, if any, shall be due on or before the tenth day of such period.

(d) If a person becomes delinquent in his or her payments for the expenses of the pet animal, the court shall hold a hearing to determine the disposition of the seized pet animal. Notice of such hearing shall be given to the person who owns, keeps, harbors, maintains, or controls such pet animal and to any lienholder or security interest holder of record as provided in subdivision (b) of this subsection.

(e) An appeal may be entered within ten days after a hearing under subdivision (c) or (d) of this subsection. Any person filing an appeal shall post a bond sufficient to pay all costs of care of the pet animal for thirty days. Such payment will be required for each succeeding thirty-day period until the appeal is final.

(f) Should the person be found not guilty, all funds paid for the expenses of the pet animal shall be returned to the person.

(g) For purposes of this subsection, pet animal means any domestic dog, domestic cat, mini pig, domestic rabbit, domestic ferret, domestic rodent, bird except a bird raised as an agricultural animal and specifically excluding any bird possessed under a license issued by the State of Nebraska or the United States Fish and Wildlife Service, nonlethal aquarium fish, nonlethal invertebrate, amphibian, turtle, nonvenomous snake that will not grow to more than

eight feet in length at maturity, or such other animal as may be specified and for which a permit shall be issued by an animal control authority after inspection and approval, except that any animal forbidden to be sold, owned, or possessed by federal or state law is not a pet animal.

(h) This section shall not preempt, and shall not be construed to preempt, any ordinance of a city of the metropolitan or primary class.

Source: Laws 1963, c. 161, § 7, p. 573; Laws 2010, LB712, § 14; Laws 2013, LB423, § 2.

Cross References

Seizure of vehicle and component parts, see section 60-2608.

29-820 Seized property; disposition.

(1) Unless other disposition is specifically provided by law, when property seized or held is no longer required as evidence, it shall be disposed of by the law enforcement agency on such showing as the law enforcement agency may deem adequate, as follows:

(a) Property stolen, embezzled, obtained by false pretenses, or otherwise obtained unlawfully from the rightful owner thereof shall be restored to the owner;

(b) Money shall be restored to the owner unless it was used in unlawful gambling or lotteries or it was used or intended to be used to facilitate a violation of Chapter 28, article 4, in which case the money shall be forfeited and disposed of as required by Article VII, section 7, of the Constitution of Nebraska;

(c) Property which is unclaimed or the ownership of which is unknown shall be sold at a public auction held by the officer having custody thereof and the net proceeds disposed of as provided in subdivision (b) of this subsection, as shall any money which is unclaimed or the ownership of which is unknown;

(d) Except as provided in subsection (2) of this section, articles of contraband shall be destroyed;

(e) Firearms, ammunition, explosives, bombs, and like devices which have been used in the commission of crime shall be destroyed; and

(f) Firearms which have come into the law enforcement agency's possession through a seizure or otherwise and (i) have not been used in the commission of crime, (ii) have not been defaced or altered in any manner that violates any state or federal law, (iii) may have a lawful use and be lawfully possessed, and (iv) are not subject to section 29-440 shall be restored to the owner.

(2) When the following property is seized or held and is no longer required as evidence, such property shall be disposed of on order of the court as the court may deem adequate:

Goods which are declared to be contraband but may reasonably be returned to a condition or state in which such goods may be lawfully used, possessed, or distributed by the public.

(3) When any animal as defined by section 28-1008 is seized or held and is no longer required as evidence, such animal may be disposed of in such manner as the court may direct. The court may consider adoption alternatives through humane societies or comparable institutions and the protection of such animal's welfare. For a humane society or comparable institution to be considered

as an adoption alternative under this subsection, it must first be licensed by the Department of Agriculture as having passed the inspection requirements in the Commercial Dog and Cat Operator Inspection Act and paid the fee for inspection under the act. The court may prohibit an adopting or purchasing party from selling such animal for a period not to exceed one year.

(4) Unless otherwise provided by law, all other property shall be disposed of in such manner as the court in its sound discretion shall direct.

Source: Laws 1963, c. 161, § 9, p. 574; Laws 1986, LB 543, § 1; Laws 2002, LB 82, § 12; Laws 2012, LB807, § 1.

Cross References

Commercial Dog and Cat Operator Inspection Act, see section 54-625.

ARTICLE 9

BAIL

Section

29-901. Bail; personal recognizance; conditions.

29-901.01. Conditions of release; how determined.

29-901 Bail; personal recognizance; conditions.

Any bailable defendant shall be ordered released from custody pending judgment on his or her personal recognizance unless the judge determines in the exercise of his or her discretion that such a release will not reasonably assure the appearance of the defendant as required or that such a release could jeopardize the safety and maintenance of evidence or the safety of victims, witnesses, or other persons in the community. When such determination is made, the judge shall either in lieu of or in addition to such a release impose the first of the following conditions of release which will reasonably assure the appearance of the person for trial or, if no single condition gives that assurance, any combination of the following conditions:

(1) Place the defendant in the custody of a designated person or organization agreeing to supervise the defendant;

(2) Place restrictions on the travel, association, or place of abode of the defendant during the period of such release;

(3) Require, at the option of any bailable defendant, either of the following:

(a) The execution of an appearance bond in a specified amount and the deposit with the clerk of the court in cash of a sum not to exceed ten percent of the amount of the bond, ninety percent of such deposit to be returned to the defendant upon the performance of the appearance or appearances and ten percent to be retained by the clerk as appearance bond costs, except that when no charge is subsequently filed against the defendant or if the charge or charges which are filed are dropped before the appearance of the defendant which the bond was to assure, the entire deposit shall be returned to the defendant. If the bond is subsequently reduced by the court after the original bond has been posted, no additional appearance bond costs shall be retained by the clerk. The difference in the appearance bond costs between the original bond and the reduced bond shall be returned to the defendant. In no event shall the deposit be less than twenty-five dollars. Whenever jurisdiction is transferred from a court requiring an appearance bond under this subdivision to another state

court, the transferring court shall transfer the ninety percent of the deposit remaining after the appearance bond costs have been retained. No further costs shall be levied or collected by the court acquiring jurisdiction; or

(b) The execution of a bail bond with such surety or sureties as shall seem proper to the judge or, in lieu of such surety or sureties, at the option of such person, a cash deposit of such sum so fixed, conditioned for his or her appearance before the proper court, to answer the offense with which he or she may be charged and to appear at such times thereafter as may be ordered by the proper court. The cash deposit shall be returned to the defendant upon the performance of all appearances.

If the amount of bail is deemed insufficient by the court before which the offense is pending, the court may order an increase of such bail and the defendant shall provide the additional undertaking, written or cash, to secure his or her release. All recognizances in criminal cases shall be in writing and be continuous from term to term until final judgment of the court in such cases and shall also extend, when the court has suspended execution of sentence for a limited time, as provided in section 29-2202, or, when the court has suspended execution of sentence to enable the defendant to apply for a writ of error to the Supreme Court or Court of Appeals, as provided in section 29-2301, until the period of suspension has expired. When two or more indictments or informations are returned against the same person at the same term of court, the recognizance given may be made to include all offenses charged therein. Each surety on such recognizance shall be required to justify under oath in a sum twice the amount of such recognizance and give the description of real estate owned by him or her of a value above encumbrance equal to the amount of such justification and shall name all other cases pending in which he or she is a surety. No one shall be accepted as surety on recognizance aggregating a sum in excess of his or her equity in the real estate, but such recognizance shall not constitute a lien on the real estate described therein until judgment is entered thereon against such surety; or

(4) Impose any other condition deemed reasonably necessary to assure appearances as required, including a condition requiring that the defendant return to custody after specified hours.

Source: G.S.1873, c. 58, §§ 346 to 348, p. 802; R.S.1913, § 9003; Laws 1921, c. 203, § 1, p. 733; C.S.1922, § 10027; C.S.1929, § 29-901; R.S.1943, § 29-901; Laws 1951, c. 87, § 1, p. 250; Laws 1953, c. 90, § 1, p. 261; Laws 1961, c. 132, § 1, p. 384; Laws 1972, LB 1032, § 174; Laws 1974, LB 828, § 1; Laws 1975, LB 284, § 2; Laws 1984, LB 773, § 1; Laws 1991, LB 732, § 74; Laws 1999, LB 51, § 1; Laws 2009, LB63, § 23; Laws 2010, LB771, § 15.

Cross References

Appeals, suspension of sentence, see section 29-2301.

Forfeiture of recognizance, see sections 29-1105 to 29-1110.

Suspension of sentence, see section 29-2202.

29-901.01 Conditions of release; how determined.

In determining which condition or conditions of release shall reasonably assure appearance and deter possible threats to the safety and maintenance of evidence or the safety of victims, witnesses, or other persons in the community, the judge shall, on the basis of available information, take into account the

nature and circumstances of the offense charged, including any information to indicate that the defendant might engage in additional criminal activity or pose a threat to himself or herself, yet to be collected evidence, alleged victims, potential witnesses, or members of the general public, the defendant's family ties, employment, financial resources, character and mental condition, the length of the defendant's residence in the community, the defendant's record of convictions, and the defendant's record of appearances at court proceedings or of flight to avoid prosecution or of failure to appear at court proceedings.

Source: Laws 1974, LB 828, § 2; Laws 2009, LB63, § 24; Laws 2010, LB771, § 16.

ARTICLE 12

DISCHARGE FROM CUSTODY OR RECOGNIZANCE

Section

29-1207. Trial within six months; time; how computed.

29-1208. Discharge from offense charged; when.

29-1207 Trial within six months; time; how computed.

(1) Every person indicted or informed against for any offense shall be brought to trial within six months, and such time shall be computed as provided in this section.

(2) Such six-month period shall commence to run from the date the indictment is returned or the information filed, unless the offense is a misdemeanor offense involving intimate partners, as that term is defined in section 28-323, in which case the six-month period shall commence from the date the defendant is arrested on a complaint filed as part of a warrant for arrest.

(3) If a defendant is to be tried again following a mistrial, an order for a new trial, or an appeal or collateral attack, such period shall commence to run from the date of the mistrial, order granting a new trial, or the mandate on remand.

(4) The following periods shall be excluded in computing the time for trial:

(a) The period of delay resulting from other proceedings concerning the defendant, including, but not limited to, an examination and hearing on competency and the period during which he or she is incompetent to stand trial; the time from filing until final disposition of pretrial motions of the defendant, including motions to suppress evidence, motions to quash the indictment or information, demurrers and pleas in abatement, and motions for a change of venue; and the time consumed in the trial of other charges against the defendant;

(b) The period of delay resulting from a continuance granted at the request or with the consent of the defendant or his or her counsel. A defendant without counsel shall not be deemed to have consented to a continuance unless he or she has been advised by the court of his or her right to a speedy trial and the effect of his or her consent. A defendant who has sought and obtained a continuance which is indefinite has an affirmative duty to end the continuance by giving notice of request for trial or the court can end the continuance by setting a trial date. When the court ends an indefinite continuance by setting a trial date, the excludable period resulting from the indefinite continuance ends on the date for which trial commences. A defendant is deemed to have waived his or her right to speedy trial when the period of delay resulting from a

continuance granted at the request of the defendant or his or her counsel extends the trial date beyond the statutory six-month period;

(c) The period of delay resulting from a continuance granted at the request of the prosecuting attorney, if:

(i) The continuance is granted because of the unavailability of evidence material to the state's case, when the prosecuting attorney has exercised due diligence to obtain such evidence and there are reasonable grounds to believe that such evidence will be available at the later date; or

(ii) The continuance is granted to allow the prosecuting attorney additional time to prepare the state's case and additional time is justified because of the exceptional circumstances of the case;

(d) The period of delay resulting from the absence or unavailability of the defendant;

(e) A reasonable period of delay when the defendant is joined for trial with a codefendant as to whom the time for trial has not run and there is good cause for not granting a severance. In all other cases, the defendant shall be granted a severance so that he or she may be tried within the time limits applicable to him or her; and

(f) Other periods of delay not specifically enumerated in this section, but only if the court finds that they are for good cause.

Source: Laws 1971, LB 436, § 3; Laws 2008, LB623, § 1; Laws 2010, LB712, § 15.

Cross References

Juvenile in custody, adjudication hearing, see sections 43-271 and 43-277.

Rights of accused, see Article I, section 11, Constitution of Nebraska.

29-1208 Discharge from offense charged; when.

If a defendant is not brought to trial before the running of the time for trial as provided for in section 29-1207, as extended by excluded periods, he or she shall be entitled to his or her absolute discharge from the offense charged and for any other offense required by law to be joined with that offense.

Source: Laws 1971, LB 436, § 4; Laws 2010, LB712, § 16.

ARTICLE 14

GRAND JURY

Section

29-1401. Grand jury; when called; death while being apprehended or in custody; procedures.

29-1401 Grand jury; when called; death while being apprehended or in custody; procedures.

(1) The district courts are hereby vested with power to call grand juries.

(2) A grand jury may be called and summoned in the manner provided by law on such day of a regular term of the district court in each year in each county of the state as the district court may direct and at such other times and upon such notice as the district court may deem necessary.

(3) District courts shall call a grand jury in each case that a petition meets the requirements of section 32-628, includes a recital as to the reason for request-

ing the convening of the grand jury and a specific reference to the statute or statutes which are alleged to have been violated, and is signed not more than ninety days prior to the date of filing under section 29-1401.02 by not less than ten percent of the registered voters of the county who cast votes for the office of Governor in such county at the most recent general election held for such office.

(4) District courts shall call a grand jury in each case upon certification by the county coroner or coroner's physician that a person has died while being apprehended by or while in the custody of a law enforcement officer or detention personnel. In each case subject to this subsection:

(a) Law enforcement personnel from the jurisdiction in which the death occurred shall immediately secure the scene, preserve all evidence, and investigate the matter as in any other homicide; and

(b) A grand jury shall be impaneled within thirty days after the certification by the county coroner or coroner's physician, unless the court extends such time period upon the showing of a compelling reason.

Source: Laws 1909, c. 171, § 1, p. 591; R.S.1913, § 9031; Laws 1917, c. 148, § 1, p. 333; C.S.1922, § 10055; C.S.1929, § 29-1401; Laws 1939, c. 18, § 19, p. 111; C.S.Supp.,1941, § 29-1401; R.S.1943, § 29-1401; Laws 1959, c. 118, § 1, p. 449; Laws 1969, c. 237, § 1, p. 874; Laws 1988, LB 676, § 4; Laws 1999, LB 72, § 2; Laws 2002, LB 935, § 2; Laws 2010, LB842, § 1.

ARTICLE 16

PROSECUTION ON INFORMATION

Section

29-1603. Allegations; how made; joinder of offenses; rights of defendant.

29-1603 Allegations; how made; joinder of offenses; rights of defendant.

(1) All informations shall be in writing and signed by the county attorney, complainant, or some other person, and the offenses charged therein shall be stated with the same fullness and precision in matters of substance as is required in indictments in like cases.

(2)(a) Any information charging a violation of section 28-303 and in which the death penalty is sought shall contain a notice of aggravation which alleges one or more aggravating circumstances, as such aggravating circumstances are provided in section 29-2523. The notice of aggravation shall be filed as provided in section 29-1602. It shall constitute sufficient notice to describe the alleged aggravating circumstances in the language provided in section 29-2523.

(b) The state shall be permitted to add to or amend a notice of aggravation at any time up to and including the thirtieth day prior to the trial of guilt.

(c) The existence or contents of a notice of aggravation shall not be disclosed to the jury until after the verdict is rendered in the trial of guilt.

(3) Different offenses and different degrees of the same offense may be joined in one information, in all cases in which the same might by different counts be joined in one indictment; and in all cases a defendant or defendants shall have the same right, as to proceedings therein, as the defendant or defendants would have if prosecuted for the same offense upon indictment.

Source: Laws 1885, c. 108, § 3, p. 397; R.S.1913, § 9064; C.S.1922, § 10088; C.S.1929, § 29-1603; R.S.1943, § 29-1603; Laws 2002, Third Spec. Sess., LB 1, § 5; Laws 2011, LB669, § 22.

ARTICLE 18

MOTIONS AND ISSUES ON INDICTMENT

Section

29-1816. Arraignment of accused; when considered waived; accused younger than eighteen years of age; move court to waive jurisdiction to juvenile court; findings for decision; transfer to juvenile court; effect.

29-1816 Arraignment of accused; when considered waived; accused younger than eighteen years of age; move court to waive jurisdiction to juvenile court; findings for decision; transfer to juvenile court; effect.

(1)(a) The accused may be arraigned in county court or district court:

(i) If the accused was eighteen years of age or older when the alleged offense was committed;

(ii) If the accused was younger than eighteen years of age and was fourteen years of age or older when an alleged offense punishable as a Class I, IA, IB, IC, ID, II, or III felony was committed; or

(iii) If the alleged offense is a traffic offense as defined in section 43-245.

(b) Arraignment in county court or district court shall be by reading to the accused the complaint or information, unless the reading is waived by the accused when the nature of the charge is made known to him or her. The accused shall then be asked whether he or she is guilty or not guilty of the offense charged. If the accused appears in person and by counsel and goes to trial before a jury regularly impaneled and sworn, he or she shall be deemed to have waived arraignment and a plea of not guilty shall be deemed to have been made.

(2) At the time of the arraignment, the county court or district court shall advise the accused, if the accused was younger than eighteen years of age at the time the alleged offense was committed, that the accused may move the county court or district court at any time not later than thirty days after arraignment, unless otherwise permitted by the court for good cause shown, to waive jurisdiction in such case to the juvenile court for further proceedings under the Nebraska Juvenile Code. This subsection does not apply if the case was transferred to county court or district court from juvenile court.

(3) For motions to transfer a case from the county court or district court to juvenile court:

(a) The county court or district court shall schedule a hearing on such motion within fifteen days. The customary rules of evidence shall not be followed at such hearing. The accused shall be represented by an attorney. The criteria set forth in section 43-276 shall be considered at such hearing. After considering all the evidence and reasons presented by both parties, the case shall be transferred to juvenile court unless a sound basis exists for retaining the case in county court or district court; and

(b) The county court or district court shall set forth findings for the reason for its decision. If the county court or district court determines that the accused should be transferred to the juvenile court, the complete file in the county court or district court shall be transferred to the juvenile court and the complaint, indictment, or information may be used in place of a petition therein. The county court or district court making a transfer shall order the accused to be taken forthwith to the juvenile court and designate where the juvenile shall be

kept pending determination by the juvenile court. The juvenile court shall then proceed as provided in the Nebraska Juvenile Code.

(4) When the accused was younger than eighteen years of age when an alleged offense was committed, the county attorney or city attorney shall proceed under section 43-274.

Source: G.S.1873, c. 58, § 448, p. 822; R.S.1913, § 9092; C.S.1922, § 10117; Laws 1925, c. 105, § 1, p. 294; C.S.1929, § 29-1815; R.S.1943, § 29-1816; Laws 1947, c. 103, § 1(1), p. 291; Laws 1974, LB 620, § 6; Laws 1975, LB 288, § 2; Laws 1987, LB 34, § 1; Laws 2008, LB1014, § 16; Laws 2010, LB800, § 5; Laws 2014, LB464, § 4.

Operative date January 1, 2015.

Cross References

Nebraska Juvenile Code, see section 43-2,129.

**ARTICLE 19
PREPARATION FOR TRIAL**

(c) DISCOVERY

Section

- 29-1912. Request by defendant to inspect and make copies of evidence; granted; when; findings; possibility of harm; effect.
 29-1917. Deposition of witness; when; procedure; use at trial.
 29-1928. Repealed. Laws 2009, LB 63, § 50.
 29-1929. Repealed. Laws 2009, LB 63, § 50.

(c) DISCOVERY

29-1912 Request by defendant to inspect and make copies of evidence; granted; when; findings; possibility of harm; effect.

(1) When a defendant is charged with a felony or when a defendant is charged with a misdemeanor or a violation of a city or village ordinance for which imprisonment is a possible penalty, he or she may request the court where the case is to be tried, at any time after the filing of the indictment, information, or complaint, to order the prosecuting attorney to permit the defendant to inspect and copy or photograph:

(a) The defendant's statement, if any. For purposes of this subdivision, statement means a written statement made by the defendant and signed or otherwise adopted or approved by him or her, or a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement made by the defendant to an agent of the prosecution, state, or political subdivision thereof, and recorded contemporaneously with the making of such oral statement;

(b) The defendant's prior criminal record, if any;

(c) The defendant's recorded testimony before a grand jury;

(d) The names and addresses of witnesses on whose evidence the charge is based;

(e) The results and reports of physical or mental examinations, and of scientific tests, or experiments made in connection with the particular case, or copies thereof;

(f) Documents, papers, books, accounts, letters, photographs, objects, or other tangible things of whatsoever kind or nature which could be used as evidence by the prosecuting authority;

(g) The known criminal history of a jailhouse witness;

(h) Any deal, promise, inducement, or benefit that the prosecuting attorney or any person acting on behalf of the prosecuting attorney has knowingly made or may make in the future to the jailhouse witness;

(i) The specific statements allegedly made by the defendant against whom the jailhouse witness will testify and the time, place, and manner of the defendant's disclosures;

(j) The case name and jurisdiction of any criminal cases known to the prosecuting attorney in which a jailhouse witness testified about statements made by another criminal defendant that were disclosed to the jailhouse witness while he or she was a jailhouse witness and whether the jailhouse witness received any deal, promise, inducement, or benefit in exchange for or subsequent to such testimony; and

(k) Any occasion known to the prosecuting attorney in which the jailhouse witness recanted testimony about statements made by another criminal defendant that were disclosed to the jailhouse witness while he or she was a jailhouse witness and, if any are known, a transcript or copy of such recantation.

(2) The court may issue such an order pursuant to the provisions of this section. In the exercise of its judicial discretion, the court shall consider among other things whether:

(a) The request is material to the preparation of the defense;

(b) The request is not made primarily for the purpose of harassing the prosecution or its witnesses;

(c) The request, if granted, would not unreasonably delay the trial of the offense and an earlier request by the defendant could not have reasonably been made;

(d) There is no substantial likelihood that the request, if granted, would preclude a just determination of the issues at the trial of the offense; or

(e) The request, if granted, would not result in the possibility of bodily harm to, or coercion of, witnesses.

(3) Whenever the court refuses to grant an order pursuant to the provisions of this section, it shall render its findings in writing together with the facts upon which the findings are based.

(4) Whenever the prosecuting attorney believes that the granting of an order under the provisions of this section will result in the possibility of bodily harm to witnesses or that witnesses will be coerced, the court may permit him or her to make such a showing in the form of a written statement to be inspected by the court alone. The statement shall be sealed and preserved in the records of the court to be made available to the appellate court in the event of an appeal by the defendant.

(5) For purposes of subdivisions (1)(g) through (k) of this section, jailhouse witness means a person in the physical custody of any jail or correctional institution as (a) an accused defendant, (b) a convicted defendant awaiting

sentencing, or (c) a convicted defendant serving a sentence of incarceration, at the time the statements the jailhouse witness will testify about were disclosed.

Source: Laws 1969, c. 235, § 1, p. 867; Laws 1983, LB 110, § 1; Laws 2009, LB63, § 25; Laws 2010, LB771, § 17.

29-1917 Deposition of witness; when; procedure; use at trial.

(1) Except as provided in section 29-1926, at any time after the filing of an indictment or information in a felony prosecution, the prosecuting attorney or the defendant may request the court to allow the taking of a deposition of any person other than the defendant who may be a witness in the trial of the offense. The court may order the taking of the deposition when it finds the testimony of the witness:

(a) May be material or relevant to the issue to be determined at the trial of the offense; or

(b) May be of assistance to the parties in the preparation of their respective cases.

(2) An order granting the taking of a deposition shall include the time and place for taking such deposition and such other conditions as the court determines to be just.

(3) The proceedings in taking the deposition of a witness pursuant to this section and returning it to the court shall be governed in all respects as the taking of depositions in civil cases.

(4) A deposition taken pursuant to this section may be used at the trial by any party solely for the purpose of contradicting or impeaching the testimony of the deponent as a witness.

Source: Laws 1969, c. 235, § 6, p. 870; Laws 1988, LB 90, § 2; Laws 1993, LB 178, § 1; Laws 2011, LB667, § 6.

Cross References

Child victim or child witness, use of videotape deposition, see section 29-1926.

29-1928 Repealed. Laws 2009, LB 63, § 50.

29-1929 Repealed. Laws 2009, LB 63, § 50.

ARTICLE 22

JUDGMENT ON CONVICTION

(a) JUDGMENT ON CONVICTION

Section

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| 29-2203. | Defense of not responsible by reason of insanity; how pleaded; burden of proof; notice before trial; examination of defendant; acquittal; further proceedings. |
| 29-2204. | Indeterminate sentence; court; duties; study of offender; when; costs; defendant under eighteen years of age; disposition. |
| 29-2206. | Fine and costs; commitment until paid; installments; deduction from bond; suspension or revocation of motor vehicle operator's license. |
| 29-2207. | Judgment for costs upon conviction; requirement. |
| 29-2208. | Repealed. Laws 2014, LB 907, § 22. |

(c) PROBATION

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| 29-2252. | Probation administrator; duties. |
| 29-2252.01. | Probation administrator; report required. |

Section

- 29-2255. Interlocal agreement; costs; requirements.
- 29-2257. Nebraska Probation System; established; duties; salary equalization.
- 29-2258. District probation officer; duties; powers.
- 29-2259. Probation administrator; office; salaries; expenses; office space; prepare budget; interpreter services.
- 29-2259.01. Probation Cash Fund; created; use; investment.
- 29-2259.02. State Probation Contractual Services Cash Fund; created; use; investment.
- 29-2260.02. Department of Health and Human Services; administer Title IV-E state plan; Office of Probation Administration; powers and duties.
- 29-2261. Presentence investigation, when; contents; psychiatric examination; persons having access to records; reports authorized.
- 29-2262. Probation; conditions.
- 29-2262.01. Repealed. Laws 2009, LB 63, § 50.
- 29-2262.07. Probation Program Cash Fund; created; use; investment.
- 29-2262.08. Transferred to section 43-286.01.
- 29-2264. Probation; completion; conviction may be set aside; conditions; retroactive effect.
- 29-2269. Act, how cited.

(a) JUDGMENT ON CONVICTION

29-2203 Defense of not responsible by reason of insanity; how pleaded; burden of proof; notice before trial; examination of defendant; acquittal; further proceedings.

(1) Any person prosecuted for an offense may plead that he or she is not responsible by reason of insanity at the time of the offense and in such case the burden shall be upon the defendant to prove the defense of not responsible by reason of insanity by a preponderance of the evidence. No evidence offered by the defendant for the purpose of establishing his or her insanity shall be admitted in the trial of the case unless notice of intention to rely upon the insanity defense is given to the county attorney and filed with the court not later than sixty days before trial.

(2) Upon the filing of the notice the court, on motion of the state, may order the defendant to be examined at a time and place designated in the order, by one or more qualified experts, appointed by the court, to inquire into the sanity or insanity of the defendant at the time of the commission of the alleged offense. The court may order that the examination be conducted at one of the regional centers or at any appropriate facility. The presence of counsel at the examination shall be within the discretion of the court. The results of such examination shall be sent to the court and to the prosecuting attorney. In misdemeanor or felony cases, the defendant may request the court to order the prosecuting attorney to permit the defendant to inspect and copy the results of such examination pursuant to the procedures set forth in sections 29-1912 to 29-1921. In the interest of justice and good cause shown the court may waive the requirements provided in this section.

(3) If the trier of fact acquits the defendant on the grounds of insanity, the verdict shall reflect whether the trier acquits him or her on that ground alone or on other grounds as well. When the defendant is acquitted solely on the ground of insanity, the court shall have exclusive jurisdiction over the defendant for disposition consistent with the terms of this section and sections 29-3701 to 29-3704.

(4) For purposes of this section, insanity does not include any temporary condition that was proximately caused by the voluntary ingestion, inhalation,

injection, or absorption of intoxicating liquor, any drug or other mentally debilitating substance, or any combination thereof.

Source: Laws 1909, c. 74, § 1, p. 333; R.S.1913, § 9139; C.S.1922, § 10164; C.S.1929, § 29-2204; R.S.1943, § 29-2203; Laws 1973, LB 501, § 1; Laws 1976, LB 806, § 17; Laws 1981, LB 213, § 2; Laws 1984, LB 183, § 1; Laws 2011, LB100, § 2.

Cross References

Constitutional provisions:

Due process, see Article I, section 3, Constitution of Nebraska.

Acquittal on grounds of insanity, special procedures, see sections 29-3701 to 29-3706.

Escape from mental health treatment facility or program, effect, see section 71-939.

Mental Health Commitment Act, Nebraska, see section 71-901.

29-2204 Indeterminate sentence; court; duties; study of offender; when; costs; defendant under eighteen years of age; disposition.

(1) Except when a term of life imprisonment is required by law, in imposing an indeterminate sentence upon an offender the court shall:

(a)(i) Until July 1, 1998, fix the minimum and maximum limits of the sentence to be served within the limits provided by law, except that when a maximum limit of life is imposed by the court for a Class IB felony, the minimum limit may be any term of years not less than the statutory mandatory minimum; and

(ii) Beginning July 1, 1998:

(A) Fix the minimum and maximum limits of the sentence to be served within the limits provided by law for any class of felony other than a Class IV felony, except that when a maximum limit of life is imposed by the court for a Class IB felony, the minimum limit may be any term of years not less than the statutory mandatory minimum. If the criminal offense is a Class IV felony, the court shall fix the minimum and maximum limits of the sentence, but the minimum limit fixed by the court shall not be less than the minimum provided by law nor more than one-third of the maximum term and the maximum limit shall not be greater than the maximum provided by law; or

(B) Impose a definite term of years, in which event the maximum term of the sentence shall be the term imposed by the court and the minimum term shall be the minimum sentence provided by law;

(b) Advise the offender on the record the time the offender will serve on his or her minimum term before attaining parole eligibility assuming that no good time for which the offender will be eligible is lost; and

(c) Advise the offender on the record the time the offender will serve on his or her maximum term before attaining mandatory release assuming that no good time for which the offender will be eligible is lost.

If any discrepancy exists between the statement of the minimum limit of the sentence and the statement of parole eligibility or between the statement of the maximum limit of the sentence and the statement of mandatory release, the statements of the minimum limit and the maximum limit shall control the calculation of the offender's term. If the court imposes more than one sentence upon an offender or imposes a sentence upon an offender who is at that time serving another sentence, the court shall state whether the sentences are to be concurrent or consecutive.

(2)(a) When the court is of the opinion that imprisonment may be appropriate but desires more detailed information as a basis for determining the sentence to be imposed than has been provided by the presentence report required by section 29-2261, the court shall commit an offender to the Department of Correctional Services for a period not exceeding ninety days. The department shall conduct a complete study of the offender during that time, inquiring into such matters as his or her previous delinquency or criminal experience, social background, capabilities, and mental, emotional, and physical health and the rehabilitative resources or programs which may be available to suit his or her needs. By the expiration of the period of commitment or by the expiration of such additional time as the court shall grant, not exceeding a further period of ninety days, the offender shall be returned to the court for sentencing and the court shall be provided with a written report of the results of the study, including whatever recommendations the department believes will be helpful to a proper resolution of the case. After receiving the report and the recommendations, the court shall proceed to sentence the offender in accordance with subsection (1) of this section. The term of the sentence shall run from the date of original commitment under this subsection.

(b) In order to encourage the use of this procedure in appropriate cases, all costs incurred during the period the defendant is held in a state institution under this subsection shall be a responsibility of the state and the county shall be liable only for the cost of delivering the defendant to the institution and the cost of returning him or her to the appropriate court for sentencing or such other disposition as the court may then deem appropriate.

(3) Except when a term of life is required by law, whenever the defendant was under eighteen years of age at the time he or she committed the crime for which he or she was convicted, the court may, in its discretion, instead of imposing the penalty provided for the crime, make such disposition of the defendant as the court deems proper under the Nebraska Juvenile Code. Until October 1, 2013, prior to making a disposition which commits the juvenile to the Office of Juvenile Services, the court shall order the juvenile to be evaluated by the office if the juvenile has not had an evaluation within the past twelve months.

Source: G.S.1873, c. 58, § 498, p. 832; R.S.1913, § 9140; C.S.1922, § 10165; C.S.1929, § 29-2205; R.S.1943, § 29-2204; Laws 1974, LB 620, § 7; Laws 1988, LB 790, § 3; Laws 1993, LB 31, § 9; Laws 1993, LB 529, § 1; Laws 1993, LB 627, § 1; Laws 1994, LB 988, § 8; Laws 1995, LB 371, § 12; Laws 1997, LB 364, § 14; Laws 1998, LB 1073, § 10; Laws 2002, Third Spec. Sess., LB 1, § 8; Laws 2011, LB12, § 2; Laws 2013, LB561, § 2.

Cross References

Nebraska Juvenile Code, see section 43-2,129.

29-2206 Fine and costs; commitment until paid; installments; deduction from bond; suspension or revocation of motor vehicle operator's license.

(1) In all cases in which courts or magistrates have now or may hereafter have the power to punish offenses, either in whole or in part, by requiring the offender to pay fines or costs, or both, such courts or magistrates may make it a part of the sentence that the party stand committed and be imprisoned in the

jail of the proper county until the fines or costs are paid or secured to be paid or the offender is otherwise discharged according to law.

(2) Notwithstanding subsection (1) of this section, when any offender demonstrates to the court or magistrate that he or she is unable to pay such fines or costs in one lump sum, the court or magistrate shall make arrangements suitable to the court or magistrate and to the offender by which the offender may pay in installments. The court or magistrate shall enter an order specifying the terms of such arrangements and the dates on which payments are to be made. When the judgment of conviction provides for the suspension or revocation of a motor vehicle operator's license and the court authorizes the payment of fines or costs by installments, the revocation or suspension shall be effective as of the date of judgment.

(3) As an alternative to a lump-sum payment or as an alternative or in conjunction with installment payments, the court or magistrate may deduct fines or costs from a bond posted by the offender to the extent that such bond is not otherwise encumbered by a valid lien, levy, execution, or assignment to counsel of record or the person who posted the bond.

Source: G.S.1873, c. 58, § 500, p. 833; R.S.1913, § 9142; C.S.1922, § 10167; C.S.1929, § 29-2207; R.S.1943, § 29-2206; Laws 1971, LB 1010, § 2; Laws 1974, LB 966, § 1; Laws 1979, LB 111, § 1; Laws 1988, LB 370, § 6; Laws 2012, LB722, § 1.

29-2207 Judgment for costs upon conviction; requirement.

In every case of conviction of any person for any felony or misdemeanor, it shall be the duty of the court or magistrate to render judgment for the costs of prosecution against the person convicted and remit the assessment as provided in section 33-157.

Source: G.S.1873, c. 58, § 501, p. 833; R.S.1913, § 9143; C.S.1922, § 10168; C.S.1929, § 29-2208; R.S.1943, § 29-2207; Laws 2010, LB510, § 2.

29-2208 Repealed. Laws 2014, LB 907, § 22. Operative date July 18, 2014.

(c) PROBATION

29-2252 Probation administrator; duties.

The administrator shall:

- (1) Supervise and administer the office;
- (2) Establish and maintain policies, standards, and procedures for the system, with the concurrence of the Supreme Court;
- (3) Prescribe and furnish such forms for records and reports for the system as shall be deemed necessary for uniformity, efficiency, and statistical accuracy;
- (4) Establish minimum qualifications for employment as a probation officer in this state and establish and maintain such additional qualifications as he or she deems appropriate for appointment to the system. Qualifications for probation officers shall be established in accordance with subsection (4) of section 29-2253. An ex-offender released from a penal complex or a county jail may be

appointed to a position of deputy probation or parole officer. Such ex-offender shall maintain a record free of arrests, except for minor traffic violations, for one year immediately preceding his or her appointment;

(5) Establish and maintain advanced periodic inservice training requirements for the system;

(6) Cooperate with all agencies, public or private, which are concerned with treatment or welfare of persons on probation;

(7) Organize and conduct training programs for probation officers;

(8) Collect, develop, and maintain statistical information concerning probationers, probation practices, and the operation of the system;

(9) Interpret the probation program to the public with a view toward developing a broad base of public support;

(10) Conduct research for the purpose of evaluating and improving the effectiveness of the system;

(11) Adopt and promulgate such rules and regulations as may be necessary or proper for the operation of the office or system;

(12) Transmit a report during each even-numbered year to the Supreme Court on the operation of the office for the preceding two calendar years which shall include a historical analysis of probation officer workload, including participation in non-probation-based programs and services. The report shall be transmitted by the Supreme Court to the Governor and the Clerk of the Legislature. The report submitted to the Clerk of the Legislature shall be submitted electronically;

(13) Administer the payment by the state of all salaries, travel, and actual and necessary expenses incident to the conduct and maintenance of the office;

(14) Use the funds provided under section 29-2262.07 to augment operational or personnel costs associated with the development, implementation, and evaluation of enhanced probation-based programs and non-probation-based programs and services in which probation personnel or probation resources are utilized pursuant to an interlocal agreement authorized by subdivision (16) of this section and to purchase services to provide such programs aimed at enhancing adult probationer or non-probation-based program participant supervision in the community and treatment needs of probationers and non-probation-based program participants. Enhanced probation-based programs include, but are not limited to, specialized units of supervision, related equipment purchases and training, and programs that address a probationer's vocational, educational, mental health, behavioral, or substance abuse treatment needs;

(15) Ensure that any risk or needs assessment instrument utilized by the system be periodically validated;

(16) Have the authority to enter into interlocal agreements in which probation resources or probation personnel may be utilized in conjunction with or as part of non-probation-based programs and services. Any such interlocal agreement shall comply with section 29-2255;

(17) Collaborate with the Community Corrections Division of the Nebraska Commission on Law Enforcement and Criminal Justice and the Office of Parole Administration to develop rules governing the participation of parolees in

community corrections programs operated by the Office of Probation Administration; and

(18) Exercise all powers and perform all duties necessary and proper to carry out his or her responsibilities.

Each member of the Legislature shall receive an electronic copy of the report required by subdivision (12) of this section by making a request for it to the administrator.

Source: Laws 1971, LB 680, § 7; Laws 1973, LB 126, § 2; Laws 1978, LB 625, § 9; Laws 1979, LB 322, § 9; Laws 1979, LB 536, § 6; Laws 1981, LB 545, § 6; Laws 1984, LB 13, § 65; Laws 1986, LB 529, § 37; Laws 1990, LB 663, § 16; Laws 1992, LB 447, § 5; Laws 2003, LB 46, § 5; Laws 2005, LB 538, § 7; Laws 2011, LB390, § 1; Laws 2012, LB782, § 32.

29-2252.01 Probation administrator; report required.

On December 31 and June 30 of each fiscal year, the administrator shall provide a report to the budget division of the Department of Administrative Services and the Legislative Fiscal Analyst which shall include, but not be limited to:

(1) The total number of felony cases supervised by the office in the previous six months for both regular and intensive supervision probation;

(2) The total number of misdemeanor cases supervised by the office in the previous six months for both regular and intensive supervision probation;

(3) The felony caseload per officer for both regular and intensive supervision probation on the last day of the reporting period;

(4) The misdemeanor caseload per officer for both regular and intensive supervision probation on the last day of the reporting period;

(5) The total number of juvenile cases supervised by the office in the previous six months for both regular and intensive supervision probation;

(6) The total number of predisposition investigations completed by the office in the previous six months;

(7) The total number of presentence investigations completed by the office in the previous six months; and

(8) The total number of juvenile intake screening interviews conducted and detentions authorized by the office in the previous six months, using the detention screening instrument described in section 43-260.01.

The report submitted to the Legislative Fiscal Analyst shall be submitted electronically.

Source: Laws 1990, LB 220, § 4; Laws 2001, LB 451, § 2; Laws 2012, LB782, § 33.

29-2255 Interlocal agreement; costs; requirements.

Any interlocal agreement authorized by subdivision (16) of section 29-2252 shall require the political subdivision party to the agreement to provide sufficient resources to cover all costs associated with the participation of probation personnel or use of probation resources other than costs covered by funds

provided pursuant to section 29-2262.07 or substance abuse treatment costs covered by funds appropriated for such purpose.

Source: Laws 2005, LB 538, § 6; Laws 2011, LB390, § 2.

29-2257 Nebraska Probation System; established; duties; salary equalization.

The Nebraska Probation System is established which shall consist of the probation administrator, chief probation officers, probation officers, and support staff. The system shall be responsible for juvenile intake services, for preadjudication juvenile supervision services under section 43-254 beginning October 1, 2013, for presentence and other probation investigations, for the direct supervision of persons placed on probation, and for non-probation-based programs and services authorized by an interlocal agreement pursuant to subdivision (16) of section 29-2252. The system shall be sufficient in size to assure that no probation officer carries a caseload larger than is compatible with adequate probation investigation or supervision. Probation officers shall be compensated with salaries substantially equal to other state employees who have similar responsibilities.

This provision for salary equalization shall apply only to probation officers and support staff and shall not apply to chief probation officers, the probation administrator, the chief deputy administrator, the deputy probation administrator, or any other similarly established management positions.

Source: Laws 1971, LB 680, § 12; Laws 1986, LB 529, § 39; Laws 1995, LB 371, § 14; Laws 2001, LB 451, § 3; Laws 2005, LB 538, § 8; Laws 2013, LB561, § 3.

29-2258 District probation officer; duties; powers.

A district probation officer shall:

(1) Conduct juvenile intake interviews and investigations in accordance with sections 43-253 and 43-260.01 and, beginning October 1, 2013, supervise delivery of preadjudication juvenile services under subdivision (6) of section 43-254;

(2) Make presentence and other investigations, as may be required by law or directed by a court in which he or she is serving;

(3) Supervise probationers in accordance with the rules and regulations of the office and the directions of the sentencing court;

(4) Advise the sentencing court, in accordance with the Nebraska Probation Administration Act and such rules and regulations of the office, of violations of the conditions of probation by individual probationers;

(5) Advise the sentencing court, in accordance with the rules and regulations of the office and the direction of the court, when the situation of a probationer may require a modification of the conditions of probation or when a probationer's adjustment is such as to warrant termination of probation;

(6) Provide each probationer with a statement of the period and conditions of his or her probation;

(7) Whenever necessary, exercise the power of arrest or temporary custody as provided in section 29-2266 or 43-286.01;

(8) Establish procedures for the direction and guidance of deputy probation officers under his or her jurisdiction and advise such officers in regard to the most effective performance of their duties;

(9) Supervise and evaluate deputy probation officers under his or her jurisdiction;

(10) Delegate such duties and responsibilities to a deputy probation officer as he or she deems appropriate;

(11) Make such reports as required by the administrator, the judges of the probation district in which he or she serves, or the Supreme Court;

(12) Keep accurate and complete accounts of all money or property collected or received from probationers and give receipts therefor;

(13) Cooperate fully with and render all reasonable assistance to other probation officers;

(14) In counties with a population of less than twenty-five thousand people, participate in pretrial diversion programs established pursuant to sections 29-3601 to 29-3604 and juvenile pretrial diversion programs established pursuant to sections 43-260.02 to 43-260.07 as requested by judges of the probation district in which he or she serves or as requested by a county attorney and approved by the judges of the probation district in which he or she serves, except that participation in such programs shall not require appointment of additional personnel and shall be consistent with the probation officer's current caseload;

(15) Participate, at the direction of the probation administrator pursuant to an interlocal agreement which meets the requirements of section 29-2255, in non-probation-based programs and services;

(16) Perform such other duties not inconsistent with the Nebraska Probation Administration Act or the rules and regulations of the office as a court may from time to time direct; and

(17) Exercise all powers and perform all duties necessary and proper to carry out his or her responsibilities.

Source: Laws 1971, LB 680, § 13; Laws 1979, LB 536, § 8; Laws 1986, LB 529, § 40; Laws 2001, LB 451, § 4; Laws 2003, LB 43, § 10; Laws 2005, LB 538, § 9; Laws 2010, LB800, § 6; Laws 2011, LB463, § 2; Laws 2013, LB561, § 4.

29-2259 Probation administrator; office; salaries; expenses; office space; prepare budget; interpreter services.

(1) The salaries, actual and necessary expenses, and expenses incident to the conduct and maintenance of the office shall be paid by the state. Actual and necessary expenses shall be paid as provided in sections 81-1174 to 81-1177.

(2) The salaries and actual and necessary travel expenses of the probation service shall be paid by the state. Actual and necessary expenses shall be paid as provided in sections 81-1174 to 81-1177.

(3) Except as provided in sections 29-2262 and 29-2262.04, the costs of drug testing and equipment incident to the electronic surveillance of individuals on probation shall be paid by the state.

(4) The expenses incident to the conduct and maintenance of the principal office within each probation district shall in the first instance be paid by the

county in which it is located, but such county shall be reimbursed for such expenses by all other counties within the probation district to the extent and in the proportions determined by the Supreme Court based upon population, number of investigations, and probation cases handled or upon such other basis as the Supreme Court deems fair and equitable.

(5) Each county shall provide office space and necessary facilities for probation officers performing their official duties and shall bear the costs incident to maintenance of such offices other than salaries, travel expenses, and data processing and word processing hardware and software that is provided on the state computer network.

(6) The cost of interpreter services for deaf and hard of hearing persons and for persons unable to communicate the English language shall be paid by the state with money appropriated to the Supreme Court for that purpose or from other funds, including grant money, made available to the Supreme Court for such purpose. Interpreter services shall include auxiliary aids for deaf and hard of hearing persons as defined in section 20-151 and interpreters to assist persons unable to communicate the English language as defined in section 25-2402. Interpreter services shall be provided under this section for the purposes of conducting a presentence investigation and for ongoing supervision by a probation officer of such persons placed on probation.

(7) The probation administrator shall prepare a budget and request for appropriations for the office and shall submit such request to the Supreme Court and with its approval to the appropriate authority in accordance with law.

Source: Laws 1971, LB 680, § 14; Laws 1979, LB 536, § 9; Laws 1981, LB 204, § 43; Laws 1986, LB 529, § 41; Laws 1989, LB 2, § 1; Laws 1990, LB 220, § 5; Laws 1992, LB 1059, § 24; Laws 1999, LB 54, § 4; Laws 2011, LB669, § 23.

29-2259.01 Probation Cash Fund; created; use; investment.

(1) There is hereby created the Probation Cash Fund. All money collected pursuant to subdivisions (2)(m) and (2)(o) of section 29-2262 shall be remitted to the State Treasurer for credit to the fund.

(2) Expenditures from the money in the fund collected pursuant to subdivisions (2)(m) and (2)(o) of section 29-2262 shall include, but not be limited to, supplementing any state funds necessary to support the costs of the services for which the money was collected.

(3) 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.

(4) The State Treasurer shall transfer any remaining money in the fund collected pursuant to subdivisions (4)(a) and (4)(b) of section 60-4,115 on January 1, 2012, to the Department of Motor Vehicles Ignition Interlock Fund.

Source: Laws 1990, LB 220, § 6; Laws 1992, LB 1059, § 25; Laws 1994, LB 1066, § 20; Laws 2001, Spec. Sess., LB 3, § 2; Laws 2003, LB 46, § 7; Laws 2009, LB497, § 1; Laws 2011, LB667, § 7.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

29-2259.02 State Probation Contractual Services Cash Fund; created; use; investment.

The State Probation Contractual Services Cash Fund is created. The fund shall consist only of payments received by the state pursuant to contractual agreements with local political subdivisions for probation services provided by the Office of Probation Administration. Except as otherwise directed by the Supreme Court during the period from November 21, 2009, until June 30, 2013, the fund shall only be used to pay for probation services provided by the Office of Probation Administration to local political subdivisions which enter into contractual agreements with the Office of Probation Administration. The fund shall be administered by the probation administrator. 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 1216, § 29; Laws 2009, First Spec. Sess., LB3, § 14; Laws 2011, LB378, § 19.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

29-2260.02 Department of Health and Human Services; administer Title IV-E state plan; Office of Probation Administration; powers and duties.

The Department of Health and Human Services, as the single state agency administering the Title IV-E state plan, has the authority to enter into the agreement with the Office of Probation Administration to act as a surrogate of the Department of Health and Human Services to administer the Title IV-E state plan for children it has placement and care authority of. The Department of Health and Human Services as the public agency administering or supervising the administration of the Title IV-E state plan in accordance with section 472(a)(2)(B)(ii) of the federal Social Security Act, 42 U.S.C. 672(a)(2)(B)(ii), to obtain federal reimbursement for allowable maintenance, administrative, and training expenses in accordance with Title IV-E of the federal Social Security Act, Public Law 96-272, Public Law 105-89, and Public Law 110-351, maintains the ultimate responsibility to supervise the Office of Probation Administration's activities regarding the Title IV-E requirements for eligible children served under the agreement.

The Office of Probation Administration has placement and care responsibility for juveniles in out-of-home placement, also known as foster care, described in subdivision (1), (2), (3)(b), or (4) of section 43-247. Placement and care constitutes accountability for the day-to-day care and protection of juveniles. The responsibility of having placement and care includes the development of an individual case plan for the juvenile, including periodic review of the appropriateness and suitability of the plan and the foster care placement, to ensure that proper care and services are provided to facilitate return to the juvenile's own home or to make an alternative placement. The case plan activities include such items as assessing family strength and needs, identifying and using community resources, and the periodic review and determination of continued appropriateness of placement. Placement and care does not include rights retained by the

legal custodian, including, but not limited to, provisions and decisions surrounding education, morality, religion, discipline, and medical care.

Source: Laws 2014, LB464, § 5.

Operative date July 18, 2014.

29-2261 Presentence investigation, when; contents; psychiatric examination; persons having access to records; reports authorized.

(1) Unless it is impractical to do so, when an offender has been convicted of a felony other than murder in the first degree, the court shall not impose sentence without first ordering a presentence investigation of the offender and according due consideration to a written report of such investigation. When an offender has been convicted of murder in the first degree and (a) a jury renders a verdict finding the existence of one or more aggravating circumstances as provided in section 29-2520 or (b)(i) the information contains a notice of aggravation as provided in section 29-1603 and (ii) the offender waives his or her right to a jury determination of the alleged aggravating circumstances, the court shall not commence the sentencing determination proceeding as provided in section 29-2521 without first ordering a presentence investigation of the offender and according due consideration to a written report of such investigation.

(2) A court may order a presentence investigation in any case, except in cases in which an offender has been convicted of a Class IIIA misdemeanor, a Class IV misdemeanor, a Class V misdemeanor, a traffic infraction, or any corresponding city or village ordinance.

(3) The presentence investigation and report shall include, when available, an analysis of the circumstances attending the commission of the crime, the offender's history of delinquency or criminality, physical and mental condition, family situation and background, economic status, education, occupation, and personal habits, and any other matters that the probation officer deems relevant or the court directs to be included. All local and state police agencies and Department of Correctional Services adult correctional facilities shall furnish to the probation officer copies of such criminal records, in any such case referred to the probation officer by the court of proper jurisdiction, as the probation officer shall require without cost to the court or the probation officer.

Such investigation shall also include:

(a) Any written statements submitted to the county attorney by a victim; and

(b) Any written statements submitted to the probation officer by a victim.

(4) If there are no written statements submitted to the probation officer, he or she shall certify to the court that:

(a) He or she has attempted to contact the victim; and

(b) If he or she has contacted the victim, such officer offered to accept the written statements of the victim or to reduce such victim's oral statements to writing.

For purposes of subsections (3) and (4) of this section, the term victim shall be as defined in section 29-119.

(5) Before imposing sentence, the court may order the offender to submit to psychiatric observation and examination for a period of not exceeding sixty days or such longer period as the court determines to be necessary for that

purpose. The offender may be remanded for this purpose to any available clinic or mental hospital, or the court may appoint a qualified psychiatrist to make the examination. The report of the examination shall be submitted to the court.

(6) Any presentence report or psychiatric examination shall be privileged and shall not be disclosed directly or indirectly to anyone other than a judge, probation officers to whom an offender's file is duly transferred, the probation administrator or his or her designee, or others entitled by law to receive such information, including personnel and mental health professionals for the Nebraska State Patrol specifically assigned to sex offender registration and community notification for the sole purpose of using such report or examination for assessing risk and for community notification of registered sex offenders. For purposes of this subsection, mental health professional means (a) a practicing physician licensed to practice medicine in this state under the Medicine and Surgery Practice Act, (b) a practicing psychologist licensed to engage in the practice of psychology in this state as provided in section 38-3111, or (c) a practicing mental health professional licensed or certified in this state as provided in the Mental Health Practice Act. The court may permit inspection of the report or examination of parts thereof by the offender or his or her attorney, or other person having a proper interest therein, whenever the court finds it is in the best interest of a particular offender. The court may allow fair opportunity for an offender to provide additional information for the court's consideration.

(7) If an offender is sentenced to imprisonment, a copy of the report of any presentence investigation or psychiatric examination shall be transmitted immediately to the Department of Correctional Services. Upon request, the Board of Parole or the Office of Parole Administration may receive a copy of the report from the department.

(8) Notwithstanding subsection (6) of this section, the Supreme Court or an agent of the Supreme Court acting under the direction and supervision of the Chief Justice shall have access to psychiatric examinations and presentence investigations and reports for research purposes. The Supreme Court and its agent shall treat such information as confidential, and nothing identifying any individual shall be released.

Source: Laws 1971, LB 680, § 16; Laws 1974, LB 723, § 1; Laws 1983, LB 78, § 4; Laws 2000, LB 1008, § 1; Laws 2002, LB 564, § 1; Laws 2002, Third Spec. Sess., LB 1, § 9; Laws 2003, LB 46, § 8; Laws 2004, LB 1207, § 17; Laws 2007, LB463, § 1129; Laws 2011, LB390, § 3.

Cross References

Medicine and Surgery Practice Act, see section 38-2001.

Mental Health Practice Act, see section 38-2101.

29-2262 Probation; conditions.

(1) When a court sentences an offender to probation, it shall attach such reasonable conditions as it deems necessary or likely to insure that the offender will lead a law-abiding life. No offender shall be sentenced to probation if he or she is deemed to be a habitual criminal pursuant to section 29-2221.

(2) The court may, as a condition of a sentence of probation, require the offender:

(a) To refrain from unlawful conduct;

(b) To be confined periodically in the county jail or to return to custody after specified hours but not to exceed (i) for misdemeanors, the lesser of ninety days or the maximum jail term provided by law for the offense and (ii) for felonies, one hundred eighty days;

(c) To meet his or her family responsibilities;

(d) To devote himself or herself to a specific employment or occupation;

(e) To undergo medical or psychiatric treatment and to enter and remain in a specified institution for such purpose;

(f) To pursue a prescribed secular course of study or vocational training;

(g) To attend or reside in a facility established for the instruction, recreation, or residence of persons on probation;

(h) To refrain from frequenting unlawful or disreputable places or consorting with disreputable persons;

(i) To possess no firearm or other dangerous weapon if convicted of a felony, or if convicted of any other offense, to possess no firearm or other dangerous weapon unless granted written permission by the court;

(j) To remain within the jurisdiction of the court and to notify the court or the probation officer of any change in his or her address or his or her employment and to agree to waive extradition if found in another jurisdiction;

(k) To report as directed to the court or a probation officer and to permit the officer to visit his or her home;

(l) To pay a fine in one or more payments as ordered;

(m) To pay for tests to determine the presence of drugs or alcohol, psychological evaluations, offender assessment screens, and rehabilitative services required in the identification, evaluation, and treatment of offenders if such offender has the financial ability to pay for such services;

(n) To perform community service as outlined in sections 29-2277 to 29-2279 under the direction of his or her probation officer;

(o) To be monitored by an electronic surveillance device or system and to pay the cost of such device or system if the offender has the financial ability;

(p) To participate in a community correctional facility or program as provided in the Community Corrections Act;

(q) To successfully complete an incarceration work camp program as determined by the Department of Correctional Services;

(r) To satisfy any other conditions reasonably related to the rehabilitation of the offender;

(s) To make restitution as described in sections 29-2280 and 29-2281; or

(t) To pay for all costs imposed by the court, including court costs and the fees imposed pursuant to section 29-2262.06.

(3) In all cases in which the offender is guilty of violating section 28-416, a condition of probation shall be mandatory treatment and counseling as provided by such section.

(4) In all cases in which the offender is guilty of a crime covered by the DNA Identification Information Act, a condition of probation shall be the collecting

of a DNA sample pursuant to the act and the paying of all costs associated with the collection of the DNA sample prior to release from probation.

Source: Laws 1971, LB 680, § 17; Laws 1975, LB 289, § 1; Laws 1978, LB 623, § 29; Laws 1979, LB 292, § 1; Laws 1986, LB 504, § 2; Laws 1986, LB 528, § 4; Laws 1986, LB 956, § 14; Laws 1989, LB 592, § 3; Laws 1989, LB 669, § 1; Laws 1990, LB 220, § 8; Laws 1991, LB 742, § 2; Laws 1993, LB 627, § 2; Laws 1995, LB 371, § 15; Laws 1997, LB 882, § 1; Laws 1998, LB 218, § 16; Laws 2003, LB 46, § 9; Laws 2006, LB 385, § 1; Laws 2010, LB190, § 1.

Cross References

Community Corrections Act, see section 47-619.

DNA Identification Information Act, see section 29-4101.

29-2262.01 Repealed. Laws 2009, LB 63, § 50.

29-2262.07 Probation Program Cash Fund; created; use; investment.

The Probation Program Cash Fund is created. All funds collected pursuant to section 29-2262.06 shall be remitted to the State Treasurer for credit to the fund. Except as otherwise directed by the Supreme Court during the period from November 21, 2009, until June 30, 2013, the fund shall be utilized by the administrator for the purposes stated in subdivisions (14) and (17) of section 29-2252, except that the State Treasurer shall, on or before June 30, 2011, on such date as directed by the budget administrator of the budget division of the Department of Administrative Services, transfer the amount set forth in Laws 2009, LB1, One Hundred First Legislature, First Special Session. 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.

On July 15, 2010, the State Treasurer shall transfer three hundred fifty thousand dollars from the Probation Program Cash Fund to the Violence Prevention Cash Fund. The Office of Violence Prevention shall distribute such funds as soon as practicable after July 15, 2010, to organizations or governmental entities that have submitted violence prevention plans and that best meet the intent of reducing street and gang violence and reducing homicides and injuries caused by firearms.

Source: Laws 2003, LB 46, § 13; Laws 2009, First Spec. Sess., LB3, § 15; Laws 2010, LB800, § 8; Laws 2011, LB378, § 20; Laws 2011, LB390, § 4.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

29-2262.08 Transferred to section 43-286.01.

29-2264 Probation; completion; conviction may be set aside; conditions; retroactive effect.

(1) Whenever any person is placed on probation by a court and satisfactorily completes the conditions of his or her probation for the entire period or is discharged from probation prior to the termination of the period of probation, the sentencing court shall issue an order releasing the offender from probation.

Such order in all felony cases shall provide notice that the person's voting rights are restored two years after completion of probation. The order shall include information on restoring other civil rights through the pardon process, including application to and hearing by the Board of Pardons.

(2) Whenever any person is convicted of a misdemeanor or felony and is placed on probation by the court or is sentenced to a fine only, he or she may, after satisfactory fulfillment of the conditions of probation for the entire period or after discharge from probation prior to the termination of the period of probation and after payment of any fine, petition the sentencing court to set aside the conviction.

(3) In determining whether to set aside the conviction, the court shall consider:

(a) The behavior of the offender after sentencing;

(b) The likelihood that the offender will not engage in further criminal activity; and

(c) Any other information the court considers relevant.

(4) The court may grant the offender's petition and issue an order setting aside the conviction when in the opinion of the court the order will be in the best interest of the offender and consistent with the public welfare. The order shall:

(a) Nullify the conviction; and

(b) Remove all civil disabilities and disqualifications imposed as a result of the conviction.

(5) The setting aside of a conviction in accordance with the Nebraska Probation Administration Act shall not:

(a) Require the reinstatement of any office, employment, or position which was previously held and lost or forfeited as a result of the conviction;

(b) Preclude proof of a plea of guilty whenever such plea is relevant to the determination of an issue involving the rights or liabilities of someone other than the offender;

(c) Preclude proof of the conviction as evidence of the commission of the misdemeanor or felony whenever the fact of its commission is relevant for the purpose of impeaching the offender as a witness, except that the order setting aside the conviction may be introduced in evidence;

(d) Preclude use of the conviction for the purpose of determining sentence on any subsequent conviction of a criminal offense;

(e) Preclude the proof of the conviction as evidence of the commission of the misdemeanor or felony in the event an offender is charged with a subsequent offense and the penalty provided by law is increased if the prior conviction is proved;

(f) Preclude the proof of the conviction to determine whether an offender is eligible to have a subsequent conviction set aside in accordance with the Nebraska Probation Administration Act;

(g) Preclude use of the conviction as evidence of commission of the misdemeanor or felony for purposes of determining whether an application filed or a license issued under sections 71-1901 to 71-1906.01, the Child Care Licensing Act, or the Children's Residential Facilities and Placing Licensure Act or a

certificate issued under sections 79-806 to 79-815 should be denied, suspended, or revoked;

(h) Preclude use of the conviction as evidence of incompetence, neglect of duty, physical, mental, or emotional incapacity, or final conviction of or pleading guilty or nolo contendere to a felony for purposes of determining whether an application filed or a certificate issued under sections 81-1401 to 81-1414.10 should be denied, suspended, or revoked;

(i) Preclude proof of the conviction as evidence whenever the fact of the conviction is relevant to a determination of the registration period under section 29-4005; or

(j) Relieve a person who is convicted of an offense for which registration is required under the Sex Offender Registration Act of the duty to register and to comply with the terms of the act.

(6) Except as otherwise provided for the notice in subsection (1) of this section, changes made to this section by Laws 2005, LB 713, shall be retroactive in application and shall apply to all persons, otherwise eligible in accordance with the provisions of this section, whether convicted prior to, on, or subsequent to September 4, 2005.

Source: Laws 1971, LB 680, § 19; Laws 1993, LB 564, § 1; Laws 1994, LB 677, § 1; Laws 1995, LB 401, § 1; Laws 1997, LB 310, § 1; Laws 1998, Spec. Sess., LB 1, § 3; Laws 2002, LB 1054, § 6; Laws 2003, LB 685, § 2; Laws 2004, LB 1005, § 3; Laws 2005, LB 53, § 3; Laws 2005, LB 713, § 3; Laws 2009, LB285, § 2; Laws 2012, LB817, § 2; Laws 2013, LB265, § 30.

Cross References

Child Care Licensing Act, see section 71-1908.

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

Sex Offender Registration Act, see section 29-4001.

29-2269 Act, how cited.

Sections 29-2246 to 29-2269 shall be known and may be cited as the Nebraska Probation Administration Act.

Source: Laws 1971, LB 680, § 31; Laws 1990, LB 220, § 9; Laws 2003, LB 46, § 14; Laws 2005, LB 538, § 11; Laws 2010, LB800, § 9; Laws 2014, LB464, § 6.
Operative date July 18, 2014.

ARTICLE 23

REVIEW OF JUDGMENTS IN CRIMINAL CASES

Section

29-2320. Appeal of sentence by prosecuting attorney or Attorney General; when authorized.

29-2321. Appeal of sentence by prosecuting attorney or Attorney General; procedure.

29-2327. District court; Court of Appeals; Supreme Court; remit assessment.

29-2320 Appeal of sentence by prosecuting attorney or Attorney General; when authorized.

Whenever a defendant is found guilty of a felony following a trial or the entry of a plea of guilty or tendering a plea of nolo contendere, the prosecuting attorney charged with the prosecution of such defendant or the Attorney

General may appeal the sentence imposed if there is a reasonable belief, based on all of the facts and circumstances of the particular case, that the sentence is excessively lenient.

Source: Laws 1982, LB 402, § 1; Laws 1991, LB 732, § 82; Laws 2003, LB 17, § 15; Laws 2009, LB63, § 26.

29-2321 Appeal of sentence by prosecuting attorney or Attorney General; procedure.

(1) Appeals under sections 29-2320 to 29-2325 shall be taken, by either the Attorney General or the prosecuting attorney, as follows:

(a) If the appeal is filed by the Attorney General, a notice of appeal shall be filed in the district court within twenty days after imposition of the sentence. A copy of the notice of appeal shall be sent to either the defendant or counsel for the defendant; or

(b) If the prosecuting attorney wishes to file the appeal, he or she, within ten days after imposition of the sentence, shall request approval from the Attorney General to proceed with the appeal. A copy of the request for approval shall be sent to the defendant or counsel for the defendant.

(2) If the Attorney General approves the request described in subdivision (1)(b) of this section, the prosecuting attorney shall file a notice of appeal indicating such approval in the district court. Such notice of appeal must be filed within twenty days of the imposition of sentence. A copy of the notice of appeal shall be sent to the defendant or counsel for the defendant.

(3) If the Attorney General does not approve the request described in subdivision (1)(b) of this section, an appeal under sections 29-2320 to 29-2325 shall not be permitted.

(4) In addition to such notice of appeal, the docket fee required by section 33-103 shall be deposited with the clerk of the district court.

(5) Upon compliance with the requirements of this section, the appeal shall proceed as provided by law for appeals to the Court of Appeals.

Source: Laws 1982, LB 402, § 2; Laws 1991, LB 732, § 83; Laws 2003, LB 17, § 16; Laws 2009, LB63, § 27.

29-2327 District court; Court of Appeals; Supreme Court; remit assessment.

In every case of appeal of a conviction of any person for any felony or misdemeanor to the district court, Court of Appeals, or Supreme Court that is affirmed, the court shall remit the assessment as provided in section 33-157.

Source: Laws 2010, LB510, § 3.

ARTICLE 24

EXECUTION OF SENTENCES

Section

29-2405. Repealed. Laws 2014, LB 907, § 22.

29-2412. Fine and costs; nonpayment; commutation upon confinement; credit; amount.

29-2405 Repealed. Laws 2014, LB 907, § 22.

Operative date July 18, 2014.

29-2412 Fine and costs; nonpayment; commutation upon confinement; credit; amount.

(1) Whenever it is made satisfactorily to appear to the district court, or to the county judge of the proper county, after all legal means have been exhausted, that any person who is subject to being or is confined in jail for any fine or costs of prosecution for any criminal offense has no estate with which to pay such fine or costs, it shall be the duty of such court or judge, on his or her own motion or upon the motion of the person so confined, to discharge such person from further imprisonment for such fine or costs, which discharge shall operate as a complete release of such fine or costs.

(2) Nothing in this section shall authorize any person to be discharged from imprisonment before the expiration of the time for which he or she may be sentenced to be imprisoned, as part of his or her punishment, or when such person shall default on a payment due pursuant to an installment agreement arranged by the court.

(3) Any person held in custody for nonpayment of a fine or costs or for default on an installment shall be entitled to a credit on the fine, costs, or installment of ninety dollars for each day so held. In no case shall a person held in custody for nonpayment of a fine or costs be held in such custody for more days than the maximum number to which he or she could have been sentenced if the penalty set by law includes the possibility of confinement.

Source: G.S.1873, c. 58, § 528, p. 838; R.S.1913, § 9199; C.S.1922, § 10206; C.S.1929, § 29-2412; R.S.1943, § 29-2412; Laws 1959, c. 122, § 2, p. 455; Laws 1979, LB 111, § 2; Laws 1986, LB 528, § 5; Laws 1988, LB 370, § 7; Laws 2010, LB712, § 17.

ARTICLE 25

SPECIAL PROCEDURE IN CASES OF HOMICIDE

Section

- 29-2520. Aggravation hearing; procedure.
- 29-2521.02. Criminal homicide cases; review and analysis by Supreme Court; manner.
- 29-2522. Sentence; considerations; determination; contents.
- 29-2524. Sections; how construed.
- 29-2532. Transferred to section 83-964.
- 29-2533. Transferred to section 83-969.
- 29-2534. Transferred to section 83-970.
- 29-2535. Transferred to section 83-971.
- 29-2536. Transferred to section 83-972.
- 29-2537. Convicted person; appears to be incompetent; notice to judge; suspend sentence; commission appointed; findings; suspension of execution; when; annual review.
- 29-2538. Suspension of execution pending investigation; convict found competent; Supreme Court; appoint a day of execution.
- 29-2539. Commission members; mileage; payment.
- 29-2540. Female convicted person; pregnant; notice to judge; procedures.
- 29-2541. Female convicted person; finding convicted person is pregnant; judge; duties; costs.
- 29-2542. Escaped convict; return; notify Supreme Court; fix date of execution.
- 29-2543. Person convicted of crime sentenced to death; Supreme Court; warrant.
- 29-2544. Repealed. Laws 2009, LB 36, § 21.
- 29-2545. Repealed. Laws 2009, LB 36, § 21.
- 29-2546. Reversal of judgment of conviction; delivery of convicted person to custody of sheriff; await further judgment and order of court.

29-2520 Aggravation hearing; procedure.

(1) Whenever any person is found guilty of a violation of section 28-303 and the information contains a notice of aggravation as provided in section 29-1603, the district court shall, as soon as practicable, fix a date for an aggravation hearing to determine the alleged aggravating circumstances. If no notice of aggravation has been filed, the district court shall enter a sentence of life imprisonment.

(2) Unless the defendant waives his or her right to a jury determination of the alleged aggravating circumstances, such determination shall be made by:

(a) The jury which determined the defendant's guilt; or

(b) A jury impaneled for purposes of the determination of the alleged aggravating circumstances if:

(i) The defendant waived his or her right to a jury at the trial of guilt and either was convicted before a judge or was convicted on a plea of guilty or nolo contendere; or

(ii) The jury which determined the defendant's guilt has been discharged.

A jury required by subdivision (2)(b) of this section shall be impaneled in the manner provided in sections 29-2004 to 29-2010.

(3) The defendant may waive his or her right to a jury determination of the alleged aggravating circumstances. The court shall accept the waiver after determining that it is made freely, voluntarily, and knowingly. If the defendant waives his or her right to a jury determination of the alleged aggravating circumstances, such determination shall be made by a panel of judges as a part of the sentencing determination proceeding as provided in section 29-2521.

(4)(a) At an aggravation hearing before a jury for the determination of the alleged aggravating circumstances, the state may present evidence as to the existence of the aggravating circumstances alleged in the information. The Nebraska Evidence Rules shall apply at the aggravation hearing.

(b) Alternate jurors who would otherwise be discharged upon final submission of the cause to the jury shall be retained during the deliberation of the defendant's guilt but shall not participate in such deliberations. Such alternate jurors shall serve during the aggravation hearing as provided in section 29-2004 but shall not participate in the jury's deliberations under this subsection.

(c) If the jury serving at the aggravation hearing is the jury which determined the defendant's guilt, the jury may consider evidence received at the trial of guilt for purposes of reaching its verdict as to the existence or nonexistence of aggravating circumstances in addition to the evidence received at the aggravation hearing.

(d) After the presentation and receipt of evidence at the aggravation hearing, the state and the defendant or his or her counsel may present arguments before the jury as to the existence or nonexistence of the alleged aggravating circumstances.

(e) The court shall instruct the members of the jury as to their duty as jurors, the definitions of the aggravating circumstances alleged in the information, and the state's burden to prove the existence of each aggravating circumstance alleged in the information beyond a reasonable doubt.

(f) The jury at the aggravation hearing shall deliberate and return a verdict as to the existence or nonexistence of each alleged aggravating circumstance. Each aggravating circumstance shall be proved beyond a reasonable doubt. Each verdict with respect to each alleged aggravating circumstance shall be unanimous. If the jury is unable to reach a unanimous verdict with respect to an aggravating circumstance, such aggravating circumstance shall not be weighed in the sentencing determination proceeding as provided in section 29-2521.

(g) Upon rendering its verdict as to the determination of the aggravating circumstances, the jury shall be discharged.

(h) If no aggravating circumstance is found to exist, the court shall enter a sentence of life imprisonment. If one or more aggravating circumstances are found to exist, the court shall convene a panel of three judges to hold a hearing to receive evidence of mitigation and sentence excessiveness or disproportionality as provided in subsection (3) of section 29-2521.

Source: Laws 1973, LB 268, § 5; Laws 1978, LB 748, § 22; Laws 2002, Third Spec. Sess., LB 1, § 11; Laws 2011, LB12, § 3.

Cross References

Nebraska Evidence Rules, see section 27-1103.

29-2521.02 Criminal homicide cases; review and analysis by Supreme Court; manner.

The Supreme Court shall within a reasonable time after July 22, 1978, review and analyze all cases involving criminal homicide committed on or after April 20, 1973. Such review and analysis shall examine (1) the facts including mitigating and aggravating circumstances, (2) the charges filed, (3) the crime for which defendant was convicted, and (4) the sentence imposed. Such review shall be updated as new criminal homicide cases occur.

Source: Laws 1978, LB 711, § 2; Laws 2000, LB 1008, § 2; Laws 2011, LB390, § 5.

29-2522 Sentence; considerations; determination; contents.

The panel of judges for the sentencing determination proceeding shall either unanimously fix the sentence at death or, if the sentence of death was not unanimously agreed upon by the panel, fix the sentence at life imprisonment. Such sentence determination shall be based upon the following considerations:

(1) Whether the aggravating circumstances as determined to exist justify imposition of a sentence of death;

(2) Whether sufficient mitigating circumstances exist which approach or exceed the weight given to the aggravating circumstances; or

(3) Whether the sentence of death is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant.

In each case, the determination of the panel of judges shall be in writing and refer to the aggravating and mitigating circumstances weighed in the determination of the panel.

If an order is entered sentencing the defendant to death, a date for execution shall not be fixed until after the conclusion of the appeal provided for by section 29-2525.

Source: Laws 1973, LB 268, § 7; Laws 1978, LB 711, § 5; Laws 1982, LB 722, § 10; Laws 2002, Third Spec. Sess., LB 1, § 14; Laws 2011, LB12, § 4.

29-2524 Sections; how construed.

Nothing in sections 25-1140.09, 28-303, 28-313, and 29-2519 to 29-2546 shall be in any way deemed to repeal or limit existing procedures for automatic review of capital cases, nor shall they in any way limit the right of the Supreme Court to reduce a sentence of death to a sentence of life imprisonment in accordance with the provisions of section 29-2308, nor shall they limit the right of the Board of Pardons to commute any sentence of death to a sentence of life imprisonment.

Source: Laws 1973, LB 268, § 9; Laws 1978, LB 748, § 23; Laws 1978, LB 711, § 6; Laws 2002, Third Spec. Sess., LB 1, § 16; Laws 2011, LB12, § 5.

Cross References

Constitutional provisions:

Board of Pardons, see Article IV, section 13, Constitution of Nebraska.

Board of Pardons, see section 83-1,126.

29-2532 Transferred to section 83-964.

29-2533 Transferred to section 83-969.

29-2534 Transferred to section 83-970.

29-2535 Transferred to section 83-971.

29-2536 Transferred to section 83-972.

29-2537 Convicted person; appears to be incompetent; notice to judge; suspend sentence; commission appointed; findings; suspension of execution; when; annual review.

(1) If any convicted person under sentence of death shall appear to be incompetent, the Director of Correctional Services shall forthwith give notice thereof to a judge of the district court of the judicial district in which the convicted person was tried and sentenced and such judge shall at once make such investigation as shall satisfy him or her as to whether a commission ought to be named to examine such convicted person.

(2) If the court determines that there is not sufficient reason for the appointment of a commission, the court shall so find and refuse to suspend the execution of the convicted person. If the court determines that a commission ought to be appointed to examine such convicted person, the court shall make a finding to that effect and cause it to be entered upon the records of the district court in the county in which such convicted person was sentenced, and, if necessary, the court shall suspend the execution and appoint three licensed mental health professionals employed by the state as a commission to examine such convicted person. The commission shall examine the convicted person to determine whether he or she is competent or incompetent and shall report its

findings in writing to the court within ten days after its appointment. If two members of the commission find the convicted person incompetent, the court shall suspend the convicted person's execution until further order. Thereafter, the court shall appoint a commission annually to review the convicted person's competency. The results of such review shall be provided to the court. If the convicted person is subsequently found to be competent by two members of the commission, the court shall certify that finding to the Supreme Court which shall then establish a date for the enforcement of the convicted person's sentence.

(3) The standard for the determination of competency under this section shall be the same as the standard for determining competency to stand trial.

Source: Laws 1973, LB 268, § 22; Laws 1986, LB 1177, § 8; Laws 2009, LB36, § 1.

29-2538 Suspension of execution pending investigation; convict found competent; Supreme Court; appoint a day of execution.

If a court has suspended the execution of the convicted person pending an investigation as to his or her competency, the date for the enforcement of the convicted person's sentence has passed, and the convicted person is found to be competent, the court shall certify that finding to the Supreme Court which shall appoint a day for the enforcement of the convicted person's sentence.

Source: Laws 1973, LB 268, § 23; Laws 2009, LB36, § 2.

29-2539 Commission members; mileage; payment.

The members of the commission appointed pursuant to section 29-2537 shall each receive mileage at the rate authorized in section 81-1176 for state employees for each mile actually and necessarily traveled in reaching and returning from the place where the convicted person is confined and examined, and it is hereby made the duty of the commission to act in this capacity without compensation other than that already provided for them by law. All of the findings and orders aforesaid shall be entered in the district court records of the county wherein the convicted person was originally tried and sentenced, and the costs therefor, including those providing for the mileage of the members of the commission, shall be allowed and paid in the usual manner by the county in which the convicted person was tried and sentenced to death.

Source: Laws 1973, LB 268, § 24; Laws 1981, LB 204, § 44; Laws 2009, LB36, § 3.

29-2540 Female convicted person; pregnant; notice to judge; procedures.

If a female convicted person under sentence of death shall appear to be pregnant, the Director of Correctional Services shall in like manner notify the judge of the district court of the county in which she was sentenced, who shall in all things proceed as in the case of an incompetent convicted person.

Source: Laws 1973, LB 268, § 25; Laws 1986, LB 1177, § 9; Laws 2009, LB36, § 4.

Cross References

Mentally incompetent convicts, see sections 29-2537 to 29-2539.

29-2541 Female convicted person; finding convicted person is pregnant; judge; duties; costs.

If the commission appointed pursuant to section 29-2537 finds that the female convicted person is pregnant, the court shall suspend the execution of her sentence. At such time as it shall be determined that such woman is no longer pregnant, the judge shall appoint a date for her execution and issue a warrant directing the enforcement of the sentence of death which shall be delivered to the Director of Correctional Services. The costs and expenses thereof shall be the same as those provided for in the case of an incompetent convicted person and shall be paid in the same manner.

Source: Laws 1973, LB 268, § 26; Laws 1986, LB 1177, § 10; Laws 2009, LB36, § 5.

29-2542 Escaped convict; return; notify Supreme Court; fix date of execution.

If any person who has been convicted of a crime punishable by death, and sentenced to death, shall escape, and shall not be retaken before the time fixed for his or her execution, it shall be lawful for the Director of Correctional Services, or any sheriff or other officer or person, to rearrest such person and return him or her to the custody of the director, who shall thereupon notify the Supreme Court that such person has been returned to custody. Upon receipt of that notice, the Supreme Court shall then issue a warrant, fixing a date for the enforcement of the sentence which shall be delivered to the director. The date of execution shall be set no later than sixty days following the issuance of the warrant.

Source: Laws 1973, LB 268, § 27; Laws 2009, LB36, § 6.

29-2543 Person convicted of crime sentenced to death; Supreme Court; warrant.

(1) Whenever any person has been tried and convicted before any district court in this state, has been sentenced to death, and has had his or her sentence of death affirmed by the Supreme Court on mandatory direct review, it shall be the duty of the Supreme Court to issue a warrant, under the seal of the court, reciting therein the conviction and sentence and establishing a date for the enforcement of the sentence directed to the Director of Correctional Services, commanding him or her to proceed at the time named in the warrant. The date of execution shall be set no later than sixty days following the issuance of the warrant.

(2) Thereafter, if the initial execution date has been stayed and the original execution date has expired, the Supreme Court shall establish a new date for enforcement of the sentence upon receipt of notice from the Attorney General that the stay of execution is no longer in effect and issue its warrant to the director. The date of execution shall be set no later than sixty days following the issuance of the warrant.

Source: Laws 1973, LB 268, § 28; Laws 1993, LB 31, § 12; Laws 2009, LB36, § 7.

29-2544 Repealed. Laws 2009, LB 36, § 21.

29-2545 Repealed. Laws 2009, LB 36, § 21.**29-2546 Reversal of judgment of conviction; delivery of convicted person to custody of sheriff; await further judgment and order of court.**

Whenever the Supreme Court reverses the judgment of conviction in accordance with which any convicted person has been sentenced to death and is confined in a Department of Correctional Services adult correctional facility as herein provided, it shall be the duty of the Director of Correctional Services, upon receipt of a copy of such judgment of reversal, duly certified by the clerk of the court and under the seal thereof, to forthwith deliver such convicted person into the custody of the sheriff of the county in which the conviction was had to be held in the jail of the county awaiting the further judgment and order of the court in the case.

Source: Laws 1973, LB 268, § 31; Laws 1993, LB 31, § 13; Laws 2009, LB36, § 8.

**ARTICLE 30
POSTCONVICTION PROCEEDINGS**

Section

29-3001. Postconviction relief; motion; limitation; procedure; costs.

29-3001 Postconviction relief; motion; limitation; procedure; costs.

(1) A prisoner in custody under sentence and claiming a right to be released on the ground that there was such a denial or infringement of the rights of the prisoner as to render the judgment void or voidable under the Constitution of this state or the Constitution of the United States, may file a verified motion, in the court which imposed such sentence, stating the grounds relied upon and asking the court to vacate or set aside the sentence.

(2) Unless the motion and the files and records of the case show to the satisfaction of the court that the prisoner is entitled to no relief, the court shall cause notice thereof to be served on the county attorney, grant a prompt hearing thereon, and determine the issues and make findings of fact and conclusions of law with respect thereto. If the court finds that there was such a denial or infringement of the rights of the prisoner as to render the judgment void or voidable under the Constitution of this state or the Constitution of the United States, the court shall vacate and set aside the judgment and shall discharge the prisoner or resentence the prisoner or grant a new trial as may appear appropriate. Proceedings under the provisions of sections 29-3001 to 29-3004 shall be civil in nature. Costs shall be taxed as in habeas corpus cases.

(3) A court may entertain and determine such motion without requiring the production of the prisoner, whether or not a hearing is held. Testimony of the prisoner or other witnesses may be offered by deposition. The court need not entertain a second motion or successive motions for similar relief on behalf of the same prisoner.

(4) A one-year period of limitation shall apply to the filing of a verified motion for postconviction relief. The one-year limitation period shall run from the later of:

(a) The date the judgment of conviction became final by the conclusion of a direct appeal or the expiration of the time for filing a direct appeal;

(b) The date on which the factual predicate of the constitutional claim or claims alleged could have been discovered through the exercise of due diligence;

(c) The date on which an impediment created by state action, in violation of the Constitution of the United States or the Constitution of Nebraska or any law of this state, is removed, if the prisoner was prevented from filing a verified motion by such state action;

(d) The date on which a constitutional claim asserted was initially recognized by the Supreme Court of the United States or the Nebraska Supreme Court, if the newly recognized right has been made applicable retroactively to cases on postconviction collateral review; or

(e) August 27, 2011.

Source: Laws 1965, c. 145, § 1, p. 486; Laws 2011, LB137, § 1.

ARTICLE 35

CRIMINAL HISTORY INFORMATION

Section

29-3506. Criminal history record information, defined.

29-3506 Criminal history record information, defined.

Criminal history record information shall mean information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of issuance of arrest warrants, arrests, detentions, indictments, charges by information, and other formal criminal charges, and any disposition arising from such arrests, charges, sentencing, correctional supervision, and release. Criminal history record information shall include any judgment against or settlement with the state as a result of a wrongful conviction pursuant to the Nebraska Claims for Wrongful Conviction and Imprisonment Act. Criminal history record information shall not include intelligence or investigative information.

Source: Laws 1978, LB 713, § 6; Laws 2009, LB260, § 9.

Cross References

Nebraska Claims for Wrongful Conviction and Imprisonment Act, see section 29-4601.

ARTICLE 36

PRETRIAL DIVERSION

Section

29-3608. Minor traffic violations; pretrial diversion program; eligibility.

29-3608 Minor traffic violations; pretrial diversion program; eligibility.

Any driver holding a commercial driver's license or CLP-commercial learner's permit issued pursuant to the Motor Vehicle Operator's License Act shall not be eligible to participate in a program under sections 29-3605 to 29-3609 if such participation would be in noncompliance with federal law or regulation and subject the state to possible loss of federal funds.

Source: Laws 2002, LB 1303, § 8; Laws 2003, LB 562, § 1; Laws 2005, LB 76, § 1; Laws 2011, LB178, § 1; Laws 2014, LB983, § 1. Operative date July 8, 2015.

Cross References

Motor Vehicle Operator's License Act, see section 60-462.

ARTICLE 39

PUBLIC DEFENDERS AND APPOINTED COUNSEL

(c) COUNTY REVENUE ASSISTANCE ACT

Section

- 29-3921. Commission on Public Advocacy Operations Cash Fund; created; use; investment; transfers; use.
- 29-3922. Terms, defined.
- 29-3927. Commission; duties.
- 29-3932. Repealed. Laws 2009, LB 154, § 27.

(c) COUNTY REVENUE ASSISTANCE ACT

29-3921 Commission on Public Advocacy Operations Cash Fund; created; use; investment; transfers; use.

(1) The Commission on Public Advocacy Operations Cash Fund is created. The fund shall be used for the operations of the commission, except that transfers may be made from the fund to the General Fund at the direction of the Legislature through June 30, 2011. The Commission on Public Advocacy Operations Cash Fund shall consist of money remitted pursuant to section 33-156. It is the intent of the Legislature that the commission shall be funded solely from 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.

(2) On July 1, 2011, or as soon thereafter as administratively possible, the State Treasurer shall transfer one hundred thousand dollars from the Commission on Public Advocacy Operations Cash Fund to the Supreme Court Education Fund. The State Court Administrator shall use these funds to assist the juvenile justice system in providing prefiling and diversion programming designed to reduce excessive absenteeism and unnecessary involvement with the juvenile justice system.

(3) The State Treasurer shall transfer the following amounts from the Commission on Public Advocacy Operations Cash Fund to the Court Appointed Special Advocate Fund:

(a) On July 1, 2011, or as soon thereafter as administratively possible, one hundred thousand dollars; and

(b) On July 1, 2012, or as soon thereafter as administratively possible, two hundred thousand dollars.

(4) On July 1, 2012, or as soon thereafter as administratively possible, the State Treasurer shall transfer sixty thousand dollars from the Commission on Public Advocacy Operations Cash Fund to the Nebraska State Patrol Cash Fund.

The Nebraska State Patrol shall use such funds to contract with the University of Nebraska to study sex offender recidivism data before and after the passage of Laws 2009, LB285, which changed the Nebraska sex offender classification system from an evaluation of risk assessment system to an offense-based assessment system in the attempt by the state to comply with

federal requirements under the Adam Walsh Child Protection and Safety Act of 2006.

Source: Laws 1995, LB 646, § 3; Laws 1997, LB 108, § 1; Laws 2001, LB 659, § 14; Laws 2002, LB 876, § 65; Laws 2003, LB 760, § 10; Laws 2008, LB961, § 2; Laws 2009, First Spec. Sess., LB3, § 16; Laws 2011, LB463, § 3; Laws 2012, LB969, § 5.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

29-3922 Terms, defined.

For purposes of the County Revenue Assistance Act:

(1) Chief counsel means an attorney appointed to be the primary administrative officer of the commission pursuant to section 29-3928;

(2) Commission means the Commission on Public Advocacy;

(3) Commission staff means attorneys, investigators, and support staff who are performing work for the capital litigation division, appellate division, DNA testing division, and major case resource center;

(4) Contracting attorney means an attorney contracting to act as a public defender pursuant to sections 23-3404 to 23-3408;

(5) Court-appointed attorney means an attorney other than a contracting attorney or a public defender appointed by the court to represent an indigent person;

(6) Indigent defense services means legal services provided to indigent persons by an indigent defense system in capital cases, felony cases, misdemeanor cases, juvenile cases, mental health commitment cases, child support enforcement cases, and paternity establishment cases;

(7) Indigent defense system means a system of providing services, including any services necessary for litigating a case, by a contracting attorney, court-appointed attorney, or public defender;

(8) Indigent person means a person who is indigent and unable to obtain legal counsel as determined pursuant to subdivision (3) of section 29-3901; and

(9) Public defender means an attorney appointed or elected pursuant to sections 23-3401 to 23-3403.

Source: Laws 1995, LB 646, § 4; Laws 2001, LB 335, § 3; Laws 2001, LB 659, § 15; Laws 2009, LB154, § 2.

29-3927 Commission; duties.

(1) With respect to its duties under section 29-3923, the commission shall:

(a) Adopt and promulgate rules and regulations for its organization and internal management and rules and regulations governing the exercise of its powers and the fulfillment of its purpose;

(b) Appoint and abolish such advisory committees as may be necessary for the performance of its functions and delegate appropriate powers and duties to them;

(c) Accept and administer loans, grants, and donations from the United States and its agencies, the State of Nebraska and its agencies, and other sources, public and private, for carrying out the functions of the commission;

(d) Enter into contracts, leases, and agreements necessary, convenient, or desirable for carrying out its purposes and the powers granted under this section with agencies of state or local government, corporations, or persons;

(e) Acquire, hold, and dispose of personal property in the exercise of its powers;

(f) Provide legal services to indigent persons through the divisions in section 29-3930; and

(g) Adopt guidelines and standards for county indigent defense systems, including, but not limited to, standards relating to the following: The use and expenditure of funds appropriated by the Legislature to reimburse counties which qualify for reimbursement; attorney eligibility and qualifications for court appointments; compensation rates for salaried public defenders, contracting attorneys, and court-appointed attorneys and overall funding of the indigent defense system; maximum caseloads for all types of systems; systems administration, including rules for appointing counsel, awarding defense contracts, and reimbursing defense expenses; conflicts of interest; continuing legal education and training; and availability of supportive services and expert witnesses.

(2) The standards adopted by the commission under subdivision (1)(g) of this section are intended to be used as a guide for the proper methods of establishing and operating indigent defense systems. The standards are not intended to be used as criteria for the judicial evaluation of alleged misconduct of defense counsel to determine the validity of a conviction. They may or may not be relevant in such judicial evaluation, depending upon all the circumstances.

(3) With respect to its duties related to the provision of civil legal services to eligible low-income persons, the commission shall have such powers and duties as described in sections 25-3001 to 25-3004.

(4) The commission may adopt and promulgate rules and regulations governing the Legal Education for Public Service and Rural Practice Loan Repayment Assistance Act which are recommended by the Legal Education for Public Service and Rural Practice Loan Repayment Assistance Board pursuant to the act. The commission shall have the powers and duties provided in the act.

Source: Laws 1995, LB 646, § 9; Laws 1997, LB 729, § 8; Laws 2001, LB 335, § 4; Laws 2002, LB 876, § 66; Laws 2008, LB1014, § 28; Laws 2009, LB154, § 3; Laws 2014, LB907, § 10.
Operative date July 18, 2014.

Cross References

Legal Education for Public Service and Rural Practice Loan Repayment Assistance Act, see section 7-201.

29-3932 Repealed. Laws 2009, LB 154, § 27.

ARTICLE 40

SEX OFFENDERS

(a) SEX OFFENDER REGISTRATION ACT

Section

29-4001. Act, how cited.

29-4001.01. Terms, defined.

Section	
29-4003.	Applicability of act.
29-4004.	Registration; location; sheriff; duties; Nebraska State Patrol; duties; name-change order; treatment.
29-4005.	Registration duration; reduction in time; request; proof.
29-4006.	Registration format; contents; consent form; verification; name change; duties; information provided to sheriff; violation; warrant.
29-4007.	Sentencing court; duties; Department of Correctional Services or local facility; Department of Motor Vehicles; notification requirements; Attorney General; approve form.
29-4008.	False or misleading information prohibited; updates required.
29-4009.	Information not confidential; limit on disclosure.
29-4010.	Repealed. Laws 2009, LB 285, § 17.
29-4011.	Violations; penalties; investigation and enforcement.
29-4013.	Rules and regulations; release of information; duties; access to public notification information; access to documents.
	(b) SEXUAL PREDATOR RESIDENCY RESTRICTION ACT
29-4016.	Terms, defined.

(a) SEX OFFENDER REGISTRATION ACT

29-4001 Act, how cited.

Sections 29-4001 to 29-4014 shall be known and may be cited as the Sex Offender Registration Act.

Source: Laws 1996, LB 645, § 1; Laws 2006, LB 1199, § 17; Laws 2009, LB97, § 23.

29-4001.01 Terms, defined.

For purposes of the Sex Offender Registration Act:

(1) Aggravated offense means any registrable offense under section 29-4003 which involves the penetration of, direct genital touching of, oral to anal contact with, or oral to genital contact with (a) a victim age thirteen years or older without the consent of the victim, (b) a victim under the age of thirteen years, or (c) a victim who the sex offender knew or should have known was mentally or physically incapable of resisting or appraising the nature of his or her conduct;

(2) Blog means a web site contained on the Internet that is created, maintained, and updated in a log, journal, diary, or newsletter format by an individual, group of individuals, or corporate entity for the purpose of conveying information or opinions to Internet users who visit their web site;

(3) Chat room means a web site or server space on the Internet or communication network primarily designated for the virtually instantaneous exchange of text or voice transmissions or computer file attachments amongst two or more computers or electronic communication device users;

(4) Chat room identifiers means the username, password, symbol, image, or series of symbols, letters, numbers, or text characters used by a chat room participant to identify himself or herself in a chat room or to identify the source of any content transmitted from a computer or electronic communication device to the web site or server space upon which the chat room is dedicated;

(5) DNA sample has the same meaning as in section 29-4103;

(6) Domain name means a series of text-based symbols, letters, numbers, or text characters used to provide recognizable names to numerically addressed

Internet resources that are registered by the Internet Corporation for Assigned Names and Numbers;

(7) Email means the exchange of electronic text messages and computer file attachments between computers or other electronic communication devices over a communications network, such as a local area computer network or the Internet;

(8) Email address means the string of letters, numbers, and symbols used to specify the source or destination of an email message that is transmitted over a communication network;

(9) Habitual living location means any place that an offender may stay for a period of more than three days even though the sex offender maintains a separate permanent address or temporary domicile;

(10) Instant messaging means a direct, dedicated, and private communication service, accessed with a computer or electronic communication device, that enables a user of the service to send and receive virtually instantaneous text transmissions or computer file attachments to other selected users of the service through the Internet or a computer communications network;

(11) Instant messaging identifiers means the username, password, symbol, image, or series of symbols, letters, numbers, images, or text characters used by an instant messaging user to identify their presence to other instant messaging users or the source of any content sent from their computer or electronic communication device to another instant messaging user;

(12) Minor means a person under eighteen years of age;

(13) Social networking web site means a web page or collection of web sites contained on the Internet (a) that enables users or subscribers to create, display, and maintain a profile or Internet domain containing biographical data, personal information, photos, or other types of media, (b) that can be searched, viewed, or accessed by other users or visitors to the web site, with or without the creator's permission, consent, invitation, or authorization, and (c) that may permit some form of communication, such as direct comment on the profile page, instant messaging, or email, between the creator of the profile and users who have viewed or accessed the creator's profile;

(14) State DNA Data Base means the data base established pursuant to section 29-4104; and

(15) Temporary domicile means any place at which the person actually lives or stays for a period of at least three working days.

Source: Laws 2009, LB97, § 24; Laws 2009, LB285, § 3.

29-4003 Applicability of act.

(1)(a) The Sex Offender Registration Act applies to any person who on or after January 1, 1997:

(i) Has ever pled guilty to, pled nolo contendere to, or been found guilty of any of the following:

(A) Kidnapping of a minor pursuant to section 28-313, except when the person is the parent of the minor and was not convicted of any other offense in this section;

(B) False imprisonment of a minor pursuant to section 28-314 or 28-315;

(C) Sexual assault pursuant to section 28-319 or 28-320;

(D) Sexual assault of a child in the second or third degree pursuant to section 28-320.01;

(E) Sexual assault of a child in the first degree pursuant to section 28-319.01;

(F) Sexual abuse of a vulnerable adult pursuant to subdivision (1)(c) of section 28-386;

(G) Incest of a minor pursuant to section 28-703;

(H) Pandering of a minor pursuant to section 28-802;

(I) Visual depiction of sexually explicit conduct of a child pursuant to section 28-1463.03 or 28-1463.05;

(J) Knowingly possessing any visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers pursuant to section 28-813.01;

(K) Criminal child enticement pursuant to section 28-311;

(L) Child enticement by means of an electronic communication device pursuant to section 28-320.02;

(M) Debauching a minor pursuant to section 28-805; or

(N) Attempt, solicitation, aiding or abetting, being an accessory, or conspiracy to commit an offense listed in subdivisions (1)(a)(i)(A) through (1)(a)(i)(M) of this section;

(ii) Has ever pled guilty to, pled nolo contendere to, or been found guilty of any offense that is substantially equivalent to a registrable offense under subdivision (1)(a)(i) of this section by any village, town, city, state, territory, commonwealth, or other jurisdiction of the United States, by the United States Government, by court-martial or other military tribunal, or by a foreign jurisdiction, notwithstanding a procedure comparable in effect to that described under section 29-2264 or any other procedure to nullify a conviction other than by pardon;

(iii) Is incarcerated in a jail, a penal or correctional facility, or any other public or private institution or is under probation or parole as a result of pleading guilty to or being found guilty of a registrable offense under subdivision (1)(a)(i) or (ii) of this section prior to January 1, 1997; or

(iv) Enters the state and is required to register as a sex offender under the laws of another village, town, city, state, territory, commonwealth, or other jurisdiction of the United States.

(b) In addition to the registrable offenses under subdivision (1)(a) of this section, the Sex Offender Registration Act applies to any person who on or after January 1, 2010:

(i)(A) Except as provided in subdivision (1)(b)(i)(B) of this section, has ever pled guilty to, pled nolo contendere to, or been found guilty of any of the following:

(I) Murder in the first degree pursuant to section 28-303;

(II) Murder in the second degree pursuant to section 28-304;

(III) Manslaughter pursuant to section 28-305;

(IV) Assault in the first degree pursuant to section 28-308;

(V) Assault in the second degree pursuant to section 28-309;

(VI) Assault in the third degree pursuant to section 28-310;

(VII) Stalking pursuant to section 28-311.03;

(VIII) Violation of section 28-311.08 requiring registration under the act pursuant to subsection (5) of section 28-311.08;

(IX) Kidnapping pursuant to section 28-313;

(X) False imprisonment pursuant to section 28-314 or 28-315;

(XI) Sexual abuse of an inmate or parolee in the first degree pursuant to section 28-322.02;

(XII) Sexual abuse of an inmate or parolee in the second degree pursuant to section 28-322.03;

(XIII) Sexual abuse of a protected individual pursuant to section 28-322.04;

(XIV) Incest pursuant to section 28-703;

(XV) Child abuse pursuant to subdivision (1)(d) or (e) of section 28-707;

(XVI) Enticement by electronic communication device pursuant to section 28-833; or

(XVII) Attempt, solicitation, aiding or abetting, being an accessory, or conspiracy to commit an offense listed in subdivisions (1)(b)(i)(A)(I) through (1)(b)(i)(A)(XVI) of this section.

(B) In order for the Sex Offender Registration Act to apply to the offenses listed in subdivisions (1)(b)(i)(A)(I), (II), (III), (IV), (V), (VI), (VII), (IX), and (X) of this section, a court shall have found that evidence of sexual penetration or sexual contact, as those terms are defined in section 28-318, was present in the record, which shall include consideration of the factual basis for a plea-based conviction and information contained in the presentence report;

(ii) Has ever pled guilty to, pled nolo contendere to, or been found guilty of any offense that is substantially equivalent to a registrable offense under subdivision (1)(b)(i) of this section by any village, town, city, state, territory, commonwealth, or other jurisdiction of the United States, by the United States Government, by court-martial or other military tribunal, or by a foreign jurisdiction, notwithstanding a procedure comparable in effect to that described under section 29-2264 or any other procedure to nullify a conviction other than by pardon; or

(iii) Enters the state and is required to register as a sex offender under the laws of another village, town, city, state, territory, commonwealth, or other jurisdiction of the United States.

(2) A person appealing a conviction of a registrable offense under this section shall be required to comply with the act during the appeals process.

Source: Laws 1996, LB 645, § 3; Laws 2002, LB 564, § 3; Laws 2004, LB 943, § 9; Laws 2005, LB 713, § 4; Laws 2006, LB 1199, § 18; Laws 2009, LB97, § 25; Laws 2009, LB285, § 4; Laws 2011, LB61, § 2; Laws 2014, LB998, § 6.
Effective date April 10, 2014.

29-4004 Registration; location; sheriff; duties; Nebraska State Patrol; duties; name-change order; treatment.

(1) Any person subject to the Sex Offender Registration Act shall register within three working days after becoming subject to the act at a location

designated by the Nebraska State Patrol for purposes of accepting such registration.

(2) Any person required to register under the act shall inform the sheriff of the county in which he or she resides, in person, and complete a form as prescribed by the Nebraska State Patrol for such purpose, if he or she has a new address, temporary domicile, or habitual living location, within three working days before the change. The sheriff shall submit such information to the sex offender registration and community notification division of the Nebraska State Patrol on the day it is received and in a manner prescribed by the Nebraska State Patrol for such purpose.

(3) Any person required to register under the act shall inform the sheriff of the county in which he or she resides, in person, and complete a form as prescribed by the Nebraska State Patrol for such purpose, if he or she has a new address, temporary domicile, or habitual living location in a different county in this state, within three working days before the address change. The sheriff shall submit such information to the sex offender registration and community notification division of the Nebraska State Patrol on the day it is received and in a manner as prescribed by the Nebraska State Patrol for such purpose. If the change in address, temporary domicile, or habitual living location is to a location within the State of Nebraska, the division shall notify the sheriff of each affected county of the new address, temporary domicile, or habitual living location, within three working days. The person shall report to the county sheriff of his or her new county of residence and register with such county sheriff within three working days after the address change.

(4) Any person required to register under the act shall inform the sheriff of the county in which he or she resides, in person, and complete a form as prescribed by the Nebraska State Patrol for such purpose, if he or she moves to a new out-of-state address, within three working days before the address change. The sheriff shall submit such information to the sex offender registration and community notification division of the Nebraska State Patrol on the day it is received and in a manner as prescribed by the Nebraska State Patrol for such purpose. If the change in address, temporary domicile, or habitual living location is to a location outside of the State of Nebraska, the division shall notify the sheriff of each affected county in Nebraska and the other state's, country's, or territory's central repository for sex offender registration of the new out-of-state address, temporary domicile, or habitual living location, within three working days.

(5) Any person required to register under the act who is employed, carries on a vocation, or attends school shall inform, in person, the sheriff of the county in which he or she is employed, carries on a vocation, or attends school and complete a form as prescribed by the Nebraska State Patrol for such purpose, within three working days after becoming employed, carrying on a vocation, or attending school. The person shall also notify the sheriff, in person, of any changes in employment, vocation, or school of attendance, and complete a form as prescribed by the Nebraska State Patrol for such purpose, within three working days after the change. The sheriff shall submit such information to the sex offender registration and community notification division of the Nebraska State Patrol on the day it is received and in a manner as prescribed by the Nebraska State Patrol for such purpose.

(6) Any person required to register under the act who is residing, has a temporary domicile, or is habitually living in another state, and is employed, carries on a vocation, or attends school in this state, shall report and register, in person, with the sheriff of the county in which he or she is employed, carries on a vocation, or attends school in this state and complete a form as prescribed by the Nebraska State Patrol for such purpose, within three working days after becoming employed, carrying on a vocation, or attending school. The person shall also notify the sheriff of any changes in employment, vocation, or school of attendance, in person, and complete a form as prescribed by the Nebraska State Patrol for such purpose, within three working days after the change. The sheriff shall submit such information to the sex offender registration and community notification division of the Nebraska State Patrol on the day it is received and in a manner as prescribed by the Nebraska State Patrol for such purpose. For purposes of this subsection:

(a) Attends school means enrollment in any educational institution in this state on a full-time or part-time basis; and

(b) Is employed or carries on a vocation means any full-time or part-time employment, with or without compensation, which lasts for a duration of more than fourteen days or for an aggregate period exceeding thirty days in a calendar year.

(7) Any person incarcerated for a registrable offense under section 29-4003 in a jail, penal or correctional facility, or other public or private institution shall be registered by the jail, penal or correctional facility, or public or private institution prior to his or her discharge, parole, furlough, work release, or release. The person shall be informed and information shall be obtained as required in section 29-4006.

(8) Any person required to register or who is registered under the act, but is incarcerated for more than three working days, shall inform the sheriff of the county in which he or she is incarcerated, in writing, within three working days after incarceration, of his or her incarceration and his or her expected release date, if any such date is available. The sheriff shall forward the information regarding incarceration to the sex offender registration and community notification division of the Nebraska State Patrol immediately on the day on which it was received and in a manner prescribed by the Nebraska State Patrol for such purpose.

(9) Any person required to register or who is registered under the act who no longer has a residence, temporary domicile, or habitual living location shall report such change in person to the sheriff of the county in which he or she is located, within three working days after such change in residence, temporary domicile, or habitual living location. Such person shall update his or her registration, in person, to the sheriff of the county in which he or she is located, on a form approved by the sex offender registration and community notification division of the Nebraska State Patrol at least once every thirty calendar days during the time he or she remains without residence, temporary domicile, or habitual living location.

(10) Each registering entity shall forward all written information, photographs, and fingerprints obtained pursuant to the act to the sex offender registration and community notification division of the Nebraska State Patrol on the day it is received and in a manner prescribed by the Nebraska State Patrol for such purpose. The information shall be forwarded on forms furnished

by the division. The division shall maintain a central registry of sex offenders required to register under the act. Any collected DNA samples shall be forwarded to the State DNA Data Base.

(11) The sex offender registration and community notification division of the Nebraska State Patrol shall determine whether a name-change order received from the clerk of a district court pursuant to section 25-21,271 is for a person in the central registry of sex offenders and, if so, shall include the changed name with the former name in the registry, file or cross-reference the information under both names, and notify the sheriff of the county in which such person then resides.

Source: Laws 1996, LB 645, § 4; Laws 2002, LB 564, § 4; Laws 2005, LB 713, § 5; Laws 2006, LB 1199, § 19; Laws 2009, LB285, § 5; Laws 2010, LB147, § 4.

29-4005 Registration duration; reduction in time; request; proof.

(1)(a) Except as provided in subsection (2) of this section, any person to whom the Sex Offender Registration Act applies shall be required to register during any period of supervised release, probation, or parole and shall continue to comply with the act for the period of time after the date of discharge from probation, parole, or supervised release or release from incarceration, whichever date is most recent, as set forth in subdivision (b) of this subsection. A sex offender shall keep the registration current for the full registration period but shall not be subject to verification procedures during any time the sex offender is in custody or under an inpatient civil commitment, unless the sex offender is allowed a reduction in his or her registration period under subsection (2) of this section.

(b) The full registration period is as follows:

(i) Fifteen years, if the sex offender was convicted of a registrable offense under section 29-4003 not punishable by imprisonment for more than one year;

(ii) Twenty-five years, if the sex offender was convicted of a registrable offense under section 29-4003 punishable by imprisonment for more than one year; or

(iii) Life, if the sex offender was convicted of a registrable offense under section 29-4003 punishable by imprisonment for more than one year and was convicted of an aggravated offense or had a prior sex offense conviction or has been determined to be a lifetime registrant in another state, territory, commonwealth, or other jurisdiction of the United States, by the United States Government, by court-martial or other military tribunal, or by a foreign jurisdiction.

(2) A sex offender who is required to register for fifteen years may request a reduction in the registration period to ten years upon completion of ten years of the registration period after the date of discharge from probation, parole, supervised release, or incarceration, whichever date is most recent. The sex offender shall make the request to the Nebraska State Patrol. The sex offender shall provide proof that, during such registration period, he or she:

(a) Was not convicted of any offense for which imprisonment for more than one year could have been imposed;

(b) Was not convicted of any sex offense;

(c) Successfully completed any period of probation, parole, supervised release, or incarceration; and

(d) Successfully completed an appropriate sex offender treatment program.

(3) Any time period when any person who is required to register under the act knowingly or willfully fails to comply with such registration requirement shall not be counted as completed registration time and shall be used to recalculate the registration period. The recalculation shall be completed by the sex offender registration and community notification division of the Nebraska State Patrol.

Source: Laws 1996, LB 645, § 5; Laws 2002, LB 564, § 5; Laws 2006, LB 1199, § 20; Laws 2009, LB285, § 6.

29-4006 Registration format; contents; consent form; verification; name change; duties; information provided to sheriff; violation; warrant.

(1) Registration information required by the Sex Offender Registration Act shall be entered into a data base in a format approved by the sex offender registration and community notification division of the Nebraska State Patrol and shall include, but not be limited to, the following information:

(a) The legal name and all aliases which the person has used or under which the person has been known;

(b) The person's date of birth and any alias dates of birth;

(c) The person's social security number;

(d) The address of each residence at which the person resides, has a temporary domicile, has a habitual living location, or will reside;

(e) The name and address of any place where the person is an employee or will be an employee, including work locations without a single worksite;

(f) The name and address of any place where the person is a student or will be a student;

(g) The license plate number and a description of any vehicle owned or operated by the person and its regular storage location;

(h) The person's motor vehicle operator's license number, including the person's valid motor vehicle operator's license or state identification card submitted for photocopying;

(i) The person's original travel and immigration documents submitted for photocopying;

(j) The person's original professional licenses or certificates submitted for photocopying;

(k) The person's remote communication device identifiers and addresses, including, but not limited to, all global unique identifiers, serial numbers, Internet protocol addresses, telephone numbers, and account numbers specific to the device;

(l) The person's telephone numbers;

(m) A physical description of the person;

(n) A digital link to the text of the provision of law defining the criminal offense or offenses for which the person is registered under the act;

(o) Access to the criminal history of the person, including the date of all arrests and convictions, the status of parole, probation, or supervised release, registration status, and the existence of any outstanding arrest warrants for the person;

- (p) A current photograph of the person;
- (q) A set of fingerprints and palm prints of the person;
- (r) A DNA sample of the person; and

(s) All email addresses, instant messaging identifiers, chat room identifiers, global unique identifiers, and other Internet communication identifiers that the person uses or plans to use, all domain names registered by the registrant, and all blogs and Internet sites maintained by the person or to which the person has uploaded any content or posted any messages or information.

(2) When the person provides any information under subdivision (1)(k) or (s) of this section, the registrant shall sign a consent form, provided by the law enforcement agency receiving this information, authorizing the:

(a) Search of all the computers or electronic communication devices possessed by the person; and

(b) Installation of hardware or software to monitor the person's Internet usage on all the computers or electronic communication devices possessed by the person.

(3) Except as provided in section 29-4005, the registration information shall be verified as provided in subsections (4), (5), and (6) of this section for the duration of the registration period. The person shall appear in person for such verification at the office of the sheriff of the county in which he or she resides, has a temporary domicile, or is habitually living for purposes of accepting verifications and shall have his or her photograph and fingerprints taken upon request of verification personnel.

(4) A person required to register under the act for fifteen years shall report every twelve months in the month of his or her birth, in person, to the office of the sheriff of the county in which he or she resides for purposes of accepting verifications, regardless of the original registration month. The sheriff shall submit such verification information to the sex offender registration and community notification division of the Nebraska State Patrol on the day it is received and in a manner prescribed by the Nebraska State Patrol for such purpose.

(5) A person required to register under the act for twenty-five years shall report, in person, every six months to the office of the sheriff of the county in which he or she resides for purposes of accepting verification. The person shall report, in person, in the month of his or her birth and in the sixth month following the month of his or her birth, regardless of the original registration month. The sheriff shall submit such verification information to the sex offender registration and community notification division of the Nebraska State Patrol on the day it is received and in a manner prescribed by the Nebraska State Patrol for such purpose.

(6) A person required to register under the act for life shall report, in person, every three months to the office of the sheriff of the county in which he or she resides for purposes of accepting verification. The person shall report, in person, in the month of his or her birth and every three months following the month of his or her birth, regardless of the original registration month. The sheriff shall submit such verification information to the sex offender registration and community notification division of the Nebraska State Patrol on the day it is received and in a manner prescribed by the Nebraska State Patrol for such purpose.

(7) The verification form shall be signed by the person required to register under the act and state whether the address last reported to the division is still correct.

(8) Upon receipt of registration and confirmation of the registry requirement, the sex offender registration and community notification division of the Nebraska State Patrol shall notify the person by certified mail of his or her registry duration and verification schedule.

(9) If the person required to register under the act fails to report in person as required in subsection (4), (5), or (6) of this section, the person shall be in violation of this section.

(10) If the person required to register under the act falsifies the registration or verification information or form or fails to provide or timely update law enforcement of any of the information required to be provided by the Sex Offender Registration Act, the person shall be in violation of this section.

(11) The verification requirements of a person required to register under the act shall not apply during periods of such person's incarceration or inpatient civil commitment. Verification shall be resumed as soon as such person is placed on any type of supervised release, parole, or probation or outpatient civil commitment or is released from incarceration or civil commitment. Prior to any type of release from incarceration or inpatient civil commitment, the person shall report a change of address, in writing, to the sheriff of the county in which he or she is incarcerated and the sheriff of the county in which he or she resides, has a temporary domicile, or has a habitual living location. The sheriff shall submit the change of address to the sex offender registration and community notification division of the Nebraska State Patrol on the day it is received and in a manner prescribed by the Nebraska State Patrol for such purpose.

(12) Any person required to register under the act shall, in person, inform the sheriff of any legal change in name within three working days after such change and provide a copy of the legal documentation supporting the change in name. The sheriff shall submit the information to the sex offender registration and community notification division of the Nebraska State Patrol, in writing, immediately after receipt of the information and in a manner prescribed by the Nebraska State Patrol for such purpose.

(13) Any person required to register under the Sex Offender Registration Act shall inform the sheriff with whom he or she is required to register of any changes in or additions to such person's list of email addresses, instant messaging identifiers, chat room identifiers, global unique identifiers, and other Internet communication identifiers that the registrant uses or plans to use, all domain names registered by the person, and all blogs and Internet web sites maintained by the person or to which the person has uploaded any content or posted any messages or information, in writing, by the next working day. The sheriff receiving this updated information shall submit the information to the sex offender registration and community notification division of the Nebraska State Patrol, in writing, by the next working day after receipt of the information.

(14) At any time that a person required to register under the act violates the registry requirements and cannot be located, the registry information shall

reflect that the person has absconded, a warrant shall be sought for the person's arrest, and the United States Marshals Service shall be notified.

Source: Laws 1996, LB 645, § 6; Laws 2002, LB 564, § 6; Laws 2006, LB 1199, § 21; Laws 2009, LB97, § 26; Laws 2009, LB285, § 7.

29-4007 Sentencing court; duties; Department of Correctional Services or local facility; Department of Motor Vehicles; notification requirements; Attorney General; approve form.

(1) When sentencing a person convicted of a registrable offense under section 29-4003, the court shall:

(a) Provide written notification of the duty to register under the Sex Offender Registration Act at the time of sentencing to any defendant who has pled guilty or has been found guilty of a registrable offense under section 29-4003. The written notification shall:

(i) Inform the defendant of whether or not he or she is subject to the act, the duration of time he or she will be subject to the act, and that he or she shall report to a location designated by the Nebraska State Patrol for purposes of accepting such registration within three working days after the date of the written notification to register;

(ii) Inform the defendant that if he or she moves to another address within the same county, he or she must report to the county sheriff of the county in which he or she is residing within three working days before his or her move;

(iii) Inform the defendant that if he or she no longer has a residence, temporary domicile, or habitual living location, he or she shall report such change in person to the sheriff of the county in which he or she is located within three working days after such change in residence, temporary domicile, or habitual living location;

(iv) Inform the defendant that if he or she moves to another county in the State of Nebraska, he or she must notify, in person, the county sheriff of the county in which he or she had been last residing, had a temporary domicile, or had a habitual living location and the county sheriff of the county in which he or she is residing, has a temporary domicile, or is habitually living of his or her current address. The notice must be given within three working days before his or her move;

(v) Inform the defendant that if he or she moves to another state, he or she must report, in person, the change of address to the county sheriff of the county in which he or she has been residing, has had a temporary domicile, or has had a habitual living location and must comply with the registration requirements of the state to which he or she is moving. The notice must be given within three working days before his or her move;

(vi) Inform the defendant that he or she shall (A) inform the sheriff of the county in which he or she resides, has a temporary domicile, or is habitually living, in person, of each educational institution at which he or she is employed, carries on a vocation, or attends school, within three working days after such employment or attendance, and (B) notify the sheriff of any change in such employment or attendance status of such person at such educational institution, within three working days;

(vii) Inform the defendant that he or she shall (A) inform the sheriff of the county in which the employment site is located, in person, of the name and

address of any place where he or she is or will be an employee, within three working days after such employment, and (B) inform the sheriff of the county in which the employment site is located, in person, of any change in his or her employment;

(viii) Inform the defendant that if he or she goes to another state to work or goes to another state as a student and still resides, has a temporary domicile, or has a habitual living location in this state, he or she must comply with the registration requirements of both states;

(ix) Inform the defendant that fingerprints, palm prints, a DNA sample if not previously collected, and a photograph will be obtained by any registering entity in order to comply with the registration requirements;

(x) Inform the defendant of registry and verification locations;

(xi) Inform the defendant of the reduction request requirements, if eligible, under section 29-4005;

(xii) Inform the defendant that he or she must provide a list to all sheriffs with whom he or she must register of all email addresses, instant messaging identifiers, chat room identifiers, global unique identifiers, and other Internet communication identifiers that the defendant uses or plans to use, all domain names registered by the defendant, and all blogs and Internet web sites maintained by the defendant or to which the defendant has uploaded any content or posted any messages or information;

(xiii) Inform the defendant that he or she is required to inform the sheriff with whom he or she is required to register of any changes in or additions to his or her list of email addresses, instant messaging identifiers, chat room identifiers, global unique identifiers, and other Internet communication identifiers that the defendant uses or plans to use, all domain names registered by the defendant, and all blogs and Internet web sites maintained by the defendant or to which the defendant has uploaded any content or posted any messages or information, in writing, by the next working day after such change or addition; and

(xiv) Inform the defendant that throughout the applicable registration period, if applicable, he or she is prohibited from accessing or using any Internet social networking web site or any instant messaging or chat room service that has the likelihood of allowing the defendant to have contact with any child who is under the age of eighteen years if the defendant has been convicted and is currently being sentenced for:

(A) Kidnapping of a minor pursuant to section 28-313;

(B) False imprisonment of a minor pursuant to section 28-314 or 28-315;

(C) Sexual assault in the first degree pursuant to subdivision (1)(c) of section 28-319 or sexual assault of a child in the first degree pursuant to section 28-319.01;

(D) Sexual assault of a child in the second or third degree pursuant to section 28-320.01;

(E) Incest of a minor pursuant to section 28-703;

(F) Visual depiction of sexually explicit conduct of a child pursuant to section 28-1463.03 or 28-1463.05;

(G) Knowingly possessing any visual depiction of sexually explicit conduct pursuant to section 28-813.01;

(H) Criminal child enticement pursuant to section 28-311;

(I) Child enticement by means of an electronic communication device pursuant to section 28-320.02;

(J) Enticement by electronic communication device pursuant to section 28-833; or

(K) Any attempt or conspiracy to commit an offense listed in subdivisions (1)(a)(xiv)(A) through (1)(a)(xiv)(J) of this section;

(b) Require the defendant to read and sign a form stating that the duty of the defendant to register under the Sex Offender Registration Act has been explained;

(c) Retain a copy of the written notification signed by the defendant; and

(d) Provide a copy of the signed, written notification, the judgment and sentence, the information or amended information, and the journal entry of the court to the county attorney, the defendant, the sex offender registration and community notification division of the Nebraska State Patrol, and the county sheriff of the county in which the defendant resides, has a temporary domicile, or has a habitual living location.

(2) When a person is convicted of a registrable offense under section 29-4003 and is not subject to immediate incarceration upon sentencing, prior to being released by the court, the sentencing court shall ensure that the defendant is registered by a Nebraska State Patrol office or other location designated by the patrol for purposes of accepting registrations.

(3)(a) The Department of Correctional Services or a city or county correctional or jail facility shall provide written notification of the duty to register pursuant to the Sex Offender Registration Act to any person committed to its custody for a registrable offense under section 29-4003 prior to the person's release from incarceration. The written notification shall:

(i) Inform the person of whether or not he or she is subject to the act, the duration of time he or she will be subject to the act, and that he or she shall report to a location designated by the Nebraska State Patrol for purposes of accepting such registration within three working days after the date of the written notification to register;

(ii) Inform the person that if he or she moves to another address within the same county, he or she must report all address changes, in person, to the county sheriff of the county in which he or she has been residing within three working days before his or her move;

(iii) Inform the defendant that if he or she no longer has a residence, temporary domicile, or habitual living location, he or she shall report such change in person to the sheriff of the county in which he or she is located within three working days after such change in residence, temporary domicile, or habitual living location;

(iv) Inform the person that if he or she moves to another county in the State of Nebraska, he or she must notify, in person, the county sheriff of the county in which he or she had been last residing, had a temporary domicile, or had a habitual living location and the county sheriff of the county in which he or she is residing, has a temporary domicile, or is habitually living of his or her current address. The notice must be given within three working days before his or her move;

(v) Inform the person that if he or she moves to another state, he or she must report, in person, the change of address to the county sheriff of the county in which he or she has been residing, has had a temporary domicile, or has been habitually living and must comply with the registration requirements of the state to which he or she is moving. The report must be given within three working days before his or her move;

(vi) Inform the person that he or she shall (A) inform the sheriff of the county in which he or she resides, has a temporary domicile, or is habitually living, in person, of each educational institution at which he or she is employed, carries on a vocation, or attends school, within three working days after such employment or attendance, and (B) notify the sheriff of any change in such employment or attendance status of such person at such educational institution, within three working days after such change;

(vii) Inform the person that he or she shall (A) inform the sheriff of the county in which the employment site is located, in person, of the name and address of any place where he or she is or will be an employee, within three working days after such employment, and (B) inform the sheriff of the county in which the employment site is located, in person, of any change in his or her employment;

(viii) Inform the person that if he or she goes to another state to work or goes to another state as a student and still resides, has a temporary domicile, or has a habitual living location in this state, he or she must comply with the registration requirements of both states;

(ix) Inform the defendant that fingerprints, palm prints, a DNA sample if not previously collected, and a photograph will be obtained by any registering entity in order to comply with the registration requirements;

(x) Inform the defendant of registry and verification locations;

(xi) Inform the defendant of the reduction request requirements, if eligible, under section 29-4005;

(xii) Inform the defendant that he or she must provide a list to all sheriffs with whom he or she must register of all email addresses, instant messaging identifiers, chat room identifiers, global unique identifiers, and other Internet communication identifiers that the defendant uses or plans to use, all domain names registered by the defendant, and all blogs and Internet web sites maintained by the defendant or to which the defendant has uploaded any content or posted any messages or information;

(xiii) Inform the defendant that he or she is required to inform the sheriff with whom he or she is required to register of any changes in or additions to his or her list of email addresses, instant messaging identifiers, chat room identifiers, global unique identifiers, and other Internet communication identifiers that the defendant uses or plans to use, all domain names registered by the defendant, and all blogs and Internet web sites maintained by the defendant or to which the defendant has uploaded any content or posted any messages or information, in writing, by the next working day after such change or addition; and

(xiv) Inform the defendant that throughout the applicable registration period, if applicable, he or she is prohibited from accessing or using any Internet social networking web site or any instant messaging or chat room service that has the likelihood of allowing the defendant to have contact with any child who is

under the age of eighteen years if the defendant has been convicted and is currently being sentenced for:

- (A) Kidnapping of a minor pursuant to section 28-313;
 - (B) False imprisonment of a minor pursuant to section 28-314 or 28-315;
 - (C) Sexual assault in the first degree pursuant to subdivision (1)(c) of section 28-319 or sexual assault of a child in the first degree pursuant to section 28-319.01;
 - (D) Sexual assault of a child in the second or third degree pursuant to section 28-320.01;
 - (E) Incest of a minor pursuant to section 28-703;
 - (F) Visual depiction of sexually explicit conduct of a child pursuant to section 28-1463.03 or 28-1463.05;
 - (G) Knowingly possessing any visual depiction of sexually explicit conduct pursuant to section 28-813.01;
 - (H) Criminal child enticement pursuant to section 28-311;
 - (I) Child enticement by means of an electronic communication device pursuant to section 28-320.02;
 - (J) Enticement by electronic communication device pursuant to section 28-833; or
 - (K) Any attempt or conspiracy to commit an offense listed in subdivisions (3)(a)(xiv)(A) through (3)(a)(xiv)(J) of this section.
- (b) The Department of Correctional Services or a city or county correctional or jail facility shall:
- (i) Require the person to read and sign the notification form stating that the duty to register under the Sex Offender Registration Act has been explained;
 - (ii) Retain a signed copy of the written notification to register; and
 - (iii) Provide a copy of the signed, written notification to register to the person and to the sex offender registration and community notification division of the Nebraska State Patrol.
- (4) If a person is convicted of a registrable offense under section 29-4003 and is immediately incarcerated, he or she shall be registered as required under the act prior to discharge, parole, or work release.
- (5) The Department of Motor Vehicles shall cause written notification of the duty to register to be provided on the applications for a motor vehicle operator's license and for a commercial driver's license.
- (6) All written notification as provided in this section shall be on a form approved by the Attorney General.

Source: Laws 1996, LB 645, § 7; Laws 1998, LB 204, § 1; Laws 2002, LB 564, § 7; Laws 2006, LB 1199, § 22; Laws 2009, LB97, § 27; Laws 2009, LB285, § 8.

29-4008 False or misleading information prohibited; updates required.

No person subject to the Sex Offender Registration Act shall knowingly and willfully furnish any false or misleading information in the registration or fail to

provide or timely update law enforcement of any of the information required to be provided by the act.

Source: Laws 1996, LB 645, § 8; Laws 2009, LB97, § 28.

29-4009 Information not confidential; limit on disclosure.

(1) Information obtained under the Sex Offender Registration Act shall not be confidential, except that the following information shall only be disclosed to law enforcement agencies, including federal or state probation or parole agencies, if appropriate:

- (a) A sex offender's social security number;
- (b) Any references to arrests of a sex offender that did not result in conviction;
- (c) A sex offender's travel or immigration document information;
- (d) A sex offender's remote communication device identifiers and addresses;
- (e) A sex offender's email addresses, instant messaging identifiers, chat room identifiers, global unique identifiers, and other Internet communication identifiers;
- (f) A sex offender's telephone numbers;
- (g) A sex offender's motor vehicle operator's license information or state identification card number; and
- (h) The name of any employer of a sex offender.

(2) The identity of any victim of a sex offense shall not be released.

(3) The release of information authorized by this section shall conform with the rules and regulations adopted and promulgated by the Nebraska State Patrol pursuant to section 29-4013.

Source: Laws 1996, LB 645, § 9; Laws 1998, LB 204, § 2; Laws 2002, LB 564, § 8; Laws 2005, LB 713, § 6; Laws 2006, LB 1199, § 23; Laws 2009, LB285, § 9.

29-4010 Repealed. Laws 2009, LB 285, § 17.

29-4011 Violations; penalties; investigation and enforcement.

(1) Any person required to register under the Sex Offender Registration Act who violates the act is guilty of a Class IV felony.

(2) Any person required to register under the act who violates the act and who has previously been convicted of a violation of the act is guilty of a Class III felony and shall be sentenced to a mandatory minimum term of at least one year in prison unless the violation which caused the person to be placed on the registry was a misdemeanor, in which case the violation of the act shall be a Class IV felony.

(3) Any law enforcement agency with jurisdiction in the area in which a person required to register under the act resides, has a temporary domicile, maintains a habitual living location, is employed, carries on a vocation, or attends school shall investigate and enforce violations of the act.

Source: Laws 1996, LB 645, § 11; Laws 2006, LB 1199, § 24; Laws 2009, LB285, § 10.

29-4013 Rules and regulations; release of information; duties; access to public notification information; access to documents.

(1) The Nebraska State Patrol shall adopt and promulgate rules and regulations to carry out the registration provisions of the Sex Offender Registration Act.

(2)(a) The Nebraska State Patrol shall adopt and promulgate rules and regulations for the release of information pursuant to section 29-4009.

(b) The procedures for release of information established by the Nebraska State Patrol shall provide for law enforcement and public notification using electronic systems.

(3) Information concerning the address or whereabouts of a sex offender may be disclosed to his or her victim or victims.

(4) The following shall have access to public notification information: Any agency responsible for conducting employment-related background checks under section 3 of the National Child Protection Act of 1993, 42 U.S.C. 5119a; any social service entity responsible for protecting minors in the child welfare system; any volunteer organization in which contact with minors or other vulnerable individuals might occur; any public housing agency in each area in which a registered sex offender resides or is an employee or a student; any governmental agency conducting confidential background checks for employment, volunteer, licensure, or certification purposes; and any health care provider who serves children or vulnerable adults for the purpose of conducting confidential background checks for employment. If any means of notification proposes a fee for usage, then nonprofit organizations holding a certificate of exemption under section 501(c) of the Internal Revenue Code shall not be charged.

(5) Personnel for the sex offender registration and community notification division of the Nebraska State Patrol shall have access to all documents that are generated by any governmental agency that may have bearing on sex offender registration and community notification. This may include, but is not limited to, law enforcement reports, presentence reports, criminal histories, birth certificates, or death certificates. The division shall not be charged for access to documents under this subsection. Access to such documents will ensure that a fair determination of what is an appropriate registration period is completed using the totality of all information available.

(6) Nothing in subsection (2) of this section shall be construed to prevent law enforcement officers from providing community notification concerning any person who poses a danger under circumstances that are not provided for in the Sex Offender Registration Act.

Source: Laws 1996, LB 645, § 13; Laws 1998, LB 204, § 3; Laws 2002, LB 564, § 10; Laws 2005, LB 713, § 7; Laws 2006, LB 1199, § 25; Laws 2007, LB463, § 1130; Laws 2009, LB285, § 11.

(b) SEXUAL PREDATOR RESIDENCY RESTRICTION ACT**29-4016 Terms, defined.**

For purposes of the Sexual Predator Residency Restriction Act:

(1) Child care facility means a facility licensed pursuant to the Child Care Licensing Act;

(2) Political subdivision means a village, a city, a county, a school district, a public power district, or any other unit of local government;

(3) School means a public, private, denominational, or parochial school which meets the requirements for accreditation or approval prescribed in Chapter 79;

(4) Sex offender means an individual who has been convicted of a crime listed in section 29-4003 and who is required to register as a sex offender pursuant to the Sex Offender Registration Act; and

(5) Sexual predator means an individual who is required to register under the Sex Offender Registration Act, who has committed an aggravated offense as defined in section 29-4001.01, and who has victimized a person eighteen years of age or younger.

Source: Laws 2006, LB 1199, § 28; Laws 2009, LB285, § 12.

Cross References

Child Care Licensing Act, see section 71-1908.

Sex Offender Registration Act, see section 29-4001.

ARTICLE 41 DNA TESTING

(a) DNA IDENTIFICATION INFORMATION ACT

Section

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|-------------|--|
| 29-4101. | Act, how cited. |
| 29-4102. | Legislative findings. |
| 29-4103. | Terms, defined. |
| 29-4106. | Person subject to DNA sample; payment of costs. |
| 29-4107. | DNA samples; persons authorized to obtain samples; immunity. |
| 29-4115.01. | State DNA Sample and Data Base Fund; created; use; investment. |

(a) DNA IDENTIFICATION INFORMATION ACT

29-4101 Act, how cited.

Sections 29-4101 to 29-4115.01 shall be known and may be cited as the DNA Identification Information Act.

Source: Laws 1997, LB 278, § 1; Laws 2006, LB 385, § 2; Laws 2006, LB 1113, § 28; Laws 2010, LB190, § 2.

29-4102 Legislative findings.

The Legislature finds that DNA data banks are an important tool in criminal investigations, in the exclusion of individuals who are the subject of criminal investigations or prosecutions, in deterring and detecting recidivist acts, and in locating and identifying missing persons and human remains. Several states have enacted laws requiring persons convicted of certain crimes to provide genetic samples for DNA typing tests. Moreover, it is the policy of this state to assist federal, state, and local criminal justice and law enforcement agencies in the identification and detection of individuals in criminal investigations and in locating and identifying missing persons and human remains. It is in the best interest of this state to establish a State DNA Data Base for DNA records and a State DNA Sample Bank as a repository for DNA samples from individuals convicted of felony offenses and other specified offenses and from individuals

for purposes of assisting in locating and identifying missing persons and human remains.

Source: Laws 1997, LB 278, § 2; Laws 2006, LB 385, § 3; Laws 2006, LB 1113, § 29; Laws 2010, LB190, § 3.

29-4103 Terms, defined.

For purposes of the DNA Identification Information Act:

(1) Combined DNA Index System means the Federal Bureau of Investigation's national DNA identification index system that allows the storage and exchange of DNA records submitted by state and local forensic DNA laboratories;

(2) DNA means deoxyribonucleic acid which is located in the cells and provides an individual's personal genetic blueprint. DNA encodes genetic information that is the basis of human heredity and forensic identification;

(3) DNA record means the DNA identification information stored in the State DNA Data Base or the Combined DNA Index System which is derived from DNA typing test results;

(4) DNA sample means a blood, tissue, or bodily fluid sample provided by any person covered by the DNA Identification Information Act for analysis or storage, or both;

(5) DNA typing tests means the laboratory procedures which evaluate the characteristics of a DNA sample which are of value in establishing the identity of an individual;

(6) Law enforcement agency includes a police department, a town marshal, a county sheriff, and the Nebraska State Patrol;

(7) Other specified offense means misdemeanor stalking pursuant to sections 28-311.02 to 28-311.05 or false imprisonment in the second degree pursuant to section 28-315 or an attempt, conspiracy, or solicitation to commit stalking pursuant to sections 28-311.02 to 28-311.05, false imprisonment in the first degree pursuant to section 28-314, false imprisonment in the second degree pursuant to section 28-315, knowing and intentional sexual abuse of a vulnerable adult pursuant to subdivision (1)(c) of section 28-386, or a violation of the Sex Offender Registration Act pursuant to section 29-4011; and

(8) Released means any release, parole, furlough, work release, prerelease, or release in any other manner from a prison, a jail, or any other detention facility or institution.

Source: Laws 1997, LB 278, § 3; Laws 2006, LB 385, § 4; Laws 2006, LB 1199, § 30; Laws 2010, LB190, § 4.

Cross References

Sex Offender Registration Act, see section 29-4001.

29-4106 Person subject to DNA sample; payment of costs.

(1) A person who is convicted of a felony offense or other specified offense on or after July 15, 2010, who does not have a DNA sample available for use in the State DNA Sample Bank, shall, at his or her own expense, have a DNA sample collected:

(a) Upon intake to a prison, jail, or other detention facility or institution to which such person is sentenced. If the person is already confined at the time of

sentencing, the person shall have a DNA sample collected immediately after the sentencing. Such DNA sample shall be collected at the place of incarceration or confinement. Such person shall not be released unless and until a DNA sample has been collected; or

(b) As a condition for any sentence which will not involve an intake into a prison, jail, or other detention facility or institution. Such DNA samples shall be collected as follows:

(i) In any county containing a city of the metropolitan class, a person placed on probation or who received a penalty of a fine or time served shall have such DNA sample collected by a probation officer at a probation office. Such person shall not be released unless and until a DNA sample has been collected; and

(ii) In all other counties, a person placed on probation shall have such DNA sample collected by a probation officer at a probation office, and a person not placed on probation who receives a penalty of a fine or time served shall have such DNA sample collected by the county sheriff. Such person shall not be released unless and until a DNA sample has been collected.

(2) A person who has been convicted of a felony offense or other specified offense before July 15, 2010, who does not have a DNA sample available for use in the State DNA Sample Bank, and who is still serving a term of confinement or probation for such felony offense or other specified offense on July 15, 2010, shall not be released prior to the expiration of his or her maximum term of confinement or revocation or discharge from his or her probation unless and until a DNA sample has been collected.

(3) A person who is serving a term of probation and has a DNA sample collected pursuant to this section shall pay all costs associated with the collection of the DNA sample.

(4) If the court waives the cost of taking a DNA sample for any reason, a county jail or other county detention facility or institution collecting the DNA sample shall not be held financially responsible for the cost of the DNA sample kit.

Source: Laws 1997, LB 278, § 6; Laws 2006, LB 385, § 7; Laws 2006, LB 1113, § 32; Laws 2010, LB190, § 5; Laws 2012, LB66, § 1.

29-4107 DNA samples; persons authorized to obtain samples; immunity.

(1) Only individuals (a) who are physicians or registered nurses, (b) who are trained to withdraw human blood for scientific or medical purposes and are obtaining blood specimens while working under orders of or protocols and procedures approved by a physician, registered nurse, or other independent health care practitioner licensed to practice by the state if the scope of practice of that practitioner permits the practitioner to obtain blood specimens, or (c) who are both employed by a licensed institution or facility and have been trained to withdraw human blood for scientific or medical purposes shall withdraw blood for a DNA blood sample under the DNA Identification Information Act. Withdrawal of blood shall be performed in a medically approved manner using a collection kit provided or accepted by the Nebraska State Patrol. The collection of buccal cell samples shall be performed by any person approved or designated by the Nebraska State Patrol and using a collection kit provided or accepted by the Nebraska State Patrol.

(2) In addition to the DNA sample, one thumb print or fingerprint shall be taken from the person from whom the DNA sample is being collected for the exclusive purpose of verifying the identity of such person. The DNA sample and the thumb print or fingerprint shall be delivered to the Nebraska State Patrol within five working days after collecting the sample unless the DNA sample was collected from buccal cell samples, in which case the DNA sample shall be delivered within ten working days after collecting the sample.

(3) A person authorized to collect DNA samples under the act is not criminally liable for collecting a DNA sample and transmitting DNA records pursuant to the act if he or she performs these activities in good faith and is not civilly liable for such activities if he or she performed such activities in a reasonable manner according to generally accepted medical standards for blood samples or in accordance with the collection kit and procedures approved by the Nebraska State Patrol for tissue samples.

Source: Laws 1997, LB 278, § 7; Laws 2000, LB 151, § 1; Laws 2006, LB 385, § 8; Laws 2006, LB 1113, § 33; Laws 2012, LB66, § 2.

29-4115.01 State DNA Sample and Data Base Fund; created; use; investment.

The State DNA Sample and Data Base Fund is created. The fund shall be maintained by the Department of Justice and administered by the Attorney General. The fund shall consist of any funds transferred to the fund by the Legislature or made available by any department or agency of the United States Government if so directed by such department or agency. The fund shall be used to pay the expenses of the Department of Correctional Services and the Nebraska State Patrol as needed to collect DNA samples as provided in section 29-4106. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2010, LB190, § 6.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

ARTICLE 42

AUDIOVISUAL COURT APPEARANCES

Section

29-4201. Legislative intent.

29-4203. Repealed. Laws 2009, LB 90, § 3.

29-4204. Audiovisual communication system and facilities; requirements.

29-4206. County or district court; accept written waivers; when; form; use; effect.

29-4201 Legislative intent.

It is the intent and purpose of sections 29-4201 to 29-4207 to authorize the usage of audiovisual court appearances and certain written waivers and pleas in criminal proceedings consistent with the statutory and constitutional rights guaranteed by the Constitution of the United States and the Constitution of Nebraska.

Source: Laws 1999, LB 623, § 1; Laws 2014, LB828, § 1.
Effective date July 18, 2014.

29-4203 Repealed. Laws 2009, LB 90, § 3.

29-4204 Audiovisual communication system and facilities; requirements.

The audiovisual communication system and the facilities for an audiovisual court appearance shall:

(1) Operate so that the detainee or prisoner and the judge or magistrate can see each other simultaneously and converse with each other verbally and documents can be transmitted between the judge or magistrate and the detainee or prisoner;

(2) Operate so that the detainee or prisoner and his or her counsel, if any, are both physically in the same location during the audiovisual court appearance; or if the detainee or prisoner and his or her counsel are in different locations, operate so that the detainee or prisoner and counsel can communicate privately and confidentially and be allowed to confidentially transmit papers back and forth; and

(3) Be at locations conducive to judicial proceedings. Audiovisual court proceedings may be conducted in the courtroom, the judge’s or magistrate’s chambers, or any other location suitable for audiovisual communications. The locations shall be sufficiently lighted for use of the audiovisual equipment. The location provided for the judge or magistrate to preside shall be accessible to the public and shall be operated so that interested persons have an opportunity to observe the proceeding.

Source: Laws 1999, LB 623, § 4; Laws 2006, LB 1115, § 23; Laws 2009, LB90, § 1.

29-4206 County or district court; accept written waivers; when; form; use; effect.

(1) The county courts and district courts may accept a written waiver of preliminary hearing and a written waiver of arraignment and plea of not guilty from any defendant. The written waivers shall only be accepted if the defendant is represented by counsel. The written waivers shall contain the necessary consent and waiver of the right to a physical appearance and comply with subsection (2) of this section, shall be signed by the defendant and his or her counsel of record, and shall be filed with the clerk of the court.

(2) The written waivers authorized under subsection (1) of this section shall be in substantially the following form:

STATE OF NEBRASKA,		PLEA OF NOT GUILTY/ WAIVER OF APPEARANCE
	Plaintiff,	
-vs-		Case No.
.....	,	
(Print or Type)	Defendant	Arrest No.

I, the defendant in the above-entitled action, advise the court that I have retained to represent me in this matter. I understand that I have been charged with the following violation(s): Preliminary Hearing Date or Arraignment Date and in the event that the charges have been amended or new charges added I wish to waive a formal preliminary hearing or arraignment before the court and ask the court to enter plea(s) of not guilty on my behalf.

My attorney has advised me of my rights: The right to trial and to a jury trial, if appropriate; my right to confront accusers; to subpoena witnesses; to remain silent; to counsel; to have this matter transferred to juvenile court, if appropriate; and my right to be presumed innocent until proven guilty beyond reasonable doubt. My attorney has also advised me of the possible penalties for the violations with which I am charged, and the possibility that I will be required to make restitution for damages, if appropriate.

I understand that my attorney will notify me of all appearance dates in this matter.

Date: Defendant’s Signature:

APPEARANCE OF COUNSEL

I,, advise the court that I am the attorney of record for the above-named defendant. I have advised my client of all rights and the possible penalties for the charges filed against him or her. I understand that the court will expect me to represent the defendant in all hearings before the court in this matter.

(Please Print or Type)

..... Attorney’s Name
..... Attorney’s Address
.....
.....

(Telephone Number) (Attorney Number)

Date: Attorney’s Signature:

(3) A defendant’s use of written forms under this section shall not prevent his or her right to all other process, procedures, and defenses allowed by state and federal law.

Source: Laws 1999, LB 623, § 6; Laws 2006, LB 1115, § 25; Laws 2014, LB828, § 2.
Effective date July 18, 2014.

ARTICLE 43

SEXUAL ASSAULT AND DOMESTIC VIOLENCE

Section 29-4306. Collection of evidence; requirements.

29-4306 Collection of evidence; requirements.

Every health care professional as defined in section 44-5418 or any person in charge of any emergency room in this state:

(1) Shall utilize a standardized sexual assault evidence collection kit approved by the Attorney General; and

(2) Shall collect forensic evidence with the consent of the sexual assault or domestic violence victim without separate authorization by a law enforcement agency. If the sexual assault or domestic violence victim is eighteen years of age, the consent of or notification of the parent, parents, guardian, or any other person having custody of the sexual assault or domestic violence victim is not required.

Source: Laws 2005, LB 713, § 1; Laws 2011, LB479, § 1.

ARTICLE 46

NEBRASKA CLAIMS FOR WRONGFUL CONVICTION
AND IMPRISONMENT ACT

Section

- 29-4601. Act, how cited.
29-4602. Legislative findings.
29-4603. Recovery; claimant; proof required.
29-4604. Recovery of damages; determination of amount; restrictions.
29-4605. Extinguishment of lien for costs of defense services.
29-4606. Provision of services to claimant; how treated.
29-4607. Filing of claim.
29-4608. Claimant; rights; recovery under act; effect.

29-4601 Act, how cited.

Sections 29-4601 to 29-4608 shall be known and may be cited as the Nebraska Claims for Wrongful Conviction and Imprisonment Act.

Source: Laws 2009, LB260, § 1.

29-4602 Legislative findings.

The Legislature finds that innocent persons who have been wrongly convicted of crimes and subsequently imprisoned have been uniquely victimized, have distinct problems reentering society, and have difficulty achieving legal redress due to a variety of substantive and technical obstacles in the law. The Legislature also finds that such persons should have an available avenue of redress. In light of the particular and substantial horror of being imprisoned for a crime one did not commit, the Legislature intends by enactment of the Nebraska Claims for Wrongful Conviction and Imprisonment Act that persons who can demonstrate that they were wrongfully convicted shall have a claim against the state as provided in the act.

Source: Laws 2009, LB260, § 2.

29-4603 Recovery; claimant; proof required.

In order to recover under the Nebraska Claims for Wrongful Conviction and Imprisonment Act, the claimant shall prove each of the following by clear and convincing evidence:

(1) That he or she was convicted of one or more felony crimes and subsequently sentenced to a term of imprisonment for such felony crime or crimes and has served all or any part of the sentence;

(2) With respect to the crime or crimes under subdivision (1) of this section, that the Board of Pardons has pardoned the claimant, that a court has vacated the conviction of the claimant, or that the conviction was reversed and remanded for a new trial and no subsequent conviction was obtained;

(3) That he or she was innocent of the crime or crimes under subdivision (1) of this section; and

(4) That he or she did not commit or suborn perjury, fabricate evidence, or otherwise make a false statement to cause or bring about such conviction or the conviction of another, with respect to the crime or crimes under subdivision (1) of this section, except that a guilty plea, a confession, or an admission, coerced

by law enforcement and later found to be false, does not constitute bringing about his or her own conviction of such crime or crimes.

Source: Laws 2009, LB260, § 3.

29-4604 Recovery of damages; determination of amount; restrictions.

(1) A claimant under the Nebraska Claims for Wrongful Conviction and Imprisonment Act shall recover damages found to proximately result from the wrongful conviction and that have been proved based upon a preponderance of the evidence.

(2) The following costs shall not offset damages:

- (a) Costs of imprisonment; and
- (b) Value of any care or education provided to the claimant while he or she was imprisoned.

(3) No damages shall be payable to the claimant for any period of time during which he or she was concurrently imprisoned for any unrelated criminal offense.

(4) In no case shall damages awarded under the act exceed five hundred thousand dollars per claimant per occurrence.

(5) A claimant's cause of action under the act shall not be assignable and shall not survive the claimant's death.

Source: Laws 2009, LB260, § 4.

29-4605 Extinguishment of lien for costs of defense services.

If the court finds that any property of the claimant was subjected to a lien to recover costs of defense services rendered by the state to defend the claimant in connection with the criminal case that resulted in his or her wrongful conviction, the court shall extinguish the lien.

Source: Laws 2009, LB260, § 5.

29-4606 Provision of services to claimant; how treated.

Nothing contained in the Nebraska Claims for Wrongful Conviction and Imprisonment Act shall preclude the state from providing services to the claimant upon exoneration, and the reasonable value of services provided shall be treated as an advance against any award or judgment under the act.

Source: Laws 2009, LB260, § 6.

29-4607 Filing of claim.

A claim brought pursuant to the Nebraska Claims for Wrongful Conviction and Imprisonment Act shall be filed under the State Tort Claims Act.

Source: Laws 2009, LB260, § 7.

Cross References

State Tort Claims Act, see section 81-8,235.

29-4608 Claimant; rights; recovery under act; effect.

Nothing in the Nebraska Claims for Wrongful Conviction and Imprisonment Act shall limit the claimant from making any other claim available against any other party or based upon any other theory of recovery, except that a claimant

who recovers a claim under the act shall not have any other claim against the state based upon any other theory of recovery or law.

Source: Laws 2009, LB260, § 8.

CHAPTER 30
DECEDENTS' ESTATES; PROTECTION
OF PERSONS AND PROPERTY

Article.

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23. Intestate Succession and Wills.
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26. Protection of Persons under Disability and Their Property.
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27. Nonprobate Transfers.
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31. Uniform Principal and Income Act.
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32. Fiduciaries. 30-3209, 30-3214.
34. Health Care Power of Attorney. 30-3408.
38. Nebraska Uniform Trust Code.
 - Part 3—Representation. 30-3823.
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39. Nebraska Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.
 - Part 1—General Provisions. 30-3901 to 30-3906.
 - Part 2—Jurisdiction. 30-3907 to 30-3915.
 - Part 3—Transfer of Guardianship or Conservatorship. 30-3916, 30-3917.
 - Part 4—Registration and Recognition of Orders From Other States. 30-3918 to 30-3920.
 - Part 5—Miscellaneous Provisions. 30-3921 to 30-3923.
40. Nebraska Uniform Power of Attorney Act.
 - Part 1—General Provisions. 30-4001 to 30-4023.
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 - Part 4—Miscellaneous Provisions. 30-4043 to 30-4045.

Article.

41. Public Guardianship Act. 30-4101 to 30-4118.

ARTICLE 2

WILLS

Section

30-241. Devise to state; acceptance; Governor; when.

30-241 Devise to state; acceptance; Governor; when.

With the exception of lands, money, or other property devised or bequeathed to this state for educational purposes which are controlled by Article VII, section 9, of the Constitution of Nebraska, and except as provided in section 81-1108.33, the Governor, on behalf of the State of Nebraska, is authorized to accept devises of real estate or bequests of personal property, or both, made to the State of Nebraska, or any department or agency thereof, if in his or her judgment, under the terms on which such devise or bequest is made, it is for the best interests of the State of Nebraska to accept the same.

Source: Laws 1951, c. 89, § 1, p. 254; Laws 1996, LB 894, § 1; Laws 2011, LB264, § 2.

ARTICLE 16

APPEALS IN PROBATE MATTERS

Section

30-1601. Appeal; procedure; operate as supersedeas; when; appellant; pay costs; when.

30-1601 Appeal; procedure; operate as supersedeas; when; appellant; pay costs; when.

(1) In all matters arising under the Nebraska Probate Code and in all matters in county court arising under the Nebraska Uniform Trust Code, appeals may be taken to the Court of Appeals in the same manner as an appeal from district court to the Court of Appeals.

(2) An appeal may be taken by any party and may also be taken by any person against whom the final judgment or final order may be made or who may be affected thereby.

(3) When the appeal is by someone other than a personal representative, conservator, trustee, guardian, or guardian ad litem, the appealing party shall, within thirty days after the entry of the judgment or final order complained of, deposit with the clerk of the county court a supersedeas bond or undertaking in such sum as the court shall direct, with at least one good and sufficient surety approved by the court, conditioned that the appellant will satisfy any judgment and costs that may be adjudged against him or her, including costs under subsection (6) of this section, unless the court directs that no bond or undertaking need be deposited. If an appellant fails to comply with this subsection, the Court of Appeals on motion and notice may take such action, including dismissal of the appeal, as is just.

(4) The appeal shall be a supersedeas for the matter from which the appeal is specifically taken, but not for any other matter. In appeals pursuant to sections 30-2601 to 30-2661, upon motion of any party to the action, the county court may remove the supersedeas or require the appealing party to deposit with the

clerk of the county court a bond or other security approved by the court in an amount and conditioned in accordance with sections 30-2640 and 30-2641. Once the appeal is perfected, the court having jurisdiction over the appeal may, upon motion of any party to the action, reimpose or remove the supersedeas or require the appealing party to deposit with the clerk of the court a bond or other security approved by the court in an amount and conditioned in accordance with sections 30-2640 and 30-2641. Upon motion of any interested person or upon the court’s own motion, the county court may appoint a special guardian or conservator pending appeal despite any supersedeas order.

(5) The judgment of the Court of Appeals shall not vacate the judgment in the county court. The judgment of the Court of Appeals shall be certified without cost to the county court for further proceedings consistent with the determination of the Court of Appeals.

(6) If it appears to the Court of Appeals that an appeal was taken vexatiously or for delay, the court shall adjudge that the appellant shall pay the cost thereof, including an attorney’s fee, to the adverse party in an amount fixed by the Court of Appeals, and any bond required under subsection (3) of this section shall be liable for the costs.

Source: Laws 1881, c. 47, § 1, p. 227; R.S.1913, § 1526; C.S.1922, § 1471; C.S.1929, § 30-1601; R.S.1943, § 30-1601; Laws 1975, LB 481, § 14; Laws 1981, LB 42, § 17; Laws 1995, LB 538, § 7; Laws 1997, LB 466, § 1; Laws 1999, LB 43, § 18; Laws 2003, LB 130, § 119; Laws 2011, LB157, § 4.

Cross References

Nebraska Probate Code, see section 30-2201.
 Nebraska Uniform Trust Code, see section 30-3801.

ARTICLE 22
PROBATE JURISDICTION

PART 1
 SHORT TITLE, CONSTRUCTION, GENERAL PROVISIONS

Section
 30-2201. Short title.

PART 2
 DEFINITIONS

30-2209. General definitions.

PART 3
 SCOPE, JURISDICTION, AND COURTS

30-2210. Territorial application.
 30-2211. Subject matter jurisdiction.

PART 5
 DISPOSITION OF REMAINS AND FUNERAL ARRANGEMENTS

30-2223. Right of disposition of remains and funeral arrangements; powers and duties; petition filed with court; considerations; court order.

PART 1
 SHORT TITLE, CONSTRUCTION, GENERAL PROVISIONS

30-2201 Short title.

Sections 30-2201 to 30-2902, 30-3901 to 30-3923, and 30-4001 to 30-4045 and the Public Guardianship Act shall be known and may be cited as the Nebraska Probate Code.

Source: Laws 1974, LB 354, § 1, UPC § 1-101; Laws 1985, LB 292, § 1; Laws 1993, LB 250, § 33; Laws 1993, LB 782, § 2; Laws 1997, LB 466, § 2; Laws 1999, LB 100, § 1; Laws 2010, LB758, § 1; Laws 2011, LB157, § 28; Laws 2012, LB1113, § 46; Laws 2014, LB788, § 8; Laws 2014, LB920, § 19; Laws 2014, LB998, § 7.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB788, section 8, with LB920, section 19, and LB998, section 7, to reflect all amendments.

Note: Changes made by LB998 became effective April 10, 2014. Changes made by LB788 became effective July 18, 2014. Changes made by LB920 became operative January 1, 2015.

Cross References

Public Guardianship Act, see section 30-4101.

PART 2

DEFINITIONS

30-2209 General definitions.

Subject to additional definitions contained in the subsequent articles which are applicable to specific articles or parts, and unless the context otherwise requires, in the Nebraska Probate Code:

(1) Application means a written request to the registrar for an order of informal probate or appointment under part 3 of Article 24.

(2) Beneficiary, as it relates to trust beneficiaries, includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer, and as it relates to a charitable trust includes any person entitled to enforce the trust.

(3) Child includes any individual entitled to take as a child under the code by intestate succession from the parent whose relationship is involved and excludes any person who is only a stepchild, a foster child, or a grandchild or any more remote descendant.

(4) Claim, in respect to estates of decedents and protected persons, includes liabilities of the decedent or protected person whether arising in contract, in tort or otherwise, and liabilities of the estate which arise at or after the death of the decedent or after the appointment of a conservator, including funeral expenses and expenses of administration. The term does not include estate or inheritance taxes, demands or disputes regarding title of a decedent or protected person to specific assets alleged to be included in the estate.

(5) Court means the court or branch having jurisdiction in matters relating to the affairs of decedents. This court in this state is known as county court or, for purposes of guardianship of a juvenile over which a separate juvenile court already has jurisdiction, the county court or separate juvenile court.

(6) Conservator means a person who is appointed by a court to manage the estate of a protected person.

(7) Devise, when used as a noun, means a testamentary disposition of real or personal property and, when used as a verb, means to dispose of real or personal property by will.

(8) Devisee means any person designated in a will to receive a devise. In the case of a devise to an existing trust or trustee, or to a trustee or trust described by will, the trust or trustee is the devisee and the beneficiaries are not devisees.

(9) Disability means cause for a protective order as described by section 30-2630.

(10) Disinterested witness to a will means any individual who acts as a witness to a will and is not an interested witness to such will.

(11) Distributee means any person who has received property of a decedent from his or her personal representative other than as a creditor or purchaser. A testamentary trustee is a distributee only to the extent of distributed assets or increment thereto remaining in his or her hands. A beneficiary of a testamentary trust to whom the trustee has distributed property received from a personal representative is a distributee of the personal representative. For purposes of this provision, testamentary trustee includes a trustee to whom assets are transferred by will, to the extent of the devised assets.

(12) Estate includes the property of the decedent, trust, or other person whose affairs are subject to the Nebraska Probate Code as originally constituted and as it exists from time to time during administration.

(13) Exempt property means that property of a decedent's estate which is described in section 30-2323.

(14) Fiduciary includes personal representative, guardian, conservator, and trustee.

(15) Foreign personal representative means a personal representative of another jurisdiction.

(16) Formal proceedings mean those conducted before a judge with notice to interested persons.

(17) Guardian means a person who has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment, but excludes one who is merely a guardian ad litem.

(18) Heirs mean those persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the property of a decedent.

(19) Incapacitated person is as defined in section 30-2601.

(20) Informal proceedings mean those conducted without notice to interested persons by an officer of the court acting as a registrar for probate of a will or appointment of a personal representative.

(21) Except for purposes of article 26 of the Nebraska Probate Code, interested person includes heirs, devisees, children, spouses, creditors, beneficiaries, and any others having a property right in or claim against a trust estate or the estate of a decedent, ward, or protected person which may be affected by the proceeding. It also includes persons having priority for appointment as personal representative, and other fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding.

(22) Interested witness to a will means any individual who acts as a witness to a will at the date of its execution and who is or would be entitled to receive any property thereunder if the testator then died under the circumstances existing at the date of its execution, but does not include any individual, merely

because of such nomination, who acts as a witness to a will by which he or she is nominated as personal representative, conservator, guardian, or trustee.

(23) Issue of a person means all his or her lineal descendants of all generations, with the relationship of parent and child at each generation being determined by the definitions of child and parent contained in the Nebraska Probate Code.

(24) Lease includes an oil, gas, or other mineral lease.

(25) Letters include letters testamentary, letters of guardianship, letters of administration, and letters of conservatorship.

(26) Minor means an individual under nineteen years of age, but in case any person marries under the age of nineteen years his or her minority ends.

(27) Mortgage means any conveyance, agreement, or arrangement in which property is used as security.

(28) Nonresident decedent means a decedent who was domiciled in another jurisdiction at the time of his or her death.

(29) Notice means compliance with the requirements of notice pursuant to subdivisions (a)(1) and (a)(2) of section 30-2220.

(30) Organization includes a corporation, government, or governmental subdivision or agency, business trust, estate, trust, partnership, limited liability company, or association, two or more persons having a joint or common interest, or any other legal entity.

(31) Parent includes any person entitled to take, or who would be entitled to take if the child died without a will, as a parent under the Nebraska Probate Code, by intestate succession from the child whose relationship is in question and excludes any person who is only a stepparent, foster parent, or grandparent.

(32) Person means an individual, a corporation, an organization, a limited liability company, or other legal entity.

(33) Personal representative includes executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status.

(34) Petition means a written request to the court for an order after notice.

(35) Proceeding includes action at law and suit in equity, but does not include a determination of inheritance tax under Chapter 77, article 20, or estate tax apportionment as provided in sections 77-2108 to 77-2112.

(36) Property includes both real and personal property or any interest therein and means anything that may be the subject of ownership.

(37) Protected person is as defined in section 30-2601.

(38) Protective proceeding is as defined in section 30-2601.

(39) Registrar refers to the official of the court designated to perform the functions of registrar as provided in section 30-2216.

(40) Relative or relation of a person means all persons who are related to him or her by blood or legal adoption.

(41) Security includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease, collateral-trust certificate, transferable share, voting-trust certificate or,

in general, any interest or instrument commonly known as a security, or any certificate of interest or participation, any temporary or interim certificate, receipt, or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of the foregoing.

(42) Settlement, in reference to a decedent's estate, includes the full process of administration, distribution, and closing.

(43) Special administrator means a personal representative as described by sections 30-2457 to 30-2461.

(44) State includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

(45) Successor personal representative means a personal representative, other than a special administrator, who is appointed to succeed a previously appointed personal representative.

(46) Successors mean those persons, other than creditors, who are entitled to property of a decedent under his or her will or the Nebraska Probate Code.

(47) Supervised administration refers to the proceedings described in Article 24, part 5.

(48) Testacy proceeding means a proceeding to establish a will or determine intestacy.

(49) Testator means the maker of a will.

(50) Trust includes any express trust, private or charitable, with additions thereto, wherever and however created. It also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. Trust excludes other constructive trusts, and it excludes resulting trusts, conservatorships, personal representatives, trust accounts as defined in Article 27, custodial arrangements pursuant to the Nebraska Uniform Transfers to Minors Act, business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind, and any arrangement under which a person is nominee or escrowee for another.

(51) Trustee includes an original, additional, or successor trustee, whether or not appointed or confirmed by court.

(52) Ward is as defined in section 30-2601.

(53) Will means any instrument, including any codicil or other testamentary instrument complying with sections 30-2326 to 30-2338, which disposes of personal or real property, appoints a personal representative, conservator, guardian, or trustee, revokes or revises an earlier executed testamentary instrument, or encompasses any one or more of such objects or purposes.

Source: Laws 1974, LB 354, § 9, UPC § 1-201; Laws 1978, LB 650, § 1; Laws 1992, LB 907, § 26; Laws 1993, LB 121, § 193; Laws 1998, LB 1041, § 3; Laws 2011, LB157, § 29.

Cross References

Nebraska Uniform Transfers to Minors Act, see section 43-2701.

PART 3

SCOPE, JURISDICTION, AND COURTS

30-2210 Territorial application.

Except as otherwise provided in this code, this code applies to (1) the affairs and estates of decedents, missing persons, and persons to be protected, domiciled in this state, (2) the property of nonresidents located in this state or property coming into the control of a fiduciary who is subject to the laws of this state, (3) incapacitated persons and minors in this state, except as provided in the Nebraska Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, and (4) survivorship and related accounts in this state.

Source: Laws 1974, LB 354, § 10, UPC § 1-301; Laws 2003, LB 130, § 122; Laws 2011, LB157, § 30.

Cross References

Nebraska Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, see section 30-3901.

30-2211 Subject matter jurisdiction.

(a) To the full extent permitted by the Constitution of Nebraska, the court has jurisdiction over all subject matter relating to (1) estates of decedents, including construction of wills and determination of heirs and successors of decedents, and estates of protected persons; and (2) protection of minors and incapacitated persons, except as provided in the Nebraska Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

(b) The court has full power to make orders, judgments, and decrees and take all other action necessary and proper to administer justice in the matters which come before it.

Source: Laws 1974, LB 354, § 11, UPC § 1-302; Laws 2003, LB 130, § 123; Laws 2011, LB157, § 31.

Cross References

Nebraska Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, see section 30-3901.

PART 5

DISPOSITION OF REMAINS AND FUNERAL ARRANGEMENTS

30-2223 Right of disposition of remains and funeral arrangements; powers and duties; petition filed with court; considerations; court order.

(1) Except as otherwise provided by section 23-1824, a person who is eighteen years of age or older and of sound mind, by testamentary disposition, by entering into a pre-need sale as defined by section 12-1102, or by affidavit as provided in subdivision (2)(a)(ii) of this section, may direct the location, manner, and conditions of disposition of his or her remains and the arrangements for funeral goods and services to be provided upon his or her death.

(2) Except as set forth in subsection (3) of this section or in section 71-20,121, the right of disposition, including the right to control the disposition of the remains of a deceased person, the location, manner, and conditions of disposition, and the arrangements for funeral goods and services to be provided, vests in the following order if the person listed is eighteen years of age or older and is of sound mind:

(a)(i) A person designated by the decedent as the person with the right of disposition in an affidavit executed in accordance with subdivision (2)(a)(ii) of this section.

(ii) A person who is eighteen years of age or older and of sound mind wishing to convey the right of disposition to another person may execute an affidavit before a notary public in substantially the following form:

State of)

County of)

I,, do hereby designate with the right to control the disposition of my remains upon my death. I (... have) (... have not) attached specific directions concerning the disposition of my remains which the designee shall substantially comply with, so long as such directions are lawful and there are sufficient resources in my estate to carry out the directions. This affidavit does not constitute a durable power of attorney for health care.

..... (signature of person executing affidavit)

Subscribed and sworn to before me this day of the month of of the year

..... (signature of notary public);

(b) The surviving spouse of the decedent;

(c) The sole surviving child of the decedent or, if there is more than one child of the decedent, the majority of the surviving children, except that less than a majority of the surviving children shall be vested with the right of disposition if they have used reasonable efforts to notify all other surviving children of their instructions regarding the right of disposition and are not aware of any opposition to those instructions on the part of a majority of the surviving children;

(d) The surviving parent or parents of the decedent. If one of the surviving parents is absent, the remaining parent shall be vested with the right of disposition after reasonable efforts have been unsuccessful in locating the absent surviving parent;

(e) The surviving brother or sister of the decedent or, if there is more than one sibling of the decedent, the majority of the surviving siblings, except that less than the majority of the surviving siblings shall be vested with the right of disposition if they have used reasonable efforts to notify all other surviving siblings of their instructions regarding the right of disposition and are not aware of any opposition to those instructions on the part of a majority of the surviving siblings;

(f) The surviving grandparent of the decedent or, if there is more than one surviving grandparent, the majority of the grandparents, except that less than the majority of the surviving grandparents shall be vested with the right of disposition if they have used reasonable efforts to notify all other surviving grandparents of their instructions regarding the right of disposition and are not aware of any opposition to those instructions on the part of a majority of the surviving grandparents;

(g) The person in the next degree of kinship, in descending order, under the laws of descent and distribution, to inherit the estate of the decedent. If there is

more than one person of the same degree, any person of that degree may exercise the right of disposition;

(h) The guardian of the person of the decedent at the time of the decedent's death, if one had been appointed;

(i) The personal representative of the estate of the decedent. The powers and duties under this section of the personal representative shall commence upon his or her appointment. Such powers and duties of the personal representative shall relate back in time to give acts by the personal representative which are beneficial to the disposition of the decedent's remains occurring prior to appointment the same effect as those occurring thereafter. Prior to appointment, the personal representative may carry out written instructions of the decedent relating to his or her body, funeral, and burial arrangements. The personal representative may also ratify and accept acts regarding disposition of the decedent's remains done by others where the acts would have been proper for the personal representative;

(j) The State Anatomical Board or the county board of the county where the death occurred in the case of an indigent person or any other person the disposition of whose remains is a responsibility of the state or county;

(k) A representative as described in section 38-1426 or 38-1427 that has arranged with the funeral establishment, cemetery, or crematory authority to cremate or bury a body part in the case of body parts received from the entity described in section 38-1426 or 38-1427; and

(l) In the absence of any person listed in subdivisions (2)(a) through (k) of this section, any other person willing to assume the right of disposition, including the funeral director with custody of the body, after attesting, in writing, that a good faith effort has been made to no avail to contact the persons listed in subdivisions (2)(a) through (k) of this section.

(3) A person entitled under this section to the right of disposition shall forfeit that right and the right is passed on to the next qualifying person as listed in subdivisions (2)(a) through (l) of this section in the following circumstances:

(a) Any person charged with first or second degree murder or voluntary manslaughter in connection with the decedent's death and whose charges are known to the funeral director. If the charges against such person are dismissed, or if such person is acquitted of the charges, the right of disposition is returned to such person;

(b) Any person who does not exercise his or her right of disposition within three days after notification of the death of the decedent or within four days after the decedent's death, whichever is earlier;

(c) If the person and the decedent are spouses and a petition to dissolve the marriage was pending at the time of the decedent's death; or

(d) If a county court pursuant to subsection (4) of this section determines that the person entitled to the right of disposition and the decedent were estranged at the time of death. For purposes of this subdivision, estranged means a physical and emotional separation from the decedent at the time of death which has existed for a period of time that clearly demonstrates an absence of due affection, trust, and regard for the decedent.

(4)(a) If two or more persons with the same relationship to the decedent hold the right of disposition and cannot by majority vote make a decision regarding the disposition of the decedent's remains, any of such persons or a funeral

home with custody of the remains may file a petition asking the court to make a determination in the matter.

(b) Notwithstanding subsections (1) through (3) of this section, the county court of the county where the decedent died may award the right of disposition to the person determined by the court to be the most fit and appropriate to carry out the right of disposition and may make decisions regarding the decedent's remains if those sharing the right of disposition cannot agree.

(c) In making a determination under this subsection, the court shall consider the following:

(i) The reasonableness and practicality of the proposed funeral arrangements and disposition;

(ii) The degree of the personal relationship between the decedent and each of the persons claiming the right of disposition;

(iii) The desires of the person or persons who are ready, able, and willing to pay the cost of the funeral arrangements and disposition; and

(iv) The convenience and needs of other families and friends wishing to pay respects.

(d) In the event of a dispute regarding the right of disposition, a funeral establishment, cemetery, or crematory authority is not liable for refusing to accept the remains or to inter or otherwise dispose of the remains of the decedent or complete the arrangements for the final disposition of the remains until the funeral establishment, cemetery, or crematory authority receives a court order or other written agreement signed by the parties in disagreement that decides the final disposition of the remains. If the funeral establishment, cemetery, or crematory authority retains the remains for final disposition while the parties are in disagreement, the funeral establishment may embalm or refrigerate and shelter the body, or both, in order to preserve it while awaiting the final decision of the court and may add the cost of embalming or refrigeration and sheltering to the final disposition costs. If a funeral home brings an action under this subsection, the funeral establishment, cemetery, or crematory authority may add the legal fees and court costs associated with a petition under this subsection to the cost of final disposition. This subsection may not be construed to require or to impose a duty upon a funeral establishment, cemetery, or crematory authority to bring an action under this subsection.

(e) Except to the degree it may be considered by the court under subdivision (4)(c)(iii) of this section, the fact that a person has paid or agreed to pay for all or part of the funeral arrangements and final disposition does not give that person a greater claim to the right of disposition than the person would otherwise have. The personal representative of the estate of the decedent does not, by virtue of being the personal representative, have a greater claim to the right of disposition than the personal representative would otherwise have.

Source: Laws 2014, LB998, § 8.

Effective date April 10, 2014.

**ARTICLE 23
INTESTATE SUCCESSION AND WILLS**

**PART 1
INTESTATE SUCCESSION**

Section
30-2302. Share of the spouse.

**PART 4
EXEMPT PROPERTY AND ALLOWANCES**

30-2322. Homestead allowance.
30-2323. Exempt property.
30-2325. Source, determination, and documentation.

**PART 6
RULES OF CONSTRUCTION**

30-2342.01. Gift for benevolent purpose; validity; court; powers; notice to Attorney General.
30-2342.02. Terms relating to federal estate and generation-skipping transfer taxes; how construed.

**PART 8
GENERAL PROVISIONS**

30-2352. Renunciation of succession.
30-2354. Effect of homicide on intestate succession, wills, joint assets, life insurance, and beneficiary designations.

**PART 1
INTESTATE SUCCESSION**

30-2302 Share of the spouse.

The intestate share of the surviving spouse is:

- (1) if there is no surviving issue or parent of the decedent, the entire intestate estate;
- (2) if there is no surviving issue but the decedent is survived by a parent or parents, the first one hundred thousand dollars, plus one-half of the balance of the intestate estate;
- (3) if there are surviving issue all of whom are issue of the surviving spouse also, the first one hundred thousand dollars, plus one-half of the balance of the intestate estate;
- (4) if there are surviving issue one or more of whom are not issue of the surviving spouse, one-half of the intestate estate.

Source: Laws 1974, LB 354, § 24, UPC § 2-102; Laws 1980, LB 694, § 2; Laws 2009, LB35, § 19.

**PART 4
EXEMPT PROPERTY AND ALLOWANCES**

30-2322 Homestead allowance.

A surviving spouse of a decedent who was domiciled in this state is entitled to a homestead allowance of seven thousand five hundred dollars for a decedent who dies before January 1, 2011, and twenty thousand dollars for a decedent who dies on or after January 1, 2011. If there is no surviving spouse, each

minor child and each dependent child of the decedent is entitled to a homestead allowance amounting to the amount allowed for a surviving spouse divided by the number of minor and dependent children of the decedent. The homestead allowance is exempt from and has priority over all claims against the estate except for costs and expenses of administration. Homestead allowance is in addition to any share passing to the surviving spouse or minor or dependent child by the will of the decedent unless otherwise provided therein, by intestate succession or by way of elective share.

Source: Laws 1974, LB 354, § 44, UPC § 2-401; Laws 1978, LB 650, § 4; Laws 1980, LB 981, § 1; Laws 2010, LB712, § 18.

30-2323 Exempt property.

(1) In addition to the homestead allowance, the surviving spouse of a decedent who was domiciled in this state is entitled from the estate to value not exceeding five thousand dollars for a decedent who dies before January 1, 2011, and twelve thousand five hundred dollars for a decedent who dies on or after January 1, 2011, in excess of any security interests therein in household furniture, automobiles, furnishings, appliances, and personal effects. If there is no surviving spouse, children of the decedent are entitled jointly to the same value unless the decedent has provided in his or her will that one or more of such children shall be disinherited, in which case only those children not so disinherited shall be so entitled. For purposes of this section, disinherited means providing in one's will that a child shall take nothing or a nominal amount of ten dollars or less from the estate.

(2) If encumbered chattels are selected and if the value in excess of security interests, plus that of other exempt property, is less than the amount allowed under subsection (1) of this section, or if there is not that amount worth of exempt property in the estate, the spouse or children are entitled to other assets of the estate, if any, to the extent necessary to make up the amount allowed under subsection (1) of this section. Rights to exempt property and assets needed to make up a deficiency of exempt property have priority over all claims against the estate except for costs and expenses of administration, except for claims filed by the Department of Health and Human Services pursuant to section 68-919 notwithstanding the order of payment established in section 30-2487, and except that the right to any assets to make up a deficiency of exempt property shall abate as necessary to permit prior payment of homestead allowance and family allowance.

(3) These rights are in addition to any benefit or share passing to the surviving spouse by the will of the decedent unless otherwise provided therein, by intestate succession, or by way of elective share. These rights are in addition to any benefit or share passing to the surviving children by intestate succession and are in addition to any benefit or share passing by the will of the decedent to those surviving children not disinherited unless otherwise provided in the will.

Source: Laws 1974, LB 354, § 45, UPC § 2-402; Laws 1978, LB 650, § 5; Laws 1980, LB 981, § 2; Laws 1999, LB 318, § 1; Laws 2010, LB712, § 19.

30-2325 Source, determination, and documentation.

If the estate is otherwise sufficient, property specifically devised is not used to satisfy rights to homestead and exempt property. Subject to this restriction, the

surviving spouse, the guardians of the minor children, or children who are adults may select property of the estate as homestead allowance and exempt property. After giving such notice as the court may require in a proceeding initiated under the provisions of section 30-2405, the personal representative may make these selections if the surviving spouse, the children or the guardians of the minor children are unable or fail to do so within a reasonable time or if there are no guardians of the minor children. The personal representative may execute an instrument or deed of distribution to establish the ownership of property taken as homestead allowance or exempt property. The personal representative may determine the family allowance in a lump sum not exceeding nine thousand dollars for a decedent who dies before January 1, 2011, and twenty thousand dollars for a decedent who dies on or after January 1, 2011, or periodic installments not exceeding seven hundred fifty dollars per month for one year for a decedent who dies before January 1, 2011, and one thousand six hundred sixty-six dollars and sixty-seven cents per month for one year for a decedent who dies on or after January 1, 2011. The personal representative may disburse funds of the estate in payment of the family allowance and any part of the homestead allowance payable in cash. The personal representative or any interested person aggrieved by any selection, determination, payment, proposed payment, or failure to act under this section may petition the court for appropriate relief, which relief may provide a family allowance larger or smaller than that which the personal representative determined or could have determined.

The homestead allowance, the exempt property, and the family allowance as finally determined by the personal representative or by the court, shall vest in the surviving spouse as of the date of decedent's death, as a vested indefeasible right of property, shall survive as an asset of the surviving spouse's estate if unpaid on the date of death of such surviving spouse, and shall not terminate upon the death or remarriage of the surviving spouse.

Source: Laws 1974, LB 354, § 47, UPC § 2-404; Laws 1980, LB 981, § 3; Laws 2010, LB712, § 20.

PART 6

RULES OF CONSTRUCTION

30-2342.01 Gift for benevolent purpose; validity; court; powers; notice to Attorney General.

(a) Except as otherwise provided in subsection (d) of this section, no gift, devise, or endowment for religious, educational, charitable, or benevolent purposes, which in other respects is valid under the laws of this state, shall be invalid or fail by reason of the indefiniteness or uncertainty of the recipient of the gift, devise, or endowment or by reason that it is or has become unlawful, impracticable, impossible to achieve, or wasteful.

(b) The court, on application of any interested person or the Attorney General may determine and order an administration or distribution of the gift, devise, or endowment in a manner as consistent as possible with the intent expressed in the document creating the gift, devise, or endowment. This section shall not be deemed to limit application of the common law doctrines of cy pres and deviation or of section 58-615.

(c) In an application for relief under this section which is not brought by the Attorney General, notice of the proceeding shall be given to the Attorney General as a representative for the charitable interests involved.

(d) Subsection (a) of this section shall not apply if the document creating the gift, devise, or endowment expressly provides for an alternate disposition of the gift, devise, or endowment in the event the gift, devise, or endowment has become unlawful, impracticable, impossible to achieve, or wasteful. A general residuary devise by will shall not be considered an express provision for an alternate disposition.

(e) Any gift, devise, or endowment to a trust with charitable purposes as described in section 30-3831 shall be governed by section 30-3839.

Source: Laws 2010, LB758, § 2.

30-2342.02 Terms relating to federal estate and generation-skipping transfer taxes; how construed.

(1) A will or trust of a decedent who dies after December 31, 2009, and before January 1, 2011, that contains a formula referring to the “unified credit”, “estate tax exemption”, “applicable exemption amount”, “applicable credit amount”, “applicable exclusion amount”, “generation-skipping transfer tax exemption”, “GST exemption”, “marital deduction”, “maximum marital deduction”, or “unlimited marital deduction”, or that measures a share of an estate or trust based on the amount that can pass free of federal estate tax or the amount that can pass free of federal generation-skipping transfer tax, or that is otherwise based on a similar provision of federal estate or generation-skipping transfer tax law, shall be deemed to refer to the federal estate and generation-skipping transfer tax laws as they applied with respect to estates of decedents dying on December 31, 2009.

(2) This section does not apply:

(a) If the decedent dies on a date on which there is a then-applicable federal estate or generation-skipping transfer tax; or

(b) With respect to a will or trust that is executed or amended after December 31, 2009, or that manifests an intent that a contrary rule apply if the decedent dies on a date on which there is no then-applicable federal estate or generation-skipping transfer tax.

(3) The personal representative or any affected beneficiary under the will or trust may bring a proceeding to determine whether the decedent intended that the references under subsection (1) of this section be construed with respect to the law as it existed after December 31, 2009. Such a proceeding shall be commenced within twelve months after the death of the decedent.

Source: Laws 2010, LB1047, § 1.

PART 8

GENERAL PROVISIONS

30-2352 Renunciation of succession.

(a)(1) A person (or the representative of a deceased, incapacitated, or protected person) who is an heir, devisee, person succeeding to a renounced interest, donee, beneficiary under a testamentary or nontestamentary instrument, donee of a power of appointment, grantee, surviving joint owner or surviving joint

tenant, beneficiary, or owner of an insurance contract or any incident of ownership therein, beneficiary or person designated to take pursuant to a power of appointment exercised by a testamentary or nontestamentary instrument, person who has a statutory entitlement to or election with respect to property pursuant to the Nebraska Probate Code, designated beneficiary of a transfer on death deed, or recipient of any beneficial interest under any testamentary or nontestamentary instrument, may renounce in whole or in part, or with reference to specific parts, fractional shares, undivided portions or assets thereof, by filing a written instrument of renunciation within the time and at the place hereinafter provided.

(2) The instrument shall (i) describe the property or part thereof or the interest therein renounced, (ii) be signed and acknowledged by the person renouncing in the manner provided for in the execution of deeds of real estate, (iii) declare the renunciation and the extent thereof, and (iv) declare that the renunciation is an irrevocable and unqualified refusal to accept the renounced interest.

(3) The appropriate court in a proceeding under section 30-3812, may direct or permit a trustee under a testamentary or nontestamentary instrument to renounce any restriction on or power of administration, management, or allocation of benefit upon finding that such restrictions on the exercise of such power may defeat or impair the accomplishment of the purposes of the trust whether by the imposition of tax or the allocation of beneficial interest inconsistent with such purposes or by other reason. Such authority shall be exercised after hearing and upon notice to qualified beneficiaries as defined in section 30-3803, in the manner directed by the court.

(b) The instrument specified in (a)(1) and (a)(2) must be received by the transferor of the interest, his or her legal representative, the personal representative of a deceased transferor, the trustee of any trust in which the interest being renounced exists, or the holder of the legal title to the property to which the interest relates. To be effective for purposes of determining inheritance and estate taxes under articles 20 and 21 of Chapter 77, the instrument must be received not later than the date which is nine months after the later of (i) the date on which the transfer creating the interest in such person is made, or (ii) the date on which such person attains age twenty-one. If the circumstances which establish the right of a person to renounce an interest arise as a result of the death of an individual, the instrument shall also be filed in the court of the county where proceedings concerning the decedent's estate are pending, or where they would be pending if commenced. If an interest in real estate is renounced, a copy of the instrument shall also be recorded in the office of the register of deeds in the county in which the real estate lies. No person entitled to a copy of the instrument shall be liable for any proper distribution or disposition made without actual notice of the renunciation and no such person making a proper distribution or disposition in reliance upon the renunciation shall be liable for any such distribution or disposition in the absence of actual notice that an action has been instituted contesting the validity of the renunciation.

(c) Unless the transferor of the interest has otherwise indicated in the instrument creating the interest, the interest renounced, and any future interest which is to take effect in possession or enjoyment at or after the termination of the interest renounced, passes as if the person renouncing had predeceased the decedent or had died prior to the date on which the transfer creating the

interest in such person is made, as the case may be, if the renunciation is within the time periods set forth in subsection (b) and if not within such time periods the interest renounced, and any future interest which is to take effect in possession or enjoyment at or after the termination of the interest renounced, passes as if the person renouncing had died on the date the interest was renounced. The person renouncing shall have no power to direct how the interest being renounced shall pass, except that the renunciation of an interest for which the right to renounce was established by the death of an individual shall, in the case of the spouse of the decedent, relate only to that statutory provision or that provision of the instrument creating the interest being renounced and shall not preclude the spouse from receiving the benefits of the renounced interest which may be derived as a result of the renounced interest passing pursuant to other statutory provisions or pursuant to other provisions of the instrument creating the interest unless such further benefits are also renounced. In every case when the renunciation is within the time periods set forth in subsection (b) the renunciation relates back for all purposes to the date of death of the decedent or the date on which the transfer creating the interest in such person is made, as the case may be.

(d) Any (1) assignment, conveyance, encumbrance, pledge, or transfer of property therein or any contract therefor, (2) written waiver of the right to renounce or any acceptance of property or benefits therefrom or an interest therein by an heir, devisee, person succeeding to a renounced interest, donee, beneficiary under a testamentary or nontestamentary instrument, donee of a power of appointment, grantee, surviving joint owner or surviving joint tenant, beneficiary or owner of an insurance contract or any incident of ownership therein, beneficiary or person designated to take pursuant to a power of appointment exercised by a testamentary or nontestamentary instrument, person who has a statutory entitlement to or election with respect to property pursuant to the Nebraska Probate Code, or recipient of any beneficial interest under any testamentary or nontestamentary instrument, or (3) sale or other disposition of property pursuant to judicial process, made within the time periods set forth in subsection (b) shall not bar the right to renounce, but shall make a subsequent renunciation within the time period set forth in subsection (b) of this section ineffective for purposes of determination of inheritance taxes under article 20 of Chapter 77. Any renunciation made after any part of the property has been assigned, conveyed, encumbered, pledged, or transferred is ineffective for the portion of the property which has previously been assigned, conveyed, encumbered, pledged, or transferred.

(e) Within thirty days of receipt of a written instrument of renunciation by the transferor of the interest, his or her legal representative, the personal representative of the decedent, the trustee of any trust in which the interest being renounced exists, or the holder of the legal title to the property to which the interest relates, as the case may be, such person shall attempt to notify in writing those persons who are known or ascertainable with reasonable diligence who shall be recipients or potential recipients of the renounced interest of the renunciation and the interest or potential interest such recipient shall receive as a result of the renunciation.

(f) The right to renounce granted by this section exists irrespective of any limitation on the interest of the person renouncing in the nature of a spendthrift provision or similar restriction. A trust beneficiary whose interest is subject to any limitation in the nature of a spendthrift provision or similar restriction may

assign, sell, or otherwise convey such interest or any part thereof upon a finding by a court in a proceeding under section 30-3812 that the rights of other beneficiaries would not be impaired and that such assignment, sale, or other conveyance would not result in any substantial benefit to nonbeneficiaries of the trust at the expense of the trust or trust beneficiaries. Such finding may be made after hearing and upon notice to all known persons beneficially interested in such trust, in the manner directed by the court.

(g) This section does not abridge the right of any person to assign, convey, release, or renounce any property arising under any other section of this code or other statute.

(h) Any interest in property which exists on July 19, 1980, may be renounced after July 19, 1980, as provided herein. An interest which has arisen prior to July 19, 1980, in any person other than the person renouncing is not destroyed or diminished by any action of the person renouncing taken under this section.

Source: Laws 1974, LB 354, § 74, UPC § 2-801; Laws 1978, LB 650, § 35; Laws 1980, LB 694, § 9; Laws 2003, LB 130, § 127; Laws 2012, LB536, § 24.

30-2354 Effect of homicide on intestate succession, wills, joint assets, life insurance, and beneficiary designations.

(a) A surviving spouse, heir or devisee who feloniously and intentionally kills or aids and abets the killing of the decedent is not entitled to any benefits under the will or under this article, and the estate of the decedent passes as if such spouse, heir, or devisee had predeceased the decedent. Property appointed by the will of the decedent to or for the benefit of such devisee passes as if the devisee had predeceased the decedent.

(b) Any joint tenant who feloniously and intentionally kills or aids and abets the killing of another joint tenant thereby effects a severance of the interest of the decedent so that the share of the decedent passes as his property and such joint tenant has no rights by survivorship. This provision applies to joint tenancies and tenancies by the entirety in real and personal property, joint accounts in banks, savings and loan associations, credit unions and other institutions, and any other form of co-ownership with survivorship incidents.

(c) A named beneficiary of a bond, life insurance policy, or other contractual arrangement who feloniously and intentionally kills or aids and abets the killing of the principal obligee or the individual upon whose life the policy is issued is not entitled to any benefit under the bond, policy or other contractual arrangement, and it becomes payable as though such beneficiary has predeceased the decedent.

(d) Real property specified for a designated beneficiary of a transfer on death deed who feloniously and intentionally kills or aids and abets the killing of the transferor who signed the transfer on death deed or any other owner of the real property shall pass as if the designated beneficiary had predeceased the transferor.

(e) Any other acquisition of property or interest by the killer or by one who aids and abets the killer is treated in accordance with the principles of this section.

(f) A final judgment of conviction of felonious and intentional killing or aiding and abetting therein is conclusive for purposes of this section. In the absence of

a conviction of felonious and intentional killing or aiding and abetting therein, the court may determine by a preponderance of evidence whether the killing or aiding and abetting therein was felonious and intentional for purposes of this section.

(g) This section does not affect the rights of any person who, before rights under this section have been adjudicated, purchases, from the killer or aider and abettor for value and without notice, property which the killer or aider and abettor would have acquired except for this section, but the killer or aider and abettor is liable for the amount of the proceeds or the value of the property. Any insurance company, bank, or other obligor making payment according to the terms of its policy or obligation is not liable by reason of this section unless prior to payment it has received at its home office or principal address written notice of a claim under this section.

Source: Laws 1974, LB 354, § 76, UPC § 2-803; Laws 2012, LB536, § 25.

ARTICLE 24

PROBATE OF WILLS AND ADMINISTRATION

PART 1

GENERAL PROVISIONS

Section

30-2409.01. Access to safe deposit box; custodian; duties; expenses; affidavit; contents; purported will; how treated; deed to burial plot or burial instructions.

PART 7

DUTIES AND POWERS OF PERSONAL REPRESENTATIVES

30-2476. Transactions authorized for personal representatives; exceptions.

PART 8

CREDITORS' CLAIMS

30-2485. Limitations on presentation of claims.

30-2487. Payment of claims; order.

PART 12

COLLECTION OF PERSONAL PROPERTY BY AFFIDAVIT AND SUMMARY ADMINISTRATION PROCEDURE FOR SMALL ESTATES

30-24,125. Collection of personal property by affidavit.

PART 13

SUCCESSION TO REAL PROPERTY BY AFFIDAVIT FOR SMALL ESTATES

30-24,129. Succession to real property by affidavit.

PART 1

GENERAL PROVISIONS

30-2409.01 Access to safe deposit box; custodian; duties; expenses; affidavit; contents; purported will; how treated; deed to burial plot or burial instructions.

(1) For purposes of this section:

(a) Custodian means a bank, savings and loan association, credit union, or other institution acting as a lessor of a safe deposit box; and

(b) Representative of a custodian means an authorized officer or employee of a custodian.

(2)(a) If a decedent at the time of his or her death was a sole or last surviving joint lessee of a safe deposit box, the custodian shall, prior to notice that a personal representative or special administrator has been appointed for such decedent's estate, allow access to the safe deposit box to determine whether the safe deposit box contains an instrument that appears to be an original will of the decedent, a deed to a burial plot, or burial instructions. The following persons may have such access:

(i) A person who presents an affidavit described in subsection (4) of this section that affiant reasonably believes that he or she is either (A) an heir at law of the decedent, (B) a devisee of the decedent or a person nominated as a personal representative as shown in a photocopy of a will which is attached to such affidavit, or (C) the agent or attorney specifically authorized in writing by a person described in subdivision (2)(a)(i)(A) or (B) of this section; or

(ii) A person who, under the terms of the safe deposit box lease or a power of attorney at the time of the decedent's death, was legally permitted to enter the safe deposit box, unless otherwise provided by the lease or the power of attorney.

(b) If a person described in subdivision (2)(a) of this section desires access to a safe deposit box but does not possess a key to the box, the custodian may open the safe deposit box by any means necessary at the person's request and expense or the custodian may require the person to obtain a court order for the custodian to open the safe deposit box at the requesting person's expense. The custodian shall retain, in a secure location at such person's expense, the contents of the box other than a purported will, deed to a burial plot, and burial instructions. A custodian shall deliver a purported will as described in subdivision (5)(b) of this section. A person described in subdivision (2)(a)(i) of this section may remove a deed to a burial plot and burial instructions that are not part of a purported will pursuant to subdivision (5)(d) of this section, and the custodian shall not prevent the removal. Expenses incurred by a custodian or by the person seeking the documents pursuant to this section shall be considered an estate administration expense.

(3) A representative of the custodian shall be present during the entry of a safe deposit box pursuant to this section.

(4) The affidavit referred to in subdivision (2)(a)(i) of this section shall state:

(a) That the sole or last surviving lessor of a safe deposit box has died and the date of his or her death, and a copy of the death certificate shall be attached;

(b) If the person submitting the affidavit is an attorney or agent of the affiant, that such appointment is for the purpose of accompanying the opening of the safe deposit box. In lieu of this statement, the appointment shall accompany the affidavit; and

(c) That the affiant:

(i)(A) Is an heir at law of the deceased lessor and a description of such person's relationship to the deceased lessor;

(B) Is reasonably thought to be a devisee of the decedent based on the provisions of a will, a photocopy of which is submitted with the affidavit; or

(C) Is reasonably thought to be nominated as personal representative pursuant to the terms of a will, a photocopy of which is submitted with the affidavit;

(ii) Swears or affirms that all statements in the affidavit are true and material and further acknowledges that any false statement may subject the person to penalties relating to perjury under section 28-915; and

(iii) Has no knowledge of an application or petition for the appointment of a personal representative pending or granted in any jurisdiction.

(5)(a) If an instrument purporting to be a will is found in a safe deposit box as the result of an entry pursuant to subsection (2) of this section, the representative of the custodian shall remove the purported will.

(b) The custodian shall mail the purported will by registered or certified mail or deliver the purported will in person to the clerk of the county court of the county in which the decedent was a resident. If the custodian is unable to determine the county of residence of the decedent, the custodian shall mail the purported will by registered or certified mail or deliver the purported will in person to the office of the clerk of the county court of the county in which the safe deposit box is located.

(c) At the request of the person or persons authorized to have access to the safe deposit box under subsection (2) of this section, the representative of the custodian shall copy each purported will of the decedent, at the expense of the requesting person, and shall deliver the copy of each purported will to the person, or if directed by the person, to the person's agent or attorney. In copying any purported will, the representative of the custodian shall not remove any staples or other fastening devices or disassemble the purported will in any way.

(d) If the safe deposit box contains a deed to a burial plot or burial instructions that are not a part of a purported will, the person or persons authorized to have access to the safe deposit box under subsection (2) of this section may remove these instruments or request that the representative of the custodian copy the deed to the burial plot or burial instructions at the expense of the requesting person.

(6) This section does not limit the right of a personal representative or a special administrator for the decedent, or a successor of the decedent pursuant to section 30-24,125, to have access to the safe deposit box as otherwise provided by law.

(7) Unless limited by the safe deposit box lease, a surviving co-lessee of the safe deposit box may continue to enter the safe deposit box notwithstanding the death of the decedent.

(8) A custodian shall not be liable to a person for an action taken pursuant to this section or for a failure to act in accordance with the requirements of this section unless the action or failure to act is shown to have resulted from the custodian's bad faith, gross negligence, or intentional misconduct.

Source: Laws 2014, LB788, § 9.

Effective date July 18, 2014.

PART 7

DUTIES AND POWERS OF PERSONAL REPRESENTATIVES

30-2476 Transactions authorized for personal representatives; exceptions.

Except as restricted or otherwise provided by the will or by an order in a formal proceeding, without limiting the authority conferred by section 30-2472,

and subject to the priorities stated in section 30-24,100, a personal representative, acting reasonably for the benefit of the interested persons, may properly:

(1) retain assets owned by the decedent pending distribution or liquidation including those in which the representative is personally interested or which are otherwise improper for trust investment;

(2) receive assets from fiduciaries or other sources;

(3) perform, compromise, or refuse performance of the decedent's contracts that continue as obligations of the estate, as he or she may determine under the circumstances. In performing enforceable contracts by the decedent to convey or lease land, the personal representative, among other possible courses of action, may:

(i) execute and deliver a deed of conveyance for cash payment of all sums remaining due or the purchaser's note for the sum remaining due secured by a mortgage or deed of trust on the land; or

(ii) deliver a deed in escrow with directions that the proceeds, when paid in accordance with the escrow agreement, be paid to the successors of the decedent, as designated in the escrow agreement;

(4) satisfy written charitable pledges of the decedent irrespective of whether the pledges constituted binding obligations of the decedent or were properly presented as claims, if in the judgment of the personal representative the decedent would have wanted the pledges completed under the circumstances;

(5) if funds are not needed to meet debts and expenses currently payable and are not immediately distributable, deposit or invest liquid assets of the estate, including money received from the sale of other assets, in federally insured interest-bearing accounts, readily marketable secured loan arrangements, or other prudent investments which would be reasonable for use by trustees generally;

(6) acquire or dispose of an asset, including land in this or another state, for cash or on credit, at public or private sale; and manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset;

(7) make ordinary or extraordinary repairs or alterations in buildings or other structures, demolish any improvements, and raze existing or erect new party walls or buildings;

(8) subdivide, develop, or dedicate land to public use; make or obtain the vacation of plats and adjust boundaries; or adjust differences in valuation on exchange or partition by giving or receiving considerations; or dedicate easements to public use without consideration;

(9) enter for any purpose into a lease as lessor or lessee, with or without option to purchase or renew, for a term within or extending beyond the period of administration;

(10) enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;

(11) abandon property when, in the opinion of the personal representative, it is valueless, or is so encumbered, or is in condition that it is of no benefit to the estate;

(12) vote stocks or other securities in person or by general or limited proxy;

(13) pay calls, assessments, and other sums chargeable or accruing against or on account of securities, unless barred by the provisions relating to claims;

(14) hold a security in the name of a nominee or in other form without disclosure of the interest of the estate but the personal representative is liable for any act of the nominee in connection with the security so held;

(15) insure the assets of the estate against damage, loss, and liability and himself or herself against liability as to third persons;

(16) borrow money with or without security to be repaid from the estate assets or otherwise; and advance money for the protection of the estate;

(17) effect a fair and reasonable compromise with any debtor or obligor, or extend, renew, or in any manner modify the terms of any obligation owing to the estate. If the personal representative holds a mortgage, pledge, or other lien upon property of another person, he or she may, in lieu of foreclosure, accept a conveyance or transfer of encumbered assets from the owner thereof in satisfaction of the indebtedness secured by lien;

(18) pay taxes, assessments, compensation of the personal representative, and other expenses incident to the administration of the estate;

(19) sell or exercise stock subscription or conversion rights; consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;

(20) allocate items of income or expense to either estate income or principal, as permitted or provided by law;

(21) employ persons, including attorneys, auditors, investment advisors, or agents, even if they are associated with the personal representative, to advise or assist the personal representative in the performance of his or her administrative duties; act without independent investigation upon their recommendations; and instead of acting personally, employ one or more agents to perform any act of administration, whether or not discretionary;

(22) prosecute or defend claims or proceedings in any jurisdiction for the protection of the estate and of the personal representative in the performance of his or her duties;

(23) sell, mortgage, or lease any real or personal property of the estate or any interest therein for cash, for credit, or for part cash and part credit, and with or without security for unpaid balances;

(24) continue any unincorporated business or venture in which the decedent was engaged at the time of death;

(25) form a business entity that has limited liability, including a limited partnership, limited liability partnership, limited liability company, or corporation, for any business or venture in which the decedent was engaged at the time of death;

(26) provide for exoneration of the personal representative from personal liability in any contract entered into on behalf of the estate;

(27) satisfy and settle claims and distribute the estate as provided in the Nebraska Probate Code.

Source: Laws 1974, LB 354, § 154, UPC § 3-715; Laws 1978, LB 650, § 17; Laws 1993, LB 315, § 1; Laws 2010, LB758, § 3.

PART 8

CREDITORS' CLAIMS

30-2485 Limitations on presentation of claims.

(a) All claims against a decedent's estate which arose before the death of the decedent, including claims of the state and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, if not barred earlier by other statute of limitations, are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented as follows:

(1) Within two months after the date of the first publication of notice to creditors if notice is given in compliance with sections 25-520.01 and 30-2483, except that claims barred by the nonclaim statute at the decedent's domicile before the first publication for claims in this state are also barred in this state. If any creditor has a claim against a decedent's estate which arose before the death of the decedent and which was not presented within the time allowed by this subdivision, including any creditor who did not receive notice, such creditor may apply to the court within sixty days after the expiration date provided in this subdivision for additional time and the court, upon good cause shown, may allow further time not to exceed thirty days;

(2) Within three years after the decedent's death if notice to creditors has not been given in compliance with sections 25-520.01 and 30-2483.

(b) All claims, other than for costs and expenses of administration as defined in section 30-2487, against a decedent's estate which arise at or after the death of the decedent, including claims of the state and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented as follows:

(1) A claim based on a contract with the personal representative, within four months after performance by the personal representative is due;

(2) Any other claim, within four months after it arises.

(c) Nothing in this section affects or prevents:

(1) Any proceeding to enforce any mortgage, pledge, or other lien upon property of the estate; or

(2) To the limits of the insurance protection only, any proceeding to establish liability of the decedent or the personal representative for which he or she is protected by liability insurance.

Source: Laws 1974, LB 354, § 163, UPC § 3-803; Laws 1991, LB 95, § 1; Laws 2009, LB35, § 20.

30-2487 Payment of claims; order.

(a) If the applicable assets of the estate are insufficient to pay all claims in full, the personal representative shall make payment in the following order:

(1) Costs and expenses of administration;

(2) Reasonable funeral expenses;

(3) Debts and taxes with preference under federal law;

(4) Reasonable and necessary medical and hospital expenses of the last illness of the decedent, including compensation of persons attending the decedent and claims filed by the Department of Health and Human Services pursuant to section 68-919;

(5) Debts and taxes with preference under other laws of this state;

(6) All other claims.

(b) No preference shall be given in the payment of any claim over any other claim of the same class, and a claim due and payable shall not be entitled to a preference over claims not due.

(c) For purposes of this section and section 30-2485, costs and expenses of administration includes expenses incurred in taking possession or control of estate assets and the management, protection, and preservation of the estate assets, expenses related to the sale of estate assets, and expenses in the day-to-day operation and continuation of business interests for the benefit of the estate.

Source: Laws 1974, LB 354, § 165, UPC § 3-805; Laws 1975, LB 481, § 17; Laws 1994, LB 1224, § 40; Laws 1996, LB 1044, § 90; Laws 2006, LB 1248, § 53; Laws 2007, LB296, § 49; Laws 2009, LB35, § 21.

PART 12

COLLECTION OF PERSONAL PROPERTY BY AFFIDAVIT AND SUMMARY ADMINISTRATION PROCEDURE FOR SMALL ESTATES

30-24,125 Collection of personal property by affidavit.

(a) Thirty days after the death of a decedent, any person indebted to the decedent or having possession of tangible personal property or an instrument evidencing a debt, obligation, stock, or chose in action belonging to the decedent shall make payment of the indebtedness or deliver the tangible personal property or an instrument evidencing a debt, obligation, stock, or chose in action to a person claiming to be the successor of the decedent upon being presented an affidavit made by or on behalf of the successor stating:

(1) the value of all of the personal property in the decedent's estate, wherever located, less liens and encumbrances, does not exceed fifty thousand dollars;

(2) thirty days have elapsed since the death of the decedent as shown in a certified or authenticated copy of the decedent's death certificate attached to the affidavit;

(3) the claiming successor's relationship to the decedent or, if there is no relationship, the basis of the successor's claim to the personal property;

(4) the person or persons claiming as successors under the affidavit swear or affirm that all statements in the affidavit are true and material and further acknowledge that any false statement may subject the person or persons to penalties relating to perjury under section 28-915;

(5) no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction; and

(6) the claiming successor is entitled to payment or delivery of the property.

(b) A transfer agent of any security shall change the registered ownership on the books of a corporation from the decedent to the successor or successors upon the presentation of an affidavit as provided in subsection (a).

(c) In addition to compliance with the requirements of subsection (a), a person seeking a transfer of a certificate of title to a motor vehicle, motorboat, all-terrain vehicle, utility-type vehicle, or minibike shall be required to furnish to the Department of Motor Vehicles an affidavit showing applicability of this section and compliance with the requirements of this section to authorize the department to issue a new certificate of title.

Source: Laws 1974, LB 354, § 203, UPC § 3-1201; Laws 1996, LB 909, § 1; Laws 1999, LB 100, § 4; Laws 1999, LB 141, § 6; Laws 2004, LB 560, § 2; Laws 2009, LB35, § 22; Laws 2010, LB650, § 2.

PART 13

SUCCESSION TO REAL PROPERTY BY AFFIDAVIT FOR SMALL ESTATES

30-24,129 Succession to real property by affidavit.

(a) Thirty days after the death of a decedent, any person claiming as successor to the decedent's interest in real property in this state may file or cause to be filed on his or her behalf, with the register of deeds office of a county in which the real property of the decedent that is the subject of the affidavit is located, an affidavit describing the real property owned by the decedent and the interest of the decedent in the property. The affidavit shall be signed by all persons claiming as successors or by parties legally acting on their behalf and shall be prima facie evidence of the facts stated in the affidavit. The affidavit shall state:

(1) the value of the decedent's interest in all real property in the decedent's estate located in this state does not exceed fifty thousand dollars. The value of the decedent's interest shall be determined from the value of the property as shown on the assessment rolls for the year in which the decedent died less real estate taxes and interest thereon if any is due at the time of death;

(2) thirty days have elapsed since the death of the decedent as shown in a certified or authenticated copy of the decedent's death certificate attached to the affidavit;

(3) no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction;

(4) the claiming successor is entitled to the real property by reason of the homestead allowance, exempt property allowance, or family allowance, by intestate succession, or by devise under the will of the decedent;

(5) the claiming successor has made an investigation and has been unable to determine any subsequent will;

(6) no other person has a right to the interest of the decedent in the described property;

(7) the claiming successor's relationship to the decedent and the value of the entire estate of the decedent; and

(8) the person or persons claiming as successors under the affidavit swear or affirm that all statements in the affidavit are true and material and further

acknowledge that any false statement may subject the person or persons to penalties relating to perjury under section 28-915.

(b) The recorded affidavit and certified or authenticated copy of the decedent’s death certificate shall also be recorded by the claiming successor in any other county in this state in which the real property of the decedent that is the subject of the affidavit is located.

Source: Laws 1999, LB 100, § 2; Laws 2009, LB35, § 23; Laws 2014, LB693, § 1.
Operative date January 1, 2015.

ARTICLE 26

PROTECTION OF PERSONS UNDER DISABILITY AND THEIR PROPERTY

PART 1

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- 30-2601. Definitions and use of terms.
- 30-2601.01. Guardians and conservators; training curricula.
- 30-2602.01. Ex parte orders; authorized; violation; penalty.
- 30-2602.02. Guardian or conservator; national criminal history record check; report; waiver by court.
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PART 2

GUARDIANS OF MINORS

- 30-2608. Natural guardians; court appointment of guardian of minor; standby guardian; conditions for appointment; child born out of wedlock; additional considerations; filings.
- 30-2613. Powers and duties of guardian of minor.

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- 30-2618. Venue.
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- 30-2627. Who may be guardian; priorities; bond.
- 30-2628. General powers, rights, and duties of guardian; inventory.
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PART 4

PROTECTION OF PROPERTY OF PERSONS UNDER DISABILITY AND MINORS

- 30-2630.01. Temporary conservator; power of court.
- 30-2632. Venue.
- 30-2639. Who may be appointed conservator; priorities.
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- 30-2648. Accounts.
- 30-2655. Limitation of powers of conservator.

PART 5

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- 30-2664. Repealed. Laws 2012, LB 1113, § 50.
- 30-2665. Repealed. Laws 2012, LB 1113, § 50.
- 30-2665.01. Repealed. Laws 2012, LB 1113, § 50.
- 30-2666. Repealed. Laws 2012, LB 1113, § 50.
- 30-2667. Repealed. Laws 2012, LB 1113, § 50.

Section

30-2668.	Repealed. Laws 2012, LB 1113, § 50.
30-2669.	Repealed. Laws 2012, LB 1113, § 50.
30-2670.	Repealed. Laws 2012, LB 1113, § 50.
30-2671.	Repealed. Laws 2012, LB 1113, § 50.
30-2672.	Repealed. Laws 2012, LB 1113, § 50.

PART 1

GENERAL PROVISIONS

30-2601 Definitions and use of terms.

Unless otherwise apparent from the context, in the Nebraska Probate Code:

(1) Incapacitated person means any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, or other cause (except minority) to the extent that the person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning himself or herself;

(2) A protective proceeding is a proceeding under the provisions of section 30-2630 to determine that a person cannot effectively manage or apply his or her estate to necessary ends, either because the person lacks the ability or is otherwise inconvenienced, or because the person is a minor, and to secure administration of the person's estate by a conservator or other appropriate relief;

(3) A protected person is a minor or other person for whom a conservator has been appointed or other protective order has been made;

(4) A ward is a person for whom a guardian has been appointed. A minor ward is a minor for whom a guardian has been appointed solely because of minority;

(5) Full guardianship means the guardian has been granted all powers which may be conferred upon a guardian by law;

(6) Guardian means any person appointed to protect a ward and may include the Public Guardian;

(7) Public Guardian is as defined in section 30-4103;

(8) Limited guardianship means any guardianship which is not a full guardianship;

(9) Conservator means any person appointed to protect a protected person and may include the Public Guardian; and

(10) For purposes of article 26 of the Nebraska Probate Code, interested person means children, spouses, those persons who would be the heirs if the ward or person alleged to be incapacitated died without leaving a valid will who are adults and any trustee of any trust executed by the ward or person alleged to be incapacitated. After the death of a ward, interested person also includes the personal representative of a deceased ward's estate, the deceased ward's heirs in an intestate estate, and the deceased ward's devisees in a testate estate. The meaning of interested person as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding. If there are no persons identified as interested persons above, then interested person shall also include

any person or entity named as a devisee in the most recently executed will of the ward or person alleged to be incapacitated.

Source: Laws 1974, LB 354, § 219, UPC § 5-101; Laws 1997, LB 466, § 5; Laws 2011, LB157, § 32; Laws 2013, LB172, § 1; Laws 2014, LB920, § 20.

Operative date January 1, 2015.

30-2601.01 Guardians and conservators; training curricula.

The Public Guardian shall approve training curricula for persons appointed as guardians and conservators. Such training curricula shall include, but not be limited to:

- (1) The rights of wards under sections 30-2601 to 30-2661 and the Public Guardianship Act specifically and under the laws of the United States generally;
- (2) The duties and responsibilities of guardians;
- (3) Reporting requirements;
- (4) Least restrictive options in the areas of housing, medical care, and psychiatric care; and
- (5) Resources to assist guardians in fulfilling their duties.

Source: Laws 1993, LB 782, § 4; Laws 2014, LB920, § 21.

Operative date January 1, 2015.

Cross References

Public Guardianship Act, see section 30-4101.

30-2602.01 Ex parte orders; authorized; violation; penalty.

During the pendency of any proceeding under sections 30-2601 to 30-2661 after a guardian or conservator is appointed, upon application by any interested person and if the accompanying affidavit of such person or his or her agent shows to the court that the ward's or protected person's safety, health, or financial welfare is at issue, the court may issue ex parte orders to address the situation. Ex parte orders issued under this section shall remain in full force and effect for no more than ten days or until a hearing is held thereon, whichever is earlier. Anyone who violates such order after service shall be guilty of a Class II misdemeanor. Any interested person that submits an affidavit under this section in bad faith, or submits an affidavit under this section that lacks a factual basis as determined by the court, shall be ordered to pay the opposing party reasonable attorney's fees and costs.

Source: Laws 2011, LB157, § 33.

30-2602.02 Guardian or conservator; national criminal history record check; report; waiver by court.

(1) A person, except for a financial institution as that term is defined in subdivision (12) of section 8-101 or its officers, directors, employees, or agents or a trust company, who has been nominated for appointment as a guardian or conservator shall obtain a national criminal history record check through a process approved by the State Court Administrator and a report of the results and file such report with the court at least ten days prior to the appointment hearing date, unless waived or modified by the court (a) for good cause shown by affidavit filed simultaneously with the petition for appointment or (b) in the

event the protected person requests an expedited hearing under section 30-2630.01.

(2) An order appointing a guardian or conservator shall not be signed by the judge until such report has been filed with the court and reviewed by the judge. Such report, or the lack thereof, shall be certified either by affidavit or by obtaining a certified copy of the report. No report or national criminal history record check shall be required by the court upon the application of a petitioner for an emergency temporary guardianship or emergency temporary conservatorship. The court may waive the requirements of this section for good cause shown.

Source: Laws 2011, LB157, § 34.

30-2604 Delegation of powers by parent or guardian.

A parent or a guardian of a minor or incapacitated person, by a properly executed power of attorney, may delegate to another person, for a period not exceeding six months, any of his or her powers regarding care, custody, or property of the minor child or ward, except his or her power to consent to marriage or adoption of a minor ward. A parent or guardian of a minor who is at least eighteen years of age and who is not a ward of the state, by a properly executed power of attorney, may delegate to such minor, for a period not exceeding one year, the parent's or guardian's power to consent to such minor's own health care and medical treatment.

Source: Laws 1974, LB 354, § 222, UPC § 5-104; Laws 2010, LB226, § 1.

PART 2

GUARDIANS OF MINORS

30-2608 Natural guardians; court appointment of guardian of minor; standby guardian; conditions for appointment; child born out of wedlock; additional considerations; filings.

(a) The father and mother are the natural guardians of their minor children and are duly entitled to their custody and to direct their education, being themselves competent to transact their own business and not otherwise unsuitable. If either dies or is disqualified for acting, or has abandoned his or her family, the guardianship devolves upon the other except as otherwise provided in this section.

(b) In the appointment of a parent as a guardian when the other parent has died and the child was born out of wedlock, the court shall consider the wishes of the deceased parent as expressed in a valid will executed by the deceased parent. If in such valid will the deceased parent designates someone other than the other natural parent as guardian for the minor children, the court shall take into consideration the designation by the deceased parent. In determining whether or not the natural parent should be given priority in awarding custody, the court shall also consider the natural parent's acknowledgment of paternity, payment of child support, and whether the natural parent is a fit, proper, and suitable custodial parent for the child.

(c) The court may appoint a standby guardian for a minor whose parent is chronically ill or near death. The appointment of a guardian under this subsection does not suspend or terminate the parent's parental rights of custody to the minor. The standby guardian's authority would take effect, if the

minor is left without a remaining parent, upon (1) the death of the parent, (2) the mental incapacity of the parent, or (3) the physical debilitation and consent of the parent.

(d) The court may appoint a guardian for a minor if all parental rights of custody have been terminated or suspended by prior or current circumstances or prior court order. The juvenile court may appoint a guardian for a child adjudicated to be under subdivision (3)(a) of section 43-247 as provided in section 43-1312.01. A guardian appointed by will as provided in section 30-2606 whose appointment has not been prevented or nullified under section 30-2607 has priority over any guardian who may be appointed by the court, but the court may proceed with an appointment upon a finding that the testamentary guardian has failed to accept the testamentary appointment within thirty days after notice of the guardianship proceeding.

(e) The petition and all other court filings for a guardianship proceeding shall be filed with the clerk of the county court. The party shall state in the petition whether such party requests that the proceeding be heard by the county court or, in cases in which a separate juvenile court already has jurisdiction over the child in need of a guardian under the Nebraska Juvenile Code, such separate juvenile court. Such proceeding is considered a county court proceeding even if heard by a separate juvenile court judge, and an order of the separate juvenile court in such guardianship proceeding has the force and effect of a county court order. The testimony in a guardianship proceeding heard before a separate juvenile court judge shall be preserved as in any other separate juvenile court proceeding. The clerks of the district courts shall transfer all guardianship petitions and other guardianship filings which were filed with such clerks prior to August 28, 1999, to the clerk of the county court where the separate juvenile court which heard the proceeding is situated. The clerk of such county court shall file and docket such petitions and other filings.

Source: Laws 1974, LB 354, § 226, UPC § 5-204; Laws 1995, LB 712, § 18; Laws 1998, LB 1041, § 4; Laws 1999, LB 375, § 1; Laws 2014, LB908, § 1.

Effective date July 18, 2014.

Cross References

Nebraska Juvenile Code, see section 43-2,129.

30-2613 Powers and duties of guardian of minor.

(1) A guardian of a minor has the powers and responsibilities of a parent who has not been deprived of custody of his or her minor and unemancipated child, except that a guardian is not legally obligated to provide from his or her own funds for the ward and is not liable to third persons by reason of the parental relationship for acts of the ward. In particular, and without qualifying the foregoing, a guardian has the following powers and duties:

(a) He or she must take reasonable care of his or her ward's personal effects and commence protective proceedings if necessary to protect other property of the ward.

(b) He or she may receive money payable for the support of the ward to the ward's parent, guardian or custodian under the terms of any statutory benefit or insurance system, or any private contract, devise, trust, conservatorship or custodianship. He or she also may receive money or property of the ward paid or delivered by virtue of section 30-2603. Any sums so received shall be applied

to the ward's current needs for support, care and education, except as provided in subsections (2) and (3) of this section. He or she must exercise due care to conserve any excess for the ward's future needs unless a conservator has been appointed for the estate of the ward, in which case such excess shall be paid over at least annually to the conservator. Sums so received by the guardian are not to be used for compensation for his or her services except as approved by order of court. A guardian may institute proceedings to compel the performance by any person of a duty to support the ward or to pay sums for the welfare of the ward.

(c) The guardian is empowered to facilitate the ward's education, social, or other activities and to authorize medical or other professional care, treatment, or advice. A guardian is not liable by reason of this consent for injury to the ward resulting from the negligence or acts of third persons unless it would have been illegal for a parent to have consented. A guardian may consent to the marriage or adoption of his or her ward.

(d) A guardian must report the condition of his or her ward and of the ward's estate which has been subject to his or her possession or control, as ordered by court on petition of any person interested in the minor's welfare or as required by court rule, and upon termination of the guardianship settle his or her accounts with the ward or his or her legal representatives and pay over and deliver all of the estate and effects remaining in his or her hands or due from him or her on settlement to the person or persons who shall be lawfully entitled thereto.

(2) The appointment of a guardian for a minor shall not relieve his or her parent or parents, liable for the support of such minor, from their obligation to provide for such minor. For the purposes of guardianship of minors, the application of guardianship income and principal after payment of debts and charges of managing the estate, in relationship to the respective obligations owed by fathers, mothers, and others, for the support, maintenance and education of the minor shall be:

(a) The income and property of the father and mother of the minor in such manner as they can reasonably afford, regard being had to the situation of the family and to all the circumstances of the case;

(b) The guardianship income, in whole or in part, as shall be judged reasonable considering the extent of the guardianship income and the parents' financial ability;

(c) The income and property of any other person having a legal obligation to support the minor, in such manner as the person can reasonably afford, regard being had to the situation of the person's family and to all the circumstances of the case; and

(d) The guardianship principal, either personal or real estate, in whole or in part, as shall be judged for the best interest of the minor, considering all the circumstances of the minor and those liable for his or her support.

(3) Notwithstanding the provisions of subsection (2) of this section, the court may from time to time authorize the guardian to use so much of the guardianship income or principal, whether personal or real estate, as it may deem proper, considering all the circumstances of the minor and those liable for his or her support, if it is shown that (a) an emergency exists which justifies an expenditure, or (b) a fund has been given to the minor for a special purpose and the court can, with reasonable certainty, ascertain such purpose.

(4) The court may require a guardian to furnish a bond in an amount and conditioned in accordance with the provisions of section 30-2640.

(5) A guardian shall not change a ward's place of abode to a location outside of the State of Nebraska without court permission.

Source: Laws 1974, LB 354, § 231, UPC § 5-209; Laws 2011, LB157, § 35.

PART 3

GUARDIANS OF INCAPACITATED PERSONS

30-2618 Venue.

Unless otherwise provided in the Nebraska Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, the venue for guardianship proceedings for an incapacitated person is in the place where the incapacitated person resides or is present, or where property is located if he or she is a nonresident. If the incapacitated person is admitted to an institution pursuant to order of a court of competent jurisdiction, venue is also in the county in which that court sits.

Source: Laws 1974, LB 354, § 236, UPC § 5-302; Laws 2011, LB157, § 36.

Cross References

Nebraska Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, see section 30-3901.

30-2620 Findings; appointment of guardian; authority and responsibility of guardian.

(a) The court may appoint a guardian if it is satisfied by clear and convincing evidence that the person for whom a guardian is sought is incapacitated and that the appointment is necessary or desirable as the least restrictive alternative available for providing continuing care or supervision of the person of the person alleged to be incapacitated. If the court finds that a guardianship should be created, the guardianship shall be a limited guardianship unless the court finds by clear and convincing evidence that a full guardianship is necessary. If a limited guardianship is created, the court shall, at the time of appointment or later, specify the authorities and responsibilities which the guardian and ward, acting together or singly, shall have with regard to:

(1) Selecting the ward's place of abode within this state or, with court permission, outside of this state;

(2) Arranging for medical care for the ward;

(3) Protecting the personal effects of the ward;

(4) Giving necessary consent, approval, or releases on behalf of the ward;

(5) Arranging for training, education, or other habilitating services appropriate for the ward;

(6) Applying for private or governmental benefits to which the ward may be entitled;

(7) Instituting proceedings to compel any person under a duty to support the ward or to pay sums for the welfare of the ward to perform such duty, if no conservator has been appointed;

(8) Entering into contractual arrangements on behalf of the ward, if no conservator has been appointed; and

(9) Receiving money and tangible property deliverable to the ward and applying such money and property to the ward's expenses for room and board, medical care, personal effects, training, education, and habilitating services, if no conservator has been appointed, or requesting the conservator to expend the ward's estate by payment to third persons to meet such expenses.

(b) In a limited guardianship, the powers shall be endorsed upon the letters of appointment of the guardian and shall be treated as specific limitations upon the general powers, rights, and duties accorded by law to the guardian. In a full guardianship, the letters of appointment shall specify that the guardian is granted all powers conferred upon guardians by law. After appointment, the ward may retain an attorney for the sole purpose of challenging the guardianship, the terms of the guardianship, or the actions of the guardian on behalf of the ward.

(c) A guardian shall not change a ward's place of abode to a location outside of the State of Nebraska without court permission.

Source: Laws 1974, LB 354, § 238, UPC § 5-304; Laws 1982, LB 428, § 6; Laws 1993, LB 782, § 6; Laws 1997, LB 466, § 7; Laws 2011, LB157, § 37.

30-2624 Visitor; qualifications.

A visitor shall be trained in law, nursing, social work, mental health, gerontology, or developmental disabilities and shall be an officer, employee, or special appointee of the court with no personal interest in the proceedings.

Any qualified person may be appointed visitor of a proposed ward, except that it shall be unlawful for any owner, part owner, manager, administrator, or employee, or any spouse of an owner, part owner, manager, administrator, or employee of a nursing home, room and board home, convalescent home, group care home, or institution providing residential care to any person with a physical disability, with an intellectual disability, with an infirmity, or who is aged to be appointed visitor of any such person residing, being under care, receiving treatment, or being housed in any such home or institution within the State of Nebraska.

The court shall select the visitor who has the expertise to most appropriately evaluate the needs of the person who is allegedly incapacitated.

The court shall maintain a current list of persons trained in or having demonstrated expertise in the areas of mental health, intellectual disability, drug abuse, alcoholism, gerontology, nursing, and social work, for the purpose of appointing a suitable visitor.

Source: Laws 1974, LB 354, § 242, UPC § 5-308; Laws 1982, LB 428, § 8; Laws 2013, LB23, § 5.

30-2626 Temporary guardians; power of court.

(a) If a person alleged to be incapacitated has no guardian and an emergency exists, the court may, pending notice and hearing, exercise the power of a guardian or enter an ex parte order appointing a temporary guardian to address the emergency. The order and letters of temporary guardianship shall

specify the powers and duties of the temporary guardian limiting the powers and duties to those necessary to address the emergency.

(b) When the court takes action to exercise the powers of a guardian or to appoint a temporary guardian under subsection (a) of this section, an expedited hearing shall be held if requested by the person alleged to be incapacitated, or by any interested person, if the request is filed more than ten business days prior to the date set for the hearing on the petition for appointment of the guardian. If an expedited hearing is to be held, the hearing shall be held within ten business days after the request is received. At the hearing on the temporary appointment, the petitioner shall have the burden of showing by a preponderance of the evidence that temporary guardianship continues to be necessary to address the emergency situation. Unless the person alleged to be incapacitated has counsel of his or her own choice, the court may appoint an attorney to represent the person alleged to be incapacitated at the hearing as provided in section 30-2619.

(c) If an expedited hearing is requested, notice shall be served as provided in section 30-2625. The notice shall specify that a temporary guardian has been appointed and shall be given at least twenty-four hours prior to the expedited hearing.

(d) At the expedited hearing, the court may render a judgment authorizing the temporary guardianship to continue beyond the original ten-day period. The judgment shall prescribe the specific powers and duties of the temporary guardian in the letters of temporary guardianship and shall be effective for a single ninety-day period. For good cause shown, the court may extend the temporary guardianship for successive ninety-day periods.

(e) The temporary guardianship shall terminate at the end of the ninety-day period in which the temporary guardianship is valid or at any time prior thereto if the court deems the circumstances leading to the order for temporary guardianship no longer exist or if an order has been entered as a result of a hearing pursuant to section 30-2619 which has been held during the ninety-day period.

(f) If the court denies the request for the ex parte order, the court may, in its discretion, enter an order for an expedited hearing pursuant to subsections (b) through (e) of this section.

(g) If the petitioner requests the entry of an order of temporary guardianship pursuant to subsection (a) of this section without requesting an ex parte order, the court may hold an expedited hearing pursuant to subsections (b) through (e) of this section.

(h) If an appointed guardian is not effectively performing his or her duties and the court further finds that the welfare of the incapacitated person requires immediate action, it may, pending notice and hearing in accordance with section 30-2220, appoint a temporary guardian for the incapacitated person for a specified period not to exceed ninety days. For good cause shown, the court may extend the temporary guardianship for successive ninety-day periods. A temporary guardian appointed pursuant to this subsection has only the powers and duties specified in the previously appointed guardian's letters of guardianship, and the authority of any permanent guardian previously appointed by the court is suspended so long as a temporary guardian has authority.

(i) A temporary guardian may be removed at any time. A temporary guardian shall make any report the court requires, except that a temporary guardian

shall not be required to provide the check or report under section 30-2602.02. In other respects the provisions of the Nebraska Probate Code concerning guardians apply to temporary guardians.

(j) The court may appoint the Public Guardian as the temporary guardian pursuant to the Public Guardianship Act.

Source: Laws 1974, LB 354, § 244, UPC § 5-310; Laws 1978, LB 650, § 22; Laws 1993, LB 782, § 9; Laws 1997, LB 466, § 9; Laws 2011, LB157, § 38; Laws 2014, LB920, § 22.
Operative date January 1, 2015.

Cross References

Public Guardianship Act, see section 30-4101.

30-2627 Who may be guardian; priorities; bond.

(a) Any competent person or the Public Guardian may be appointed guardian of a person alleged to be incapacitated, except that it shall be unlawful for any agency providing residential care in an institution or community-based program, or any owner, part owner, manager, administrator, employee, or spouse of an owner, part owner, manager, administrator, or employee of any nursing home, room and board home, assisted-living facility, or institution engaged in the care, treatment, or housing of any person physically or mentally handicapped, infirm, or aged to be appointed guardian of any such person residing, being under care, receiving treatment, or being housed in any such home, facility, or institution within the State of Nebraska. Nothing in this subsection shall prevent the spouse, adult child, parent, or other relative of the person alleged to be incapacitated from being appointed guardian or prevent the guardian officer for one of the Nebraska veterans homes as provided in section 80-327 from being appointed guardian or conservator for the person alleged to be incapacitated. It shall be unlawful for any county attorney or deputy county attorney appointed as guardian for a person alleged to be incapacitated to circumvent his or her duties or the rights of the ward pursuant to the Nebraska Mental Health Commitment Act by consenting to inpatient or outpatient psychiatric treatment over the objection of the ward.

(b) Persons who are not disqualified under subsection (a) of this section and who exhibit the ability to exercise the powers to be assigned by the court have priority for appointment as guardian in the following order:

(1) A person nominated most recently by one of the following methods:

(i) A person nominated by the incapacitated person in a power of attorney or a durable power of attorney;

(ii) A person acting under a power of attorney or durable power of attorney;
or

(iii) A person nominated by an attorney in fact who is given power to nominate in a power of attorney or a durable power of attorney executed by the incapacitated person;

(2) The spouse of the incapacitated person;

(3) An adult child of the incapacitated person;

(4) A parent of the incapacitated person, including a person nominated by will or other writing signed by a deceased parent;

(5) Any relative of the incapacitated person with whom he or she has resided for more than six months prior to the filing of the petition;

(6) A person nominated by the person who is caring for him or her or paying benefits to him or her;

(7) The Public Guardian.

(c) When appointing a guardian, the court shall take into consideration the expressed wishes of the allegedly incapacitated person. The court, acting in the best interest of the incapacitated person, may pass over a person having priority and appoint a person having lower priority or no priority. With respect to persons having equal priority, the court shall select the person it deems best qualified to serve.

(d) In its order of appointment, unless waived by the court, the court shall require any person appointed as guardian to successfully complete within three months of such appointment a training program approved by the Public Guardian. If the person appointed as guardian does not complete the training program, the court shall issue an order to show cause why such person should not be removed as guardian.

(e) The court may require a guardian to furnish a bond in an amount and conditioned in accordance with the provisions of sections 30-2640 and 30-2641. The Public Guardian shall not be required to post bond.

Source: Laws 1974, LB 354, § 245, UPC § 5-311; Laws 1982, LB 428, § 10; Laws 1985, LB 292, § 2; Laws 1993, LB 782, § 10; Laws 1997, LB 396, § 2; Laws 1997, LB 466, § 10; Laws 1997, LB 608, § 1; Laws 2014, LB920, § 23.

Operative date January 1, 2015.

Cross References

Nebraska Mental Health Commitment Act, see section 71-901.

Training program, curricula, see section 30-2601.01.

30-2628 General powers, rights, and duties of guardian; inventory.

(a) Except as limited by section 30-2620, a guardian of an incapacitated person has the same powers, rights, and duties respecting the guardian's ward that a parent has respecting the parent's unemancipated minor child, except that a guardian is not liable to third persons for acts of the ward solely by reason of the parental relationship. In particular, and without qualifying the foregoing, a guardian has the following powers and duties, except as may be specified by order of the court:

(1) To the extent that it is consistent with the terms of any order by a court of competent jurisdiction relating to detention or commitment of the ward, a guardian is entitled to custody of the person of his or her ward and may establish the ward's place of abode within this state or, with court permission, outside of this state. When establishing the ward's place of abode, a guardian shall make every reasonable effort to ensure that the placement is the least restrictive alternative. A guardian shall authorize a placement to a more restrictive environment only after careful evaluation of the need for such placement. The guardian may obtain a professional evaluation or assessment that such placement is in the best interest of the ward.

(2) If entitled to custody of his or her ward, a guardian shall make provision for the care, comfort, and maintenance of his or her ward and, whenever

appropriate, arrange for the ward's training and education. Without regard to custodial rights of the ward's person, a guardian shall take reasonable care of his or her ward's clothing, furniture, vehicles, and other personal effects and commence protective proceedings if other property of his or her ward is in need of protection.

(3) A guardian may give any consents or approvals that may be necessary to enable the ward to receive medical, psychiatric, psychological, or other professional care, counsel, treatment, or service. When making such medical or psychiatric decisions, the guardian shall consider and carry out the intent of the ward expressed prior to incompetency to the extent allowable by law. Notwithstanding this provision or any other provision of the Nebraska Probate Code, the ward may authorize the release of financial, medical, and other confidential records pursuant to sections 20-161 to 20-166.

(4) If no conservator for the estate of the ward has been appointed, a guardian shall, within thirty days after appointment, prepare and file with the appointing court a complete inventory of the ward's estate together with the guardian's oath or affirmation that the inventory is complete and accurate so far as the guardian is informed. The guardian shall mail a copy thereof by first-class mail to the ward, if the ward can be located and has attained the age of fourteen years, and to all other interested persons as defined in section 30-2601. The guardian shall file with the court a certificate of mailing showing that copies were sent to all interested persons by first-class mail along with a form to send back to the court that indicates if such person wants to continue receiving notifications about the proceedings. The guardian shall keep suitable records of the guardian's administration and exhibit the same on request of any interested person. To the extent a guardian, who has not been named a conservator, has possession or control of the ward's estate, the guardian shall file with the court an updated inventory every year along with a certificate of mailing showing that copies were sent to all interested persons and, if a bond has been required, to the bonding company by first-class mail.

(5) If no conservator for the estate of the ward has been appointed, a guardian may:

(i) Institute proceedings to compel any person under a duty to support the ward or to pay sums for the welfare of the ward to perform such person's duty;

(ii) Receive money and tangible property deliverable to the ward and apply the money and property for support, care, and education of the ward; but a guardian may not use funds from his or her ward's estate for room and board which the guardian or the guardian's spouse, parent, or child has furnished the ward unless a charge for the service is approved by order of the court made upon notice to at least one of the next of kin of the ward, if notice is possible. A guardian must exercise care to conserve any excess for the ward's needs; and

(iii) Exercise a settlor's powers with respect to revocation, amendment, or distribution of trust property when authorized by a court acting under the authority of subsection (f) of section 30-3854. In acting under the authority of subsection (f) of section 30-3854, the court shall proceed in the same manner as provided under subdivision (3) of section 30-2637.

(6) A guardian is required to report the condition of his or her ward and of the estate which has been subject to the guardian's possession or control, at least every year and as required by the court or court rule. The court shall receive from any interested person, for a period of thirty days after the filing of

the guardian's report, any comments with regard to the need for continued guardianship or amendment of the guardianship order. If the court has reason to believe that additional rights should be returned to the ward or assigned to the guardian, the court shall set a date for a hearing and may provide all protections as set forth for the original finding of incapacity and appointment of a guardian.

(7) If a conservator has been appointed, all of the ward's estate received by the guardian in excess of those funds expended to meet current expenses for support, care, and education of the ward must be paid to the conservator for management as provided in the Nebraska Probate Code, and the guardian must account to the conservator for funds expended.

(b) Any guardian of one for whom a conservator also has been appointed shall control the custody and care of the ward and is entitled to receive reasonable sums for the guardian's services and for room and board furnished to the ward as agreed upon between the guardian and the conservator if the amounts agreed upon are reasonable under the circumstances. The guardian may request the conservator to expend the ward's estate by payment to third persons or institutions for the ward's care and maintenance.

(c) Nothing in subdivision (a)(3) of this section or in any other part of this section shall be construed to alter the decisionmaking authority of an attorney in fact designated and authorized under sections 30-3401 to 30-3432 to make health care decisions pursuant to a power of attorney for health care.

Source: Laws 1974, LB 354, § 246, UPC § 5-312; Laws 1982, LB 428, § 11; Laws 1993, LB 782, § 11; Laws 1997, LB 466, § 11; Laws 2003, LB 130, § 130; Laws 2011, LB157, § 39; Laws 2013, LB172, § 2.

30-2629 Proceedings subsequent to appointment; venue.

(a) Unless otherwise provided in the Nebraska Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, the court where the ward resides has concurrent jurisdiction with the court which appointed the guardian, or in which acceptance of a testamentary appointment was filed, over resignation, removal, accounting, and other proceedings relating to the guardianship.

(b) Unless otherwise provided in the Nebraska Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, if the court located where the ward resides is not the court in which acceptance of appointment is filed, the court in which proceedings subsequent to appointment are commenced shall in all appropriate cases notify the other court, in this or another state, and after consultation with that court determine whether to retain jurisdiction or transfer the proceedings to the other court, whichever may be in the best interest of the ward. A copy of any order accepting a resignation or removing a guardian shall be sent to the court in which acceptance of appointment is filed.

(c) Any action or proposed action by a guardian may be challenged at any time by any interested person.

Source: Laws 1974, LB 354, § 247, UPC § 5-313; Laws 1997, LB 466, § 12; Laws 2011, LB157, § 40.

Cross References

Nebraska Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, see section 30-3901.

PART 4

PROTECTION OF PROPERTY OF PERSONS
UNDER DISABILITY AND MINORS**30-2630.01 Temporary conservator; power of court.**

(a) If a person alleged to be in need of protection under section 30-2630 has no conservator and an emergency exists, the court may, pending notice and hearing, exercise the power of a conservator or enter an emergency protective order appointing a temporary conservator, who may be the Public Guardian, to address the emergency.

(b) When the court takes action to exercise the powers of a conservator or to appoint a temporary conservator under subsection (a) of this section, an expedited hearing shall be held if requested by the person alleged to be in need of protection, or by any interested person, if the request is filed more than ten business days prior to the date set for the hearing on the petition for appointment of the conservator. If an expedited hearing is to be held, the hearing shall be held within ten business days after the request is received. At the hearing on the temporary appointment, the petitioner shall have the burden of showing by a preponderance of the evidence that temporary conservatorship continues to be necessary to address the emergency situation. Unless the person alleged to be in need of protection has counsel of his or her own choice, the court may appoint an attorney to represent the person at the hearing as provided in section 30-2636.

(c) If an expedited hearing is requested, notice shall be served as provided in section 30-2634. The notice shall specify that a temporary conservator has been appointed and shall be given at least twenty-four hours prior to the expedited hearing.

(d) At the expedited hearing, the court may render a judgment authorizing the temporary conservatorship to continue beyond the original ten-day period. The judgment shall prescribe the specific powers and duties of the temporary conservator in the letters of temporary conservatorship and shall be effective for a ninety-day period. For good cause shown, the court may extend the temporary conservatorship for successive ninety-day periods.

(e) The temporary conservatorship shall terminate at the end of the ninety-day period in which the temporary conservatorship is valid or at any time prior thereto if the court deems the circumstances leading to the order for temporary conservatorship no longer exist or if an order has been entered as a result of a hearing pursuant to section 30-2636 which has been held during the ninety-day period.

(f) If the court denies the request for the ex parte order, the court may, in its discretion, enter an order for an expedited hearing pursuant to subsections (b) through (e) of this section.

(g) If the petitioner requests the entry of an order of temporary conservatorship pursuant to subsection (a) of this section without requesting an ex parte order, the court may hold an expedited hearing pursuant to subsections (b) through (e) of this section.

(h) A temporary conservator may be removed at any time. A temporary conservator shall make any report the court requires, except that a temporary conservator shall not be required to provide the national criminal history

record check and report under section 30-2602.02. In other respects the provisions of the Nebraska Probate Code concerning conservators apply to temporary conservators.

Source: Laws 1993, LB 782, § 13; Laws 1997, LB 466, § 13; Laws 2011, LB157, § 41; Laws 2014, LB920, § 24.
Operative date January 1, 2015.

30-2632 Venue.

Unless otherwise provided in the Nebraska Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, venue for proceedings under this part is:

- (1) In the place in this state where the person to be protected resides whether or not a guardian has been appointed in another place; or
- (2) If the person to be protected does not reside in this state, in any place where he or she has property.

Source: Laws 1974, LB 354, § 250, UPC § 5-403; Laws 2011, LB157, § 42.

Cross References

Nebraska Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, see section 30-3901.

30-2639 Who may be appointed conservator; priorities.

(a) The court may appoint an individual, a corporation with general power to serve as trustee, or the Public Guardian as conservator of the estate of a protected person, except that it shall be unlawful for any agency providing residential care in an institution or community-based program or any owner, part owner, manager, administrator, employee, or spouse of an owner, part owner, manager, administrator, or employee of any nursing home, room and board home, assisted-living facility, or institution engaged in the care, treatment, or housing of any person physically or mentally handicapped, infirm, or aged to be appointed conservator of any such person residing, being under care, receiving treatment, or being housed in any such home, facility, or institution within the State of Nebraska. Nothing in this subsection shall prevent the spouse, adult child, parent, or other relative of the person in need of protection from being appointed conservator.

(b) Persons who are not disqualified under subsection (a) of this section and who exhibit the ability to exercise the powers to be assigned by the court have priority for appointment as conservator in the following order:

(1) A person nominated most recently by one of the following methods:

(i) A person nominated by the protected person in a power of attorney or durable power of attorney;

(ii) A person acting under a power of attorney or durable power of attorney;
or

(iii) A person nominated by an attorney in fact who is given power to nominate in a power of attorney or a durable power of attorney executed by the protected person;

(2) A conservator, guardian of property, or other like fiduciary appointed or recognized by the appropriate court of any other jurisdiction in which the protected person resides;

(3) An individual or corporation nominated by the protected person if he or she is fourteen or more years of age and has, in the opinion of the court, sufficient mental capacity to make an intelligent choice;

(4) The spouse of the protected person;

(5) An adult child of the protected person;

(6) A parent of the protected person or a person nominated by the will of a deceased parent;

(7) Any relative of the protected person with whom he or she has resided for more than six months prior to the filing of the petition;

(8) A person nominated by the person who is caring for him or her or paying benefits to him or her;

(9) The Public Guardian.

(c) When appointing a conservator, the court shall take into consideration the expressed wishes of the person to be protected. A person having priority listed in subdivision (2), (4), (5), (6), or (7) of subsection (b) of this section may nominate in writing a person to serve in his or her stead. With respect to persons having equal priority, the court shall select the person it deems best qualified of those willing to serve. The court, acting in the best interest of the protected person, may pass over a person having priority and appoint a person having lower priority or no priority.

(d) In its order of appointment, unless waived by the court, the court shall require any person appointed as conservator to successfully complete within three months of such appointment a training program approved by the Public Guardian. If the person appointed as conservator does not complete the training program, the court shall issue an order to show cause why such person should not be removed as conservator.

Source: Laws 1974, LB 354, § 257, UPC § 5-410; Laws 1985, LB 292, § 3; Laws 1993, LB 782, § 18; Laws 1997, LB 466, § 17; Laws 1997, LB 608, § 2; Laws 2014, LB920, § 25.

Operative date January 1, 2015.

Cross References

Training program, curricula, see section 30-2601.01.

30-2640 Bond.

For estates with a net value of more than ten thousand dollars, the bond for a conservator shall be in the amount of the aggregate capital value of the personal property of the estate in the conservator's control plus one year's estimated income from all sources minus the value of securities and other assets deposited under arrangements requiring an order of the court for their removal. The bond of the conservator shall be conditioned upon the faithful discharge of all duties of the trust according to law, with sureties as the court shall specify. The court, in lieu of sureties on a bond, may accept other security for the performance of the bond, including a pledge of securities or a mortgage of land owned by the conservator. For good cause shown, the court may eliminate the requirement of a bond or decrease or increase the required amount of any such bond previously furnished. The court shall not require a bond if the protected person executed a written, valid power of attorney that specifically nominates a guardian or conservator and specifically does not require a bond. The court shall consider as one of the factors of good cause,

when determining whether a bond should be required and the amount thereof, the protected person's choice of any attorney in fact or alternative attorney in fact. No bond shall be required of any financial institution, as that term is defined in subdivision (12) of section 8-101, or any officer, director, employee, or agent of the financial institution serving as a conservator, or any trust company serving as a conservator. The Public Guardian shall not be required to post bond.

Source: Laws 1974, LB 354, § 258, UPC § 5-411; Laws 1985, LB 292, § 4; Laws 2011, LB157, § 43; Laws 2014, LB920, § 26.
Operative date January 1, 2015.

30-2647 Conservator; duties; inventory and records.

Within thirty days after appointment, every conservator shall prepare and file with the appointing court a complete inventory of the estate of the protected person together with the conservator's oath or affirmation that the inventory is complete and accurate so far as he or she is informed. The conservator shall mail a copy thereof by first-class mail to the protected person, if the protected person can be located and has attained the age of fourteen years, and to all other interested persons as defined in section 30-2601. The conservator shall file with the court a certificate of mailing showing that copies were sent to all interested persons by first-class mail along with a form to send back to the court that indicates if such person wants to continue receiving notifications about the proceedings. Every conservator shall file an updated inventory with the annual accounting required under section 30-2648. The conservator shall keep suitable records of his or her administration and exhibit the same on request of any interested person.

Source: Laws 1974, LB 354, § 265, UPC § 5-418; Laws 2011, LB157, § 44; Laws 2013, LB172, § 3.

30-2648 Accounts.

Every conservator must account to the court for his or her administration of the trust annually, upon his or her resignation or removal, and at such other times as the court may direct. On termination of the protected person's minority or disability, a conservator may account to the court, or the conservator may account to the former protected person or the former protected person's personal representative. Subject to appeal or vacation within the time permitted, an order, made upon notice and hearing, allowing an intermediate account of a conservator, adjudicates as to the conservator's liabilities concerning the matters considered in connection therewith; and an order, made upon notice and hearing, allowing a final account adjudicates as to all previously unsettled liabilities of the conservator to the protected person or the protected person's successors relating to the conservatorship. In connection with any account, the court may require a conservator to submit to a physical check of the estate in his or her control, to be made in any manner the court may specify.

Source: Laws 1974, LB 354, § 266, UPC § 5-419; Laws 2011, LB157, § 45.

30-2655 Limitation of powers of conservator.

(a) The court may, at the time of appointment or later, limit the powers of a conservator otherwise conferred by sections 30-2653 and 30-2654, or previously conferred by the court, and may at any time relieve the conservator of any limitation. If the court limits any power conferred on the conservator by section 30-2653 or 30-2654, the limitation shall be endorsed upon the conservator's letters of appointment.

(b) A conservator shall not change a protected person's place of abode to a location outside of the State of Nebraska without court permission.

Source: Laws 1974, LB 354, § 273, UPC § 5-426; Laws 2011, LB157, § 46.

PART 5

POWERS OF ATTORNEY

30-2664 Repealed. Laws 2012, LB 1113, § 50.

30-2665 Repealed. Laws 2012, LB 1113, § 50.

30-2665.01 Repealed. Laws 2012, LB 1113, § 50.

30-2666 Repealed. Laws 2012, LB 1113, § 50.

30-2667 Repealed. Laws 2012, LB 1113, § 50.

30-2668 Repealed. Laws 2012, LB 1113, § 50.

30-2669 Repealed. Laws 2012, LB 1113, § 50.

30-2670 Repealed. Laws 2012, LB 1113, § 50.

30-2671 Repealed. Laws 2012, LB 1113, § 50.

30-2672 Repealed. Laws 2012, LB 1113, § 50.

ARTICLE 27

NONPROBATE TRANSFERS

PART 1

PROVISIONS RELATING TO EFFECT OF DEATH

Section

30-2715. Nonprobate transfers on death.

30-2715.01. Motor vehicle; transfer on death; certificate of title.

PART 1

PROVISIONS RELATING TO EFFECT OF DEATH

30-2715 Nonprobate transfers on death.

(a) A provision for a nonprobate transfer on death in an insurance policy, contract of employment, bond, mortgage, promissory note, certificated or uncertificated security, account agreement, custodial agreement, deposit agreement, compensation plan, pension plan, individual retirement plan, employee benefit plan, trust, marital property agreement, certificate of title, or other written instrument of a similar nature is nontestamentary. This subsection includes a written provision that:

(1) money or other benefits due to, controlled by, or owned by a decedent before death must be paid after the decedent's death to a person whom the decedent designates either in the instrument or in a separate writing, including a will, executed either before or at the same time as the instrument, or later;

(2) money due or to become due under the instrument ceases to be payable in the event of death of the promisee or the promisor before payment or demand; or

(3) any property controlled by or owned by the decedent before death which is the subject of the instrument passes to a person the decedent designates either in the instrument or in a separate writing, including a will, executed either before or at the same time as the instrument, or later.

(b) This section does not limit rights of creditors under other laws of this state.

Source: Laws 1993, LB 250, § 1; Laws 2010, LB712, § 24.

30-2715.01 Motor vehicle; transfer on death; certificate of title.

(1) A person who owns a motor vehicle may provide for the transfer of such vehicle upon his or her death or the death of the last survivor of a joint tenancy with right of survivorship by including in the certificate of title a designation of beneficiary or beneficiaries to whom the vehicle will be transferred on the death of the owner or the last survivor, subject to the rights of all lienholders, whether created before, simultaneously with, or after the creation of the transfer-on-death interest. A trust may be the beneficiary of a transfer-on-death certificate of title. The certificate of title shall include the name of the owner, the name of any tenant-in-common owner or the name of any joint-tenant-with-right-of-survivorship owner, followed in substance by the words transfer on death to (name of beneficiary or beneficiaries or name of trustee if a trust is to be the beneficiary). The abbreviation TOD may be used instead of the words transfer on death to.

(2) A transfer-on-death beneficiary shall have no interest in the motor vehicle until the death of the owner or the last survivor of the joint-tenant-with-right-of-survivorship owners. A beneficiary designation may be changed at any time by the owner or by the joint-tenant-with-right-of-survivorship owners then surviving without the consent of any beneficiary by filing an application for a subsequent certificate of title.

(3) Ownership of a motor vehicle which has a designation of beneficiary as provided in subsection (1) of this section and for which an application for a subsequent certificate of title has not been filed shall vest in the designated beneficiary or beneficiaries on the death of the owner or the last of the joint-tenant-with-right-of-survivorship owners, subject to the rights of all lienholders.

Source: Laws 2010, LB712, § 23.

ARTICLE 31

UNIFORM PRINCIPAL AND INCOME ACT

PART 1

DEFINITIONS AND FIDUCIARY DUTIES

Section

30-3116. Act, how cited.

30-3119.01. Conversion to total return trust.

Section

PART 4
ALLOCATION OF RECEIPTS DURING ADMINISTRATION OF TRUST
SUBPART 3
RECEIPTS NORMALLY APPORTIONED

- 30-3135. Deferred compensation, annuities, and similar payments; allocation to principal and income.
30-3135.01. Trust; marital deduction; when provisions applicable.

PART 5
ALLOCATION OF DISBURSEMENTS DURING ADMINISTRATION OF TRUST

- 30-3146. Income taxes.

PART 1
DEFINITIONS AND FIDUCIARY DUTIES

30-3116 Act, how cited.

Sections 30-3116 to 30-3149 shall be known and may be cited as the Uniform Principal and Income Act.

Source: Laws 2001, LB 56, § 1; Laws 2005, LB 533, § 33; Laws 2009, LB80, § 1.

30-3119.01 Conversion to total return trust.

(1) Unless expressly prohibited by a trust, a trustee may release the power to adjust described in section 30-3119 and convert a trust to a total return trust as described in this section if all of the following apply:

(a) The trustee determines that the conversion will enable the trustee to better carry out the intent of the settlor and the purpose of the trust;

(b) The trustee sends written notice of the trustee's decision to convert the trust to a total return trust specifying a prospective effective date for the conversion which shall not be sooner than sixty days after the notice is sent and which shall include a copy of this section of law and shall specifically recite the time period within which a timely objection may be made. Such notice shall be sent to the qualified beneficiaries determined as of the date the notice is sent and assuming nonexercise of all powers of appointment;

(c) There are one or more legally competent beneficiaries who are currently eligible to receive income from the trust and one or more legally competent beneficiaries who would receive a distribution of principal if the trust were to terminate immediately before the notice is given; and

(d) No beneficiary has objected in writing to the conversion to a total return trust and delivered such objection to the trustee within sixty days after the notice was sent.

(2) Conversion to a total return trust or reconversion to an income trust may be made by agreement between the trustee and all qualified beneficiaries of the trust. The trustee and all qualified beneficiaries of the trust may also agree to modify the distribution percentage, except that the trustee and the qualified beneficiaries may not agree to a distribution percentage of less than three percent or greater than five percent. The agreement may include any other actions a court could properly order pursuant to subsection (7) of this section.

(3)(a) The trustee may, for any reason, elect to petition the court to order conversion to a total return trust including, without limitation, the reason that conversion under subsection (1) of this section is unavailable because:

(i) A beneficiary timely objects to the conversion to a total return trust;

(ii) There are no legally competent beneficiaries who are currently eligible to receive income from the trust; or

(iii) There are no legally competent beneficiaries who would receive a distribution of principal if the trust were to terminate immediately.

(b) A beneficiary may request the trustee to convert to a total return trust or adjust the distribution percentage pursuant to this subsection. If the trustee declines or fails to act within six months after receiving a written request from a beneficiary to do so, the beneficiary may petition the court to order the conversion or adjustment.

(c) The trustee may petition the court prospectively to reconvert from a total return trust or to adjust the distribution percentage if the trustee determines that the reconversion or adjustment will enable the trustee to better carry out the purposes of the trust. A beneficiary may request the trustee to petition the court prospectively to reconvert from a total return trust or adjust the distribution percentage. If the trustee declines or fails to act within six months after receiving a written request from a beneficiary to do so, the beneficiary may petition the court to order the reconversion or adjustment.

(d)(i) In a judicial proceeding instituted under this subsection, the trustee may present opinions and reasons concerning:

(A) The trustee's support for or opposition to a conversion to a total return trust, a reconversion from a total return trust, or an adjustment of the distribution percentage of a total return trust, including whether the trustee believes conversion, reconversion, or adjustment of the distribution percentage would enable the trustee to better carry out the purposes of the trust; and

(B) Any other matter relevant to the proposed conversion, reconversion, or adjustment of the distribution percentage.

(ii) A trustee's actions undertaken in accordance with this subsection shall not be deemed improper or inconsistent with the trustee's duty of impartiality unless the court finds from all the evidence that the trustee acted in bad faith.

(e) The court shall order conversion to a total return trust, reconversion prospectively from a total return trust, or adjustment of the distribution percentage of a total return trust if the court determines that the conversion, reconversion, or adjustment of the distribution percentage will enable the trustee to better carry out the purposes of the trust.

(f) If a conversion to a total return trust is made pursuant to a court order, the trustee may reconvert the trust to an income trust only:

(i) Pursuant to a subsequent court order; or

(ii) By filing with the court an agreement made pursuant to subsection (2) of this section to reconvert to an income trust.

(g) Upon a reconversion the power to adjust, as described in section 30-3119 and as it existed before the conversion, shall be revived.

(h) An action may be taken under this subsection no more frequently than every two years, unless a court for good cause orders otherwise.

(4)(a) During the time that a trust is a total return trust, the trustee shall administer the trust in accordance with the provisions of this subsection as follows, unless otherwise expressly provided by the terms of the trust:

(i) The trustee shall invest the trust assets seeking a total return without regard to whether the return is from income or appreciation of principal;

(ii) The trustee shall make income distributions in accordance with the trust subject to the provisions of this section;

(iii) The distribution percentage for any trust converted to a total return trust by a trustee in accordance with subsection (1) of this section shall be four percent, unless a different percentage has been determined in an agreement made pursuant to subsection (2) of this section or ordered by the court pursuant to subsection (3) of this section; and

(iv)(A) The trustee shall pay to a beneficiary in the case of an underpayment within a reasonable time and shall recover from a beneficiary in the case of an overpayment either by repayment by the beneficiary or by withholding from future distributions to the beneficiary:

(I) An amount equal to the difference between the amount properly payable and the amount actually paid; and

(II) Interest compounded annually at a rate per annum equal to the distribution percentage in the year or years during which the underpayment or overpayment occurs.

(B) For purposes of subdivision (4)(a)(iv) of this section, accrual of interest may not commence until the beginning of the trust year following the year in which the underpayment or overpayment occurs.

(b) For purposes of this subsection:

(i) Distribution amount means an annual amount equal to the distribution percentage multiplied by the average net fair market value of the trust's assets. The average net fair market value of the trust's assets shall be the net fair market value of the trust's assets averaged over the lesser of:

(A) The three preceding years; or

(B) The period during which the trust has been in existence; and

(ii) Income, as that term appears in the governing instrument, means the distribution amount.

(5) The trustee may determine any of the following matters in administering a total return trust as the trustee deems necessary or helpful for the proper functioning of the trust:

(a) The effective date of a conversion to a total return trust pursuant to subsection (1) of this section;

(b) The manner of prorating the distribution amount for a short year in which a beneficiary's interest commences or ceases, or, if the trust is a total return trust for only part of the year or the trustee may elect to treat the trust year as two separate years, the first of which ends at the close of the day on which the conversion or reconversion occurs, and the second of which ends at the close of the trust year;

(c) Whether distributions are made in cash or in kind;

(d) The manner of adjusting valuations and calculations of the distribution amount to account for other payments from, or contributions to, the trust;

- (e) Whether to value the trust's assets annually or more frequently;
- (f) Which valuation dates to use and how many valuation dates to use;
- (g) Valuation decisions concerning any asset for which there is no readily available market value, including:
 - (i) How frequently to value such an asset;
 - (ii) Whether and how often to engage a professional appraiser to value such an asset; and
 - (iii) Whether to exclude the value of such an asset from the net fair market value of the trust's assets for purposes of determining the distribution amount. For purposes of this section, any such asset so excluded shall be referred to as an excluded asset and the trustee shall distribute any net income received from the excluded asset as provided for in the governing instrument, subject to the following principles:
 - (A) The trustee shall treat each asset for which there is no readily available market value as an excluded asset unless the trustee determines that there are compelling reasons not to do so and the trustee considers all relevant factors including the best interests of the beneficiaries;
 - (B) If tangible personal property or real property is possessed or occupied by a beneficiary, the trustee may not limit or restrict any right of the beneficiary to use the property in accordance with the governing instrument regardless of whether the trustee treats the property as an excluded asset; and
 - (C) By way of example and not by way of limitation, assets for which there is a readily available market value include cash and cash equivalents; stocks, bonds, and other securities and instruments for which there is an established market on a stock exchange, in an over-the-counter market, or otherwise; and any other property that can reasonably be expected to be sold within one week of the decision to sell without extraordinary efforts by the seller. By way of example and not by way of limitation, assets for which there is no readily available market value include stocks, bonds, and other securities and instruments for which there is no established market on a stock exchange, in an over-the-counter market, or otherwise; real property; tangible personal property; and artwork and other collectibles; and
 - (h) Any other administrative matter that the trustee determines is necessary or helpful for the proper functioning of the total return trust.
- (6)(a) Expenses, taxes, and other charges that would otherwise be deducted from income if the trust was not a total return trust may not be deducted from the distribution amount.
 - (b) Unless otherwise provided by the governing instrument, the distribution amount each year shall be deemed to be paid from the following sources for that year in the following order:
 - (i) Net income determined as if the trust was not a total return trust;
 - (ii) Other ordinary income as determined for federal income tax purposes;
 - (iii) Net realized short-term capital gains as determined for federal income tax purposes;
 - (iv) Net realized long-term capital gains as determined for federal income tax purposes;
 - (v) Trust principal comprising assets for which there is a readily available market value; and

(vi) Other trust principal.

(7)(a) The court may order any of the following actions in a proceeding brought by a trustee or a beneficiary pursuant to subdivision (a), (b), or (c) of subsection (3) of this section:

(i) Select a distribution percentage other than four percent, except that the court may not order a distribution percentage of less than three percent or greater than five percent;

(ii) Average the valuation of the trust's net assets over a period other than three years;

(iii) Reconvert prospectively from a total return trust or adjust the distribution percentage of a total return trust;

(iv) Direct the distribution of net income, determined as if the trust were not a total return trust, in excess of the distribution amount as to any or all trust assets if the distribution is necessary to preserve a tax benefit; or

(v) Change or direct any administrative procedure as the court determines is necessary or helpful for the proper functioning of the total return trust.

(b) Nothing in this subsection shall be construed to limit the equitable jurisdiction of the court to grant other relief as the court deems proper.

(8)(a) In the case of a trust for which a marital deduction has been taken for federal tax purposes under section 2056 or section 2523 of the Internal Revenue Code of 1986, as amended, the spouse otherwise entitled to receive the net income of the trust shall have the right, by written instrument delivered to the trustee, to compel the reconversion during that spouse's lifetime of the trust from a total return trust to an income trust, notwithstanding anything in this section to the contrary.

(b) Conversion to a total return trust shall not affect any provision in the governing instrument:

(i) That directs or authorizes the trustee to distribute principal;

(ii) That directs or authorizes the trustee to distribute a fixed annuity or a fixed fraction of the value of trust assets;

(iii) That authorizes a beneficiary to withdraw a portion or all of the principal; or

(iv) That in any manner diminishes an amount permanently set aside for charitable purposes under the governing instrument unless both income and principal are set aside.

(9) If a particular trustee is also a beneficiary of the trust and conversion or failure to convert would enhance or diminish the beneficial interest of that trustee or, if possession or exercise of the conversion power by a particular trustee alone would cause any individual to be treated as owner of a part of the trust for federal income tax purposes or cause a part of the trust to be included in the gross estate of any individual for federal estate tax purposes, then that particular trustee may not participate as a trustee in the exercise of the conversion power, except that:

(a) The trustee may petition the court under subdivision (a) of subsection (3) of this section to order conversion in accordance with this section; and

(b) A cotrustee or cotrustees to whom this subsection does not apply may convert the trust to a total return trust in accordance with subsection (1) or (2) of this section.

(10) A trustee may irrevocably release the power granted by this section if the trustee reasonably believes the release is in the best interests of the trust and its beneficiaries. The release may be personal to the releasing trustee or it may apply generally to some or all subsequent trustees. The release may be for any specified period, including a period measured by the life of an individual.

(11)(a) A trustee who reasonably and in good faith takes any action or omits to take any action under this section is not liable to any person interested in the trust. A discretionary act or omission by a trustee under this section shall be presumed to be reasonable and undertaken in good faith unless the act or omission is determined by a court to have been an abuse of discretion.

(b) If a trustee reasonably and in good faith takes or omits to take any action under this section and a person interested in the trust opposes the act or omission, the person's exclusive remedy shall be to seek an order of the court directing the trustee to:

(i) Convert the trust to a total return trust;

(ii) Reconvert from a total return trust;

(iii) Change the distribution percentage; or

(iv) Order any administrative procedures the court determines are necessary or helpful for the proper functioning of the trust.

(c) A claim for relief under this subsection that is not barred by adjudication, consent, or limitation is nevertheless barred as to any beneficiary who has received a statement fully disclosing the matter unless a proceeding to assert the claim is commenced within six months after receipt of the statement. A beneficiary is deemed to have received a statement if it is received by the beneficiary or the beneficiary's representative in a manner described in section 30-2222 or 30-3121.

(12) A trustee has no duty to inform a beneficiary about the availability and provisions of this section. A trustee has no duty to review the trust to determine whether any action should be taken under this section unless the trustee is requested in writing by a qualified beneficiary to do so.

(13)(a) This section applies to trusts in existence on September 4, 2005, and to trusts created on or after such date.

(b) This section shall be construed to apply to the administration of a trust that is administered in Nebraska under Nebraska law or that is governed by Nebraska law with respect to the meaning and effect of its terms unless:

(i) The trust is a trust described in the Internal Revenue Code of 1986, as amended, 26 U.S.C. section 170(f)(2)(B), 664(d), 1361(d), 2702(a)(3), or 2702(b);

(ii) Conversion of a trust to a total return trust is clearly contrary to the manifestation of the settlor's intent as expressed in the trust instrument or as may be established by other evidence that would be admissible in a judicial proceeding; or

(iii) The terms of a trust in existence on September 4, 2005, incorporate provisions that operate as a total return trust. The trustee or a beneficiary of such a trust may proceed under section 30-3121 to adopt provisions in this section that do not contradict provisions in the governing instrument.

Source: Laws 2005, LB 533, § 35; Laws 2010, LB760, § 1.

PART 4

ALLOCATION OF RECEIPTS DURING ADMINISTRATION OF TRUST

SUBPART 3

RECEIPTS NORMALLY APPORTIONED

30-3135 Deferred compensation, annuities, and similar payments; allocation to principal and income.

(a) In this section:

(1) Payment means a payment that a trustee may receive over a fixed number of years or during the life of one or more individuals because of services rendered or property transferred to the payer in exchange for future payments. The term includes a payment made in money or property from the payer's general assets or from a separate fund created by the payer. For purposes of subsections (d), (e), (f), and (g) of this section, the term also includes any payment from any separate fund, regardless of the reason for the payment; and

(2) Separate fund includes a private or commercial annuity, an individual retirement account, and a pension, profit-sharing, stock-bonus, or stock-ownership plan.

(b) To the extent that a payment is characterized as interest, a dividend, or a payment made in lieu of interest or a dividend, a trustee shall allocate the payment to income. The trustee shall allocate to principal the balance of the payment and any other payment received in the same accounting period that is not characterized as interest, a dividend, or an equivalent payment.

(c) If no part of a payment is characterized as interest, a dividend, or an equivalent payment, and all or part of the payment is required to be made, a trustee shall allocate to income ten percent of the part that is required to be made during the accounting period and the balance to principal. If no part of a payment is required to be made or the payment received is the entire amount to which the trustee is entitled, the trustee shall allocate the entire payment to principal. For purposes of this subsection, a payment is not required to be made to the extent that it is made because the trustee exercises a right of withdrawal.

(d) Except as otherwise provided in subsection (e) of this section, subsections (f) and (g) of this section apply, and subsections (b) and (c) of this section do not apply, in determining the allocation of a payment made from a separate fund to:

(1) a trust to which an election to qualify for a marital deduction under section 2056(b)(7) of the Internal Revenue Code of 1986, as amended, has been made; or

(2) a trust that qualifies for the marital deduction under section 2056(b)(5) of the Internal Revenue Code of 1986, as amended.

(e) Subsections (d), (f), and (g) of this section do not apply if and to the extent that the series of payments would, without the application of subsection (d) of this section, qualify for the marital deduction under section 2056(b)(7)(C) of the Internal Revenue Code of 1986, as amended.

(f) A trustee shall determine the internal income of each separate fund for the accounting period as if the separate fund were a trust subject to the Uniform

Principal and Income Act. Upon request of the surviving spouse, the trustee shall demand that the person administering the separate fund distribute the internal income to the trust. The trustee shall allocate a payment from the separate fund to income to the extent of the internal income of the separate fund and distribute that amount to the surviving spouse. The trustee shall allocate the balance of the payment to principal. Upon request of the surviving spouse, the trustee shall allocate principal to income to the extent the internal income of the separate fund exceeds payments made from the separate fund to the trust during the accounting period.

(g) If a trustee cannot determine the internal income of a separate fund but can determine the value of the separate fund, the internal income of the separate fund is deemed to equal at least three percent of the fund's value, according to the most recent statement of value preceding the beginning of the accounting period. If the trustee can determine neither the internal income of the separate fund nor the fund's value, the internal income of the fund is deemed to equal the product of the interest rate and the present value of the expected future payments, as determined under section 7520 of the Internal Revenue Code of 1986, as amended, for the month preceding the accounting period for which the computation is made.

(h) This section does not apply to a payment to which section 30-3136 applies.

Source: Laws 2001, LB 56, § 20; Laws 2009, LB80, § 2.

30-3135.01 Trust; marital deduction; when provisions applicable.

Section 30-3135, as amended by Laws 2009, LB 80, applies to a trust described in subsection (d) of section 30-3135 on and after the following dates:

(1) If the trust is not funded as of February 27, 2009, the date of the decedent's death;

(2) If the trust is initially funded in the calendar year beginning January 1, 2009, the date of the decedent's death; or

(3) If the trust is not described in subdivision (1) or (2) of this section, January 1, 2009.

Source: Laws 2009, LB80, § 4.

PART 5

ALLOCATION OF DISBURSEMENTS DURING ADMINISTRATION OF TRUST

30-3146 Income taxes.

(a) A tax required to be paid by a trustee based on receipts allocated to income must be paid from income.

(b) A tax required to be paid by a trustee based on receipts allocated to principal must be paid from principal, even if the tax is called an income tax by the taxing authority.

(c) A tax required to be paid by a trustee on the trust's share of an entity's taxable income must be paid:

(1) from income to the extent that receipts from the entity are allocated to income;

(2) from principal to the extent that receipts from the entity are allocated only to principal;

(3) proportionately from principal and income to the extent that receipts from the entity are allocated to both income and principal; and

(4) from principal to the extent that the tax exceeds the total receipts from the entity.

(d) After applying subsections (a) through (c) of this section, the trustee shall adjust income or principal receipts to the extent that the trust's taxes are reduced because the trust receives a deduction for payments made to a beneficiary.

Source: Laws 2001, LB 56, § 31; Laws 2009, LB80, § 3.

ARTICLE 32 FIDUCIARIES

Section

30-3209. Corporate trustee; retirement or pension funds of governmental employees; investments authorized.

30-3214. Real estate investment trust; articles of agreement or trust; filing.

30-3209 Corporate trustee; retirement or pension funds of governmental employees; investments authorized.

(1) Corporate trustees authorized by Nebraska law to exercise fiduciary powers and holding retirement or pension funds for the benefit of employees or former employees of cities, villages, school districts, or other governmental or political subdivisions may invest and reinvest such funds in such securities and investments as are authorized for trustees, guardians, conservators, personal representatives, or administrators under the laws of Nebraska. Retirement or pension funds of such cities, villages, districts, or subdivisions may be invested in annuities issued by life insurance companies authorized to do business in Nebraska. Except as provided in subsection (2) of this section, any other retirement or pension funds of cities, including cities operating under home rule charters, villages, school districts except as provided in section 79-9,107, and all other governmental or political subdivisions may be invested and reinvested, as the governing body of such city, village, school district, or other governmental or political subdivision may determine, in the following classes of securities and investments: (a) Bonds, notes, or other obligations of the United States or those guaranteed by or for which the credit of the United States is pledged for the payment of the principal and interest or dividends thereof; (b) bonds or other evidences of indebtedness of the State of Nebraska and full faith and credit obligations of or obligations unconditionally guaranteed as to principal and interest by any other state of the United States; (c) bonds, notes, or obligations of any municipal or political subdivision of the State of Nebraska which are general obligations of the issuer thereof and revenue bonds or debentures of any city, county, or utility district of this state when the earnings available for debt service have, for a five-year period immediately preceding the date of purchase, averaged not less than one and one-half times such debt service requirements; (d) bonds and debentures issued either singly or collectively by any of the twelve federal land banks, the twelve intermediate credit banks, or the thirteen banks for cooperatives under the supervision of the Farm Credit Administration; (e) certificates of deposit of banks which are members of the Federal Deposit Insurance Corporation or capital stock financial institu-

tions, and if the amount deposited exceeds the amount of insurance available thereon, then the excess shall be secured in the same manner as for the deposit of public funds; (f) accounts with building and loan associations, qualifying mutual financial institutions, or federal savings and loan associations in the State of Nebraska to the extent that such accounts are insured or guaranteed by the Federal Deposit Insurance Corporation; (g) bonds or other interest-bearing obligations of any corporation organized under the laws of the United States or any state thereof if (i) at the time the purchase is made, they are given, by at least one statistical organization whose publication is in general use, one of the three highest ratings given by such organization and (ii) not more than five percent of the fund shall be invested in the obligations of any one issuer; (h) direct short-term obligations, generally classified as commercial paper, of any corporation organized or existing under the laws of the United States or any state thereof with a net worth of ten million dollars or more; and (i) preferred or common stock of any corporation organized under the laws of the United States or of any state thereof with a net worth of ten million dollars or more if (i) not more than fifty percent of the total investments at the time such investment is made is in this class and not more than five percent is invested in each of the first five years and (ii) not more than five percent thereof is invested in the securities of any one corporation. Notwithstanding the percentage limits stated in this subsection, the cash proceeds of the sale of such preferred or common stock may be reinvested in any securities authorized under this subdivision. No city, village, school district, or other governmental subdivision or the governing body thereof shall be authorized to sell any securities short, buy on margin, or buy, sell, or engage in puts and calls. Section 77-2366 shall apply to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

(2) Notwithstanding the limitations prescribed in subsection (1) of this section, trustees or custodians holding retirement or pension funds for the benefit of employees or former employees of any city of the primary class, city of the metropolitan class, metropolitan utilities district, county in which a city of the metropolitan class is located, or public power district shall invest such funds in investments of the nature which individuals of prudence, discretion, and intelligence acquire or retain in dealing with the property of another. Such investments shall not be made for speculation but for investment, considering the probable safety of their capital as well as the probable income to be derived. The trustees or custodians shall not buy on margin, buy call options, or buy put options. The trustees or custodians may lend any security if cash, United States Government obligations, or United States Government agency obligations with a market value equal to or exceeding the market value of the security lent are received as collateral. If shares of stock are purchased under this subsection, all proxies may be voted by the trustees or custodians. The asset allocation restrictions set forth in subsection (1) of this section shall not be applicable to the funds of pension or retirement systems administered by or on behalf of a city of the primary class, city of the metropolitan class, metropolitan utilities district, county in which a city of the metropolitan class is located, or public power district.

(3) For purposes of subsection (2) of this section, a custodian means a custodian meeting the requirements of section 401(f)(2) of the Internal Revenue Code.

Source: Laws 1967, c. 257, § 1, p. 678; Laws 1984, LB 752, § 1; Laws 1989, LB 33, § 25; R.S.Supp., 1989, § 24-601.04; Laws 1992, LB

757, § 21; Laws 1996, LB 900, § 1036; Laws 1998, LB 1321, § 78; Laws 2001, LB 362, § 29; Laws 2001, LB 408, § 12; Laws 2009, LB259, § 12; Laws 2014, LB759, § 18.
Effective date July 18, 2014.

30-3214 Real estate investment trust; articles of agreement or trust; filing.

A real estate investment trust shall file its articles of agreement or of trust or any modifications thereof with the Secretary of State and with the county clerk of the county in this state in which the trust has its principal place of doing business by complying with the same procedures as set forth in sections 21-215, 21-219 to 21-225, and 21-2,150 to 21-2,160. Such filing shall include a copy of the articles of agreement or of trust and shall name a resident agent in the State of Nebraska and the principal place of doing business in this state.

Source: Laws 1961, c. 108, § 2, p. 345; Laws 1965, c. 114, § 1, p. 439; R.S.1943, (1985), § 24-633; Laws 1995, LB 109, § 213; Laws 2014, LB749, § 278.
Operative date January 1, 2016.

ARTICLE 34

HEALTH CARE POWER OF ATTORNEY

Section

30-3408. Power of attorney; form; validity.

30-3408 Power of attorney; form; validity.

(1) A power of attorney for health care executed on or after September 9, 1993, shall be in a form which complies with sections 30-3401 to 30-3432 and may be in the form provided in this subsection.

POWER OF ATTORNEY FOR HEALTH CARE

I appoint, whose address is, and whose telephone number is, as my attorney in fact for health care. I appoint, whose address is, and whose telephone number is, as my successor attorney in fact for health care. I authorize my attorney in fact appointed by this document to make health care decisions for me when I am determined to be incapable of making my own health care decisions. I have read the warning which accompanies this document and understand the consequences of executing a power of attorney for health care.

I direct that my attorney in fact comply with the following instructions or limitations:

I direct that my attorney in fact comply with the following instructions on life-sustaining treatment: (optional)

I direct that my attorney in fact comply with the following instructions on artificially administered nutrition and hydration: (optional)

I HAVE READ THIS POWER OF ATTORNEY FOR HEALTH CARE. I UNDERSTAND THAT IT ALLOWS ANOTHER PERSON TO MAKE LIFE AND DEATH DECISIONS FOR ME IF I AM INCAPABLE OF MAKING SUCH DECISIONS. I ALSO UNDERSTAND THAT I CAN REVOKE THIS POWER OF ATTORNEY FOR HEALTH CARE AT ANY TIME BY NOTIFYING MY

ATTORNEY IN FACT, MY PHYSICIAN, OR THE FACILITY IN WHICH I AM A PATIENT OR RESIDENT. I ALSO UNDERSTAND THAT I CAN REQUIRE IN THIS POWER OF ATTORNEY FOR HEALTH CARE THAT THE FACT OF MY INCAPACITY IN THE FUTURE BE CONFIRMED BY A SECOND PHYSICIAN.

.....
(Signature of person making designation/date)

DECLARATION OF WITNESSES

We declare that the principal is personally known to us, that the principal signed or acknowledged his or her signature on this power of attorney for health care in our presence, that the principal appears to be of sound mind and not under duress or undue influence, and that neither of us nor the principal's attending physician is the person appointed as attorney in fact by this document.

Witnessed By:

.....
(Signature of Witness/Date)

.....
(Printed Name of Witness)

.....
(Signature of Witness/Date)

.....
(Printed Name of Witness)

OR

State of Nebraska,)
)ss.
County of)

On this day of, 20...., before me,, a notary public in and for County, personally came, personally to me known to be the identical person whose name is affixed to the above power of attorney for health care as principal, and I declare that he or she appears in sound mind and not under duress or undue influence, that he or she acknowledges the execution of the same to be his or her voluntary act and deed, and that I am not the attorney in fact or successor attorney in fact designated by this power of attorney for health care.

Witness my hand and notarial seal at in such county the day and year last above written.

Seal

.....
Signature of Notary Public

(2) A power of attorney for health care may be included in a durable power of attorney drafted under the Nebraska Uniform Power of Attorney Act or in any other form if the power of attorney for health care included in such durable power of attorney or any other form fully complies with the terms of section 30-3404.

(3) A power of attorney for health care executed prior to January 1, 1993, shall be effective if it fully complies with the terms of section 30-3404.

(4) A power of attorney for health care which is executed in another state and is valid under the laws of that state shall be valid according to its terms.

Source: Laws 1992, LB 696, § 8; Laws 1993, LB 782, § 22; Laws 2004, LB 813, § 11; Laws 2012, LB1113, § 47.

Cross References

Nebraska Uniform Power of Attorney Act, see section 30-4001.

ARTICLE 38

NEBRASKA UNIFORM TRUST CODE

PART 3
REPRESENTATION

Section

30-3823. (UTC 302) Holder of power of appointment or power to terminate an interest.

PART 4
CREATION, VALIDITY, MODIFICATION, AND TERMINATION OF TRUST

30-3839. (UTC 413) Cy pres.

PART 6
REVOCABLE TRUSTS

30-3855. (UTC 603) Rights and duties.

PART 3
REPRESENTATION

30-3823 (UTC 302) Holder of power of appointment or power to terminate an interest.

(UTC 302) The holder of a power of appointment or other power to terminate an interest may represent and bind persons whose interests, as permissible appointees, takers in default, or otherwise, are subject to the power.

Source: Laws 2003, LB 130, § 23; Laws 2013, LB38, § 1.

PART 4
CREATION, VALIDITY, MODIFICATION, AND TERMINATION OF TRUST

30-3839 (UTC 413) Cy pres.

(UTC 413) (a) Except as otherwise provided in subsection (b) of this section, if a particular charitable purpose becomes unlawful, impracticable, impossible to achieve, or wasteful:

- (1) the trust does not fail, in whole or in part;
- (2) the trust property does not revert to the settlor or the settlor's successors in interest; and
- (3) the court may apply cy pres to modify or terminate the trust by directing that the trust property be applied or distributed, in whole or in part, in a manner consistent with the settlor's charitable purposes or to the Legal Aid and Services Fund.

(b) Subsection (a) of this section does not apply if the document creating the charitable interest expressly provides for an alternate disposition of the charitable interest in the event the charitable purpose becomes unlawful, impracticable-

ble, impossible to achieve, or wasteful. A general residuary disposition by trust shall not be considered an express provision for an alternate disposition.

(c) This section shall not be deemed to limit application of the common law doctrines of cy pres and deviation or section 58-615.

Source: Laws 2003, LB 130, § 39; Laws 2010, LB758, § 4; Laws 2014, LB1089, § 2.

Effective date July 18, 2014.

PART 6

REVOCABLE TRUSTS

30-3855 (UTC 603) Rights and duties.

(UTC 603) (a) While a trust is revocable, rights of the beneficiaries are subject to the control of, and the duties of the trustee are owed exclusively to, the settlor.

(b) While the trust is irrevocable and during the period the power may be exercised, the holder of a power of withdrawal has the rights of a settlor of a revocable trust under this section and the duties of the trustee are owed exclusively to the holder of the power to the extent of the property subject to the power.

(c) While the trust is irrevocable and during the period the interest of any beneficiary not having a present interest may be terminated by the exercise of a power of appointment or other power, the duties of the trustee are owed exclusively to the holder of the power to the extent of the property subject to the power.

Source: Laws 2003, LB 130, § 55; Laws 2004, LB 999, § 27; Laws 2005, LB 533, § 43; Laws 2013, LB38, § 2.

ARTICLE 39

NEBRASKA UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTION ACT

PART 1

GENERAL PROVISIONS

Section

- 30-3901. Act, how cited.
- 30-3902. Definitions.
- 30-3903. International application of act.
- 30-3904. Communication between courts.
- 30-3905. Cooperation between courts.
- 30-3906. Taking testimony in another state.

PART 2

JURISDICTION

- 30-3907. Definitions; significant connection factors.
- 30-3908. Exclusive basis.
- 30-3909. Jurisdiction.
- 30-3910. Special jurisdiction.
- 30-3911. Exclusive and continuing jurisdiction.
- 30-3912. Appropriate forum.
- 30-3913. Jurisdiction declined by reason of conduct.
- 30-3914. Notice of proceeding.
- 30-3915. Proceedings in more than one state.

Section

PART 3

TRANSFER OF GUARDIANSHIP OR CONSERVATORSHIP

- 30-3916. Transfer of guardianship or conservatorship to another state.
- 30-3917. Accepting guardianship or conservatorship transferred from another state.

PART 4

REGISTRATION AND RECOGNITION OF ORDERS FROM OTHER STATES

- 30-3918. Registration of guardianship orders; filing required.
- 30-3919. Registration of protective orders.
- 30-3920. Effect of registration.

PART 5

MISCELLANEOUS PROVISIONS

- 30-3921. Uniformity of application and construction.
- 30-3922. Relation to Electronic Signatures in Global and National Commerce Act.
- 30-3923. Transitional provision.

PART 1

GENERAL PROVISIONS

30-3901 Act, how cited.

Sections 30-3901 to 30-3923 shall be known and may be cited as the Nebraska Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

Source: Laws 2011, LB157, § 5.

30-3902 Definitions.

In the Nebraska Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act:

- (1) Adult means an individual who has attained nineteen years of age;
- (2) Conservator means a person appointed by the court to administer the property of an adult, including a person appointed under the Nebraska Probate Code for an adult;
- (3) Guardian means a person appointed by the court to make decisions regarding the person of an adult, including a person appointed under the Nebraska Probate Code for an adult;
- (4) Guardianship order means an order appointing a guardian;
- (5) Guardianship proceeding means a judicial proceeding in which an order for the appointment of a guardian is sought or has been issued;
- (6) Incapacitated person means an adult for whom a guardian has been appointed;
- (7) Party means the respondent, petitioner, guardian, conservator, or any other person allowed by the court to participate in a guardianship or protective proceeding;
- (8) Person, except in the term incapacitated person or protected person, means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity;

(9) Protected person means an adult for whom a protective order has been issued;

(10) Protective order means an order appointing a conservator or other order related to management of an adult's property;

(11) Protective proceeding means a judicial proceeding in which a protective order is sought or has been issued;

(12) Record means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

(13) Respondent means an adult for whom a protective order or the appointment of a guardian is sought; and

(14) State means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States.

Source: Laws 2011, LB157, § 6.

30-3903 International application of act.

A court of this state may treat a foreign country as if it were a state for the purpose of applying sections 30-3901 to 30-3917 and 30-3921 to 30-3923.

Source: Laws 2011, LB157, § 7.

30-3904 Communication between courts.

(1) A court of this state may communicate with a court in another state concerning a proceeding arising under the Nebraska Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act. The court may allow the parties to participate in the communication. Except as otherwise provided in subsection (2) of this section, the court shall make a record of the communication. The record may be limited to the fact that the communication occurred.

(2) Courts may communicate concerning schedules, calendars, court records, and other administrative matters without making a record.

Source: Laws 2011, LB157, § 8.

30-3905 Cooperation between courts.

(1) In a guardianship or protective proceeding in this state, a court of this state may request the appropriate court of another state to do any of the following:

(a) Hold an evidentiary hearing;

(b) Order a person in that state to produce evidence or give testimony pursuant to procedures of that state;

(c) Order that an evaluation or assessment be made of the respondent;

(d) Order any appropriate investigation of a person involved in a proceeding;

(e) Forward to the court of this state a certified copy of the transcript or other record of a hearing under subdivision (a) of this subsection or any other proceeding, any evidence otherwise produced under subdivision (b) of this subsection, and any evaluation or assessment prepared in compliance with an order under subdivision (c) or (d) of this subsection;

(f) Issue any order necessary to assure the appearance in the proceeding of a person whose presence is necessary for the court to make a determination, including the respondent or the incapacitated or protected person; or

(g) Issue an order authorizing the release of medical, financial, criminal, or other relevant information in that state, including protected health information as defined in 45 C.F.R. 160.103, as such regulation existed on January 1, 2011.

(2) If a court of another state in which a guardianship or protective proceeding is pending requests assistance of the kind provided in subsection (1) of this section, a court of this state has jurisdiction for the limited purpose of granting the request or making reasonable efforts to comply with the request.

Source: Laws 2011, LB157, § 9.

30-3906 Taking testimony in another state.

(1) In a guardianship or protective proceeding, in addition to other procedures that may be available, testimony of a witness who is located in another state may be offered by deposition or other means allowable in this state for testimony taken in another state. The court on its own motion may order that the testimony of a witness be taken in another state and may prescribe the manner in which and the terms upon which the testimony is to be taken.

(2) In a guardianship or protective proceeding, a court in this state may permit a witness located in another state to be deposed or to testify by telephone or audiovisual or other electronic means. A court of this state shall cooperate with the court of the other state in designating an appropriate location for the deposition or testimony.

(3) Documentary evidence transmitted from another state to a court of this state by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the best evidence rule.

Source: Laws 2011, LB157, § 10.

PART 2

JURISDICTION

30-3907 Definitions; significant connection factors.

(1) For purposes of sections 30-3907 to 30-3915:

(a) Emergency means a circumstance that likely will result in substantial harm to a respondent's health, safety, or welfare, and for which the appointment of a guardian is necessary because no other person has authority and is willing to act on the respondent's behalf;

(b) Home state means the state in which the respondent was physically present, including any period of temporary absence, for at least six consecutive months immediately before the filing of a petition for a protective order or the appointment of a guardian or, if none, the state in which the respondent was physically present, including any period of temporary absence, for at least six consecutive months ending within the six months prior to the filing of the petition; and

(c) Significant-connection state means a state, other than the home state, with which a respondent has a significant connection other than mere physical presence and in which substantial evidence concerning the respondent is available.

(2) In determining under section 30-3909 and subsection (5) of section 30-3916 whether a respondent has a significant connection with a particular state, the court shall consider:

(a) The location of the respondent's family and other persons required to be notified of the guardianship or protective proceeding;

(b) The length of time the respondent at any time was physically present in the state and the duration of any absence;

(c) The location of the respondent's property; and

(d) The extent to which the respondent has ties to the state such as voting registration, state or local tax return filing, vehicle registration, driver's license, social relationship, and receipt of services.

Source: Laws 2011, LB157, § 11.

30-3908 Exclusive basis.

Sections 30-3907 to 30-3915 provide the exclusive jurisdictional basis for a court of this state to appoint a guardian or issue a protective order for an adult.

Source: Laws 2011, LB157, § 12.

30-3909 Jurisdiction.

A court of this state has jurisdiction to appoint a guardian or issue a protective order for a respondent if:

(1) This state is the respondent's home state;

(2) On the date the petition is filed, this state is a significant-connection state and:

(a) The respondent does not have a home state or a court of the respondent's home state has declined to exercise jurisdiction because this state is a more appropriate forum; or

(b) The respondent has a home state, a petition for an appointment or order is not pending in a court of that state or another significant-connection state, and, before the court makes the appointment or issues the order:

(i) A petition for an appointment or order is not filed in the respondent's home state;

(ii) An objection to the court's jurisdiction is not filed by a person required to be notified of the proceeding; and

(iii) The court in this state concludes that it is an appropriate forum under the factors set forth in section 30-3912;

(3) This state does not have jurisdiction under either subdivision (1) or (2) of this section, the respondent's home state and all significant-connection states have declined to exercise jurisdiction because this state is the more appropriate forum, and jurisdiction in this state is consistent with the constitutions of this state and the United States; or

(4) The requirements for special jurisdiction under section 30-3910 are met.

Source: Laws 2011, LB157, § 13.

30-3910 Special jurisdiction.

(1) A court of this state lacking jurisdiction under section 30-3909 has special jurisdiction to do any of the following:

(a) Appoint a guardian in an emergency for a term not exceeding ninety days for a respondent who is physically present in this state;

(b) Issue a protective order with respect to real or tangible personal property located in this state; or

(c) Appoint a guardian or conservator for an incapacitated or protected person for whom a provisional order to transfer the proceeding from another state has been issued under procedures similar to section 30-3916.

(2) If a petition for the appointment of a guardian in an emergency is brought in this state and this state was not the respondent's home state on the date the petition was filed, the court shall dismiss the proceeding at the request of the court of the home state, if any, whether dismissal is requested before or after the emergency appointment.

Source: Laws 2011, LB157, § 14.

30-3911 Exclusive and continuing jurisdiction.

Except as otherwise provided in section 30-3910, a court that has appointed a guardian or issued a protective order consistent with the Nebraska Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act has exclusive and continuing jurisdiction over the proceeding until it is terminated by the court or the appointment or order expires by its own terms.

Source: Laws 2011, LB157, § 15.

30-3912 Appropriate forum.

(1) A court of this state having jurisdiction under section 30-3909 to appoint a guardian or issue a protective order may decline to exercise its jurisdiction if it determines at any time that a court of another state is a more appropriate forum.

(2) If a court of this state declines to exercise its jurisdiction under subsection (1) of this section, it shall either dismiss or stay the proceeding. The court may impose any condition the court considers just and proper, including the condition that a petition for the appointment of a guardian or issuance of a protective order be filed promptly in another state.

(3) In determining whether it is an appropriate forum, the court shall consider all relevant factors, including:

(a) Any expressed preference of the respondent;

(b) Whether abuse, neglect, or exploitation of the respondent has occurred or is likely to occur and which state could best protect the respondent from the abuse, neglect, or exploitation;

(c) The length of time the respondent was physically present in or was a legal resident of this or another state;

(d) The distance of the respondent from the court in each state;

(e) The financial circumstances of the respondent's estate;

(f) The nature and location of the evidence;

(g) The ability of the court in each state to decide the issue expeditiously and the procedures necessary to present evidence;

(h) The familiarity of the court of each state with the facts and issues in the proceeding; and

(i) If an appointment were made, the court's ability to monitor the conduct of the guardian or conservator.

Source: Laws 2011, LB157, § 16.

30-3913 Jurisdiction declined by reason of conduct.

(1) If at any time a court of this state determines that it acquired jurisdiction to appoint a guardian or issue a protective order because of unjustifiable conduct, the court may:

(a) Decline to exercise jurisdiction;

(b) Exercise jurisdiction for the limited purpose of fashioning an appropriate remedy to ensure the health, safety, and welfare of the respondent or the protection of the respondent's property or prevent a repetition of the unjustifiable conduct, including staying the proceeding until a petition for the appointment of a guardian or issuance of a protective order is filed in a court of another state having jurisdiction; or

(c) Continue to exercise jurisdiction after considering:

(i) The extent to which the respondent and all persons required to be notified of the proceedings have acquiesced in the exercise of the court's jurisdiction;

(ii) Whether it is a more appropriate forum than the court of any other state under the factors set forth in subsection (3) of section 30-3912; and

(iii) Whether the court of any other state would have jurisdiction under factual circumstances in substantial conformity with the jurisdictional standards of section 30-3909.

(2) If a court of this state determines that it acquired jurisdiction to appoint a guardian or issued a protective order because a party seeking to invoke its jurisdiction engaged in unjustifiable conduct, it may assess against that party necessary and reasonable expenses, including attorney's fees, investigative fees, court costs, communication expenses, witness fees and expenses, and travel expenses. The court may not assess fees, costs, or expenses of any kind against this state or a governmental subdivision, agency, or instrumentality of this state unless authorized by law other than the Nebraska Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

Source: Laws 2011, LB157, § 17.

30-3914 Notice of proceeding.

If a petition for the appointment of a guardian or issuance of a protective order is brought in this state and this state was not the respondent's home state on the date the petition was filed, in addition to complying with the notice requirements of this state, notice of the petition must be given to those persons who would be entitled to notice of the petition if a proceeding were brought in the respondent's home state. The notice must be given in the same manner as notice is required to be given in this state.

Source: Laws 2011, LB157, § 18.

30-3915 Proceedings in more than one state.

Except for a petition for the appointment of a guardian in an emergency or issuance of a protective order limited to property located in this state under subdivision (1)(a) or (b) of section 30-3910, if a petition for the appointment of

a guardian or issuance of a protective order is filed in this state and in another state and neither petition has been dismissed or withdrawn, the following rules apply:

(1) If the court in this state has jurisdiction under section 30-3909, it may proceed with the case unless a court in another state acquires jurisdiction under provisions similar to section 30-3909 before the appointment or issuance of the order; and

(2) If the court in this state does not have jurisdiction under section 30-3909, whether at the time the petition is filed or at any time before the appointment or issuance of the order, the court shall stay the proceeding and communicate with the court in the other state. If the court in the other state has jurisdiction, the court in this state shall dismiss the petition unless the court in the other state determines that the court in this state is a more appropriate forum.

Source: Laws 2011, LB157, § 19.

PART 3

TRANSFER OF GUARDIANSHIP OR CONSERVATORSHIP

30-3916 Transfer of guardianship or conservatorship to another state.

(1) A guardian or conservator appointed in this state may petition the court to transfer the guardianship or conservatorship to another state.

(2) Notice of a petition under subsection (1) of this section must be given to the persons that would be entitled to notice of a petition in this state for the appointment of a guardian or conservator.

(3) On the court's own motion or on request of the guardian or conservator, the incapacitated or protected person, or other person required to be notified of the petition, the court shall hold a hearing on a petition filed pursuant to subsection (1) of this section.

(4) The court shall issue an order provisionally granting a petition to transfer a guardianship and shall direct the guardian to petition for guardianship in the other state if the court is satisfied that the guardianship will be accepted by the court in the other state and the court finds that:

(a) The incapacitated person is physically present in or is reasonably expected to move permanently to the other state;

(b) An objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the interests of the incapacitated person; and

(c) Plans for care and services for the incapacitated person in the other state are reasonable and sufficient.

(5) The court shall issue a provisional order granting a petition to transfer a conservatorship and shall direct the conservator to petition for conservatorship in the other state if the court is satisfied that the conservatorship will be accepted by the court of the other state and the court finds that:

(a) The protected person is physically present in or is reasonably expected to move permanently to the other state, or the protected person has a significant connection to the other state considering the factors in subsection (2) of section 30-3907;

(b) An objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the interests of the protected person; and

(c) Adequate arrangements will be made for management of the protected person's property.

(6) The court shall issue a final order confirming the transfer and terminating the guardianship or conservatorship upon its receipt of:

(a) A provisional order accepting the proceeding from the court to which the proceeding is to be transferred which is issued under provisions similar to section 30-3917; and

(b) The documents required to terminate a guardianship or conservatorship in this state.

Source: Laws 2011, LB157, § 20.

30-3917 Accepting guardianship or conservatorship transferred from another state.

(1) To confirm transfer of a guardianship or conservatorship transferred to this state under provisions similar to section 30-3916, the guardian or conservator must petition the court in this state to accept the guardianship or conservatorship. The petition must include a certified copy of the other state's provisional order of transfer.

(2) Notice of a petition under subsection (1) of this section must be given to those persons that would be entitled to notice if the petition were a petition for the appointment of a guardian or issuance of a protective order in both the transferring state and this state. The notice must be given in the same manner as notice is required to be given in this state.

(3) On the court's own motion or on request of the guardian or conservator, the incapacitated or protected person, or other person required to be notified of the proceeding, the court shall hold a hearing on a petition filed pursuant to subsection (1) of this section.

(4) The court shall issue an order provisionally granting a petition filed under subsection (1) of this section unless:

(a) An objection is made and the objector establishes that transfer of the proceeding would be contrary to the interests of the incapacitated or protected person; or

(b) The guardian or conservator is ineligible for appointment in this state.

(5) The court shall issue a final order accepting the proceeding and appointing the guardian or conservator as guardian or conservator in this state upon its receipt from the court from which the proceeding is being transferred of a final order issued under provisions similar to section 30-3916 transferring the proceeding to this state.

(6) Not later than ninety days after issuance of a final order accepting transfer of a guardianship or conservatorship, the court shall determine whether the guardianship or conservatorship needs to be modified to conform to the law of this state.

(7) In granting a petition under this section, the court shall recognize a guardianship or conservatorship order from the other state, including the

determination of the incapacitated or protected person's incapacity and the appointment of the guardian or conservator.

(8) The denial by a court of this state of a petition to accept a guardianship or conservatorship transferred from another state does not affect the ability of the guardian or conservator to seek appointment as guardian or conservator in this state under the Nebraska Probate Code if the court has jurisdiction to make an appointment other than by reason of the provisional order of transfer.

Source: Laws 2011, LB157, § 21.

PART 4

REGISTRATION AND RECOGNITION OF ORDERS FROM OTHER STATES

30-3918 Registration of guardianship orders; filing required.

If a guardian has been appointed in another state and a petition for the appointment of a guardian is not pending in this state, the guardian appointed in the other state, after giving notice to the appointing court of an intent to register, may register the guardianship order in this state by filing as a foreign judgment in a court, in any appropriate county of this state, certified copies of the order and letters of office. If the incapacitated person does not have a conservator and has real property or an interest in real property in Nebraska, the guardian shall file in every county where such property is located as required by section 25-2708.

Source: Laws 2011, LB157, § 22.

30-3919 Registration of protective orders.

If a conservator has been appointed in another state and a petition for a protective order is not pending in this state, the conservator appointed in the other state, after giving notice to the appointing court of an intent to register, may register the protective order in this state by filing as a foreign judgment in a court of this state, in every county in which property belonging to the protected person is located as required by section 25-2708, certified copies of the order and letters of office and of any bond.

Source: Laws 2011, LB157, § 23.

30-3920 Effect of registration.

(1) Upon registration of a guardianship or protective order from another state, the guardian or conservator may exercise in this state all powers authorized in the order of appointment except as prohibited under the laws of this state, including maintaining actions and proceedings in this state and, if the guardian or conservator is not a resident of this state, subject to any conditions imposed upon nonresident parties.

(2) A court of this state may grant any relief available under the Nebraska Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act and other law of this state to enforce a registered order.

Source: Laws 2011, LB157, § 24.

PART 5

MISCELLANEOUS PROVISIONS

30-3921 Uniformity of application and construction.

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Source: Laws 2011, LB157, § 25.

30-3922 Relation to Electronic Signatures in Global and National Commerce Act.

The Nebraska Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001, as the act existed on January 1, 2011, but does not modify, limit, or supersede section 101(c) of the act, 15 U.S.C. 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of the act, 15 U.S.C. 7003(b).

Source: Laws 2011, LB157, § 26.

30-3923 Transitional provision.

(1) The Nebraska Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act applies to guardianship and protective proceedings begun on or after January 1, 2012.

(2) Sections 30-3901 to 30-3906 and 30-3916 to 30-3923 apply to proceedings begun before January 1, 2012, regardless of whether a guardianship or protective order has been issued.

Source: Laws 2011, LB157, § 27.

ARTICLE 40**NEBRASKA UNIFORM POWER OF ATTORNEY ACT**

PART 1

GENERAL PROVISIONS

Section

- 30-4001. Act, how cited.
- 30-4002. Definitions.
- 30-4003. Applicability.
- 30-4004. Power of attorney is durable.
- 30-4005. Execution of power of attorney.
- 30-4006. Validity of power of attorney.
- 30-4007. Meaning and effect of power of attorney.
- 30-4008. Nomination of conservator or guardian; relation of agent to court-appointed fiduciary.
- 30-4009. When power of attorney effective.
- 30-4010. Termination of power of attorney or agent's authority.
- 30-4011. Coagents and successor agents.
- 30-4012. Reimbursement and compensation of agent.
- 30-4013. Agent's acceptance.
- 30-4014. Agent's duties.
- 30-4015. Exoneration of agent.
- 30-4016. Judicial relief.
- 30-4017. Agent's liability.

Section

- 30-4018. Agent's resignation; notice.
- 30-4019. Acceptance of and reliance upon acknowledged power of attorney.
- 30-4020. Liability for refusal to accept acknowledged power of attorney.
- 30-4021. Principles of law and equity.
- 30-4022. Laws applicable to financial institutions and entities.
- 30-4023. Remedies under other law.

PART 2
AUTHORITY

- 30-4024. Authority that requires specific grant; grant of general authority.
- 30-4025. Incorporation of authority.
- 30-4026. Construction of authority generally.
- 30-4027. Real property.
- 30-4028. Tangible personal property.
- 30-4029. Stocks and bonds.
- 30-4030. Commodities and options.
- 30-4031. Banks and other financial institutions.
- 30-4032. Operation of entity or business.
- 30-4033. Insurance and annuities.
- 30-4034. Estates, trusts, and other beneficial interests.
- 30-4035. Claims and litigation.
- 30-4036. Personal and family maintenance.
- 30-4037. Benefits from governmental programs or civil or military service.
- 30-4038. Retirement plans.
- 30-4039. Taxes.
- 30-4040. Gifts.

PART 3
STATUTORY FORMS

- 30-4041. Statutory form power of attorney.
- 30-4042. Agent's certification.

PART 4
MISCELLANEOUS PROVISIONS

- 30-4043. Uniformity of application and construction.
- 30-4044. Relation to federal Electronic Signatures in Global and National Commerce Act.
- 30-4045. Effect on existing powers of attorney.

PART 1
GENERAL PROVISIONS

30-4001 Act, how cited.

Sections 30-4001 to 30-4045 may be cited as the Nebraska Uniform Power of Attorney Act.

Source: Laws 2012, LB1113, § 1.

30-4002 Definitions.

For purposes of the Nebraska Uniform Power of Attorney Act:

(1) Agent means a person granted authority to act for a principal under a power of attorney, whether denominated an agent, attorney in fact, or otherwise. The term includes an original agent, coagent, successor agent, and a person to which an agent's authority is delegated;

(2) Business day means any day other than a Saturday, Sunday, or state or nationally observed legal holiday;

(3) Durable, with respect to a power of attorney, means not terminated by the principal's incapacity;

(4) Electronic means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities;

(5) Good faith means honesty in fact;

(6) Incapacity means inability of an individual to manage property or property affairs effectively because the individual:

(a) Has an impairment in the ability to receive and evaluate information or make or communicate responsible decisions even with the use of technological assistance for reasons such as mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, or lack of discretion in managing benefits received from public funds; or

(b) Is:

(i) Missing;

(ii) Detained, including incarcerated in a penal system; or

(iii) Outside the United States and unable to return;

(7) Person means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity;

(8) Power of attorney means a writing or other record that grants authority to an agent to act in the place of the principal, whether or not the term power of attorney is used;

(9) Presently exercisable general power of appointment, with respect to property or a property interest subject to a power of appointment, means power exercisable at the time in question to vest absolute ownership in the principal individually, the principal's estate, the principal's creditors, or the creditors of the principal's estate. The term includes a power of appointment not exercisable until the occurrence of a specified event, the satisfaction of an ascertainable standard, or the passage of a specified period only after the occurrence of the specified event, the satisfaction of the ascertainable standard, or the passage of the specified period. The term does not include a power exercisable in a fiduciary capacity or only by will;

(10) Principal means an individual who grants authority to an agent in a power of attorney;

(11) Property means anything that may be the subject of ownership, whether real or personal, legal or equitable, or any interest or right therein;

(12) Record means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

(13) Sign means, with present intent to authenticate or adopt a record:

(a) To execute or adopt a tangible symbol; or

(b) To attach to or logically associate with the record an electronic sound, symbol, or process;

(14) State means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States; and

(15) Stocks and bonds means stocks, bonds, mutual funds, and all other types of securities and financial instruments, whether held directly, indirectly, or in any other manner. The term does not include commodity futures contracts and call or put options on stocks or stock indexes.

Source: Laws 2012, LB1113, § 2.

30-4003 Applicability.

The Nebraska Uniform Power of Attorney Act applies to all powers of attorney except:

(1) A power to the extent it is coupled with an interest in the subject of the power, including a power given to or for the benefit of a creditor in connection with a credit transaction;

(2) A power to make health care decisions;

(3) A proxy or other delegation to exercise voting rights or management rights with respect to an entity; and

(4) A power created on a form prescribed by a government or governmental subdivision, agency, or instrumentality for a governmental purpose.

Source: Laws 2012, LB1113, § 3.

30-4004 Power of attorney is durable.

A power of attorney created after January 1, 2013, under the Nebraska Uniform Power of Attorney Act is durable unless it expressly provides that it is terminated by the incapacity of the principal.

Source: Laws 2012, LB1113, § 4.

30-4005 Execution of power of attorney.

A power of attorney must be signed by the principal or marked by the principal in accordance with section 64-105.02 or signed in the principal's conscious presence by another individual directed by the principal to sign the principal's name on the power of attorney. A signature or mark on a power of attorney is presumed to be genuine if the principal acknowledges the signature before a notary public or other individual authorized by law to take acknowledgments. A power of attorney under the Nebraska Uniform Power of Attorney Act is not valid unless it is acknowledged before a notary public or other individual authorized by law to take acknowledgments.

Source: Laws 2012, LB1113, § 5.

30-4006 Validity of power of attorney.

(1) A power of attorney executed in this state on or after January 1, 2013, is valid if its execution complies with section 30-4005. The county court and the district court of the principal's domicile shall have concurrent jurisdiction to determine the validity and enforceability of a power of attorney.

(2) A power of attorney executed in this state before January 1, 2013, is valid if its execution complied with the law of this state as it existed at the time of execution.

(3) A power of attorney executed other than in this state is valid in this state if, when the power of attorney was executed, the execution complied with:

(a) The law of the jurisdiction that determines the meaning and effect of the power of attorney pursuant to section 30-4007; or

(b) The requirements for a military power of attorney pursuant to 10 U.S.C. 1044b, as amended.

(4) Except as otherwise provided by statute other than the Nebraska Uniform Power of Attorney Act, a photocopy or electronically transmitted copy of an original power of attorney has the same effect as the original.

Source: Laws 2012, LB1113, § 6.

30-4007 Meaning and effect of power of attorney.

The meaning and effect of a power of attorney is determined by the law of the jurisdiction indicated in the power of attorney and, in the absence of an indication of jurisdiction, by the law of the jurisdiction in which the power of attorney was executed.

Source: Laws 2012, LB1113, § 7.

30-4008 Nomination of conservator or guardian; relation of agent to court-appointed fiduciary.

(1) In a power of attorney, a principal may nominate a conservator or guardian of the principal's estate or guardian of the principal's person for consideration by the court if protective proceedings for the principal's estate or person are begun after the principal executes the power of attorney.

(2) If, following execution of a durable power of attorney, a court of the principal's domicile appoints a conservator, guardian of the estate, or other fiduciary charged with the management of all the principal's property or all of his or her property except specified exclusions, the agent shall be accountable to the fiduciary as well as to the principal. The fiduciary shall have the same power to revoke or amend the power of attorney that the principal would have had if he or she were not disabled or incapacitated.

Source: Laws 2012, LB1113, § 8.

30-4009 When power of attorney effective.

(1) A power of attorney is effective when executed unless the principal provides in the power of attorney that it becomes effective at a future date or upon the occurrence of a future event or contingency.

(2) If a power of attorney becomes effective upon the occurrence of a future event or contingency, the principal, in the power of attorney, may authorize one or more persons to determine in a writing or other record that the event or contingency has occurred.

(3) If a power of attorney becomes effective upon the principal's incapacity and the principal has not authorized a person to determine whether the principal is incapacitated, or the person authorized is unable or unwilling to make the determination, the power of attorney becomes effective upon a determination in a writing or other record by:

(a) A licensed physician or licensed psychologist that the principal is incapacitated; or

(b) The court or an appropriate governmental official that the principal is incapacitated.

(4) A person authorized by the principal in the power of attorney to determine that the principal is incapacitated may act as the principal's personal representative pursuant to the Health Insurance Portability and Accountability Act, sections 1171 to 1179 of the Social Security Act, 42 U.S.C. 1320d, as amended, and applicable regulations, to obtain access to the principal's health care information and communicate with the principal's health care provider.

Source: Laws 2012, LB1113, § 9.

30-4010 Termination of power of attorney or agent's authority.

(1) A power of attorney terminates when:

(a) The principal dies;

(b) The principal becomes incapacitated, if the power of attorney is not durable;

(c) The principal revokes the power of attorney;

(d) The power of attorney provides that it terminates;

(e) The purpose of the power of attorney is accomplished; or

(f) The principal revokes the agent's authority or the agent dies, becomes incapacitated, or resigns, and the power of attorney does not provide for another agent to act under the power of attorney.

(2) An agent's authority terminates when:

(a) The principal revokes the authority;

(b) The agent dies, becomes incapacitated, or resigns;

(c) An action is filed for the dissolution or annulment of the agent's marriage to the principal or their legal separation, unless the power of attorney otherwise provides; or

(d) The power of attorney terminates.

(3) Unless the power of attorney otherwise provides, an agent's authority is exercisable until the authority terminates under subsection (2) of this section, notwithstanding a lapse of time since the execution of the power of attorney.

(4) Termination of an agent's authority or of a power of attorney is not effective as to the agent or another person that, without actual knowledge of the termination, acts in good faith under the power of attorney. An act so performed, unless otherwise invalid or unenforceable, binds the principal and the principal's successors in interest.

(5) Incapacity of the principal of a power of attorney that is not durable does not revoke or terminate the power of attorney as to an agent or other person that, without actual knowledge of the incapacity, acts in good faith under the power of attorney. An act so performed, unless otherwise invalid or unenforceable, binds the principal and the principal's successors in interest.

(6) The execution of a power of attorney does not revoke a power of attorney previously executed by the principal unless the subsequent power of attorney provides that the previous power of attorney is revoked or that all other powers of attorney are revoked.

Source: Laws 2012, LB1113, § 10.

30-4011 Coagents and successor agents.

(1) A principal may designate two or more persons to act as coagents. Unless the power of attorney otherwise provides, each coagent may exercise its authority independently.

(2) A principal may designate one or more successor agents to act if an agent resigns, dies, becomes incapacitated, is not qualified to serve, or declines to serve. A principal may grant authority to designate one or more successor agents to an agent or other person designated by name, office, or function. Unless the power of attorney otherwise provides, a successor agent:

(a) Has the same authority as that granted to the original agent; and

(b) May not act until all predecessor agents have resigned, died, become incapacitated, are no longer qualified to serve, or have declined to serve.

(3) Except as otherwise provided in the power of attorney and subsection (4) of this section, an agent that does not participate in or conceal a breach of fiduciary duty committed by another agent, including a predecessor agent, is not liable for the actions of the other agent.

(4) An agent that has actual knowledge of a breach or imminent breach of fiduciary duty by another agent shall notify the principal and, if the principal is incapacitated, take any action reasonably appropriate in the circumstances to safeguard the principal's best interest. An agent that fails to notify the principal or take action as required by this subsection is liable for the reasonably foreseeable damages that could have been avoided if the agent had notified the principal or taken such action.

Source: Laws 2012, LB1113, § 11.

30-4012 Reimbursement and compensation of agent.

Unless the power of attorney otherwise provides, an agent is entitled to reimbursement of expenses reasonably incurred on behalf of the principal and to compensation that is reasonable under the circumstances.

Source: Laws 2012, LB1113, § 12.

30-4013 Agent's acceptance.

Except as otherwise provided in the power of attorney, a person accepts appointment as an agent under a power of attorney by exercising authority or performing duties as an agent or by any other assertion or conduct indicating acceptance.

Source: Laws 2012, LB1113, § 13.

30-4014 Agent's duties.

(1) Notwithstanding provisions in the power of attorney, an agent that has accepted appointment shall:

(a) Act in accordance with the principal's reasonable expectations to the extent known by the agent and, otherwise, in the principal's best interest;

(b) Act in good faith; and

(c) Act only within the scope of authority granted, or reasonably implied by, the grant of authority in the power of attorney.

(2) Except as otherwise provided in the power of attorney, an agent that has accepted appointment shall:

- (a) Act loyally for the principal's benefit;
 - (b) Act so as not to create a conflict of interest that impairs the agent's ability to act impartially in the principal's best interest;
 - (c) Act with the care, competence, and diligence ordinarily exercised by agents in similar circumstances;
 - (d) Keep a record of all receipts, disbursements, and transactions made on behalf of the principal;
 - (e) Cooperate with a person that has authority to make health care decisions for the principal to carry out the principal's reasonable expectations to the extent known by the agent and, otherwise, act in the principal's best interest; and
 - (f) Attempt to preserve the principal's estate plan, to the extent known by the agent, if preserving the plan is consistent with the principal's best interest based on all relevant factors, including:
 - (i) The value and nature of the principal's property;
 - (ii) The principal's foreseeable obligations and need for maintenance;
 - (iii) Minimization of taxes, including income, estate, inheritance, generation-skipping transfer, and gift taxes; and
 - (iv) Eligibility for a benefit, a program, or assistance under a statute or regulation.
- (3) An agent that acts in good faith is not liable to any beneficiary of the principal's estate plan for failure to preserve the plan.
- (4) An agent that acts with care, competence, and diligence for the best interest of the principal is not liable solely because the agent also benefits from the act or has an individual or conflicting interest in relation to the property or affairs of the principal.
- (5) If an agent is selected by the principal because of special skills or expertise possessed by the agent or in reliance on the agent's representation that the agent has special skills or expertise, the special skills or expertise must be considered in determining whether the agent has acted with care, competence, and diligence under the circumstances.
- (6) Absent a breach of duty to the principal, an agent is not liable if the value of the principal's property declines.
- (7) An agent that exercises authority to delegate to another person the authority granted by the principal or that engages another person on behalf of the principal is not liable for an act, error of judgment, or default of that person if the agent exercises care, competence, and diligence in selecting and monitoring the person.
- (8) Except as otherwise provided in the power of attorney, an agent is not required to disclose receipts, disbursements, or transactions conducted on behalf of the principal unless ordered by a court or requested by the principal, a guardian, a conservator, another fiduciary or agent acting for the principal, a governmental agency having authority to protect the welfare of the principal, or, upon the death of the principal, by the personal representative or successor in interest of the principal's estate. If so requested, within thirty days the agent shall comply with the request or provide a writing or other record substantiat-

ing why additional time is needed and shall comply with the request within an additional thirty days.

Source: Laws 2012, LB1113, § 14.

30-4015 Exoneration of agent.

(1) A provision in a power of attorney relieving an agent of liability for breach of duty is binding on the principal and the principal's successors in interest except to the extent the provision:

(a) Relieves the agent of liability for breach of duty committed dishonestly, with an improper motive, or with reckless indifference to the purposes of the power of attorney or the best interest of the principal; or

(b) Was inserted as a result of an abuse of a confidential or fiduciary relationship with the principal.

(2) An exculpatory term drafted or caused to be drafted by an agent is invalid as an abuse of fiduciary or confidential relationship unless the agent proves that the exculpatory term is fair under the circumstances and that its existence and contents were adequately communicated to the principal.

Source: Laws 2012, LB1113, § 15.

30-4016 Judicial relief.

(1) The following persons may petition a court to construe a power of attorney or review the agent's conduct and grant appropriate relief:

(a) The principal or the agent;

(b) A guardian, conservator, or other fiduciary acting for the principal;

(c) A person authorized to make health care decisions for the principal;

(d) The principal's spouse, parent, or issue;

(e) An individual who would qualify as a presumptive heir of the principal or would otherwise qualify as a devisee under a will that remains unrevoked;

(f) A person named as a beneficiary to receive any property, benefit, or contractual right on the principal's death or as a beneficiary of a trust created by or for the principal that has a financial interest in the principal's estate;

(g) A governmental agency having regulatory authority to protect the welfare of the principal;

(h) The principal's caregiver or another person that demonstrates sufficient interest in the principal's welfare; and

(i) A person asked to accept the power of attorney.

(2) Upon motion by the principal, the court shall dismiss a petition filed under this section, unless the court finds that the principal lacks capacity to revoke the agent's authority or the power of attorney.

Source: Laws 2012, LB1113, § 16.

30-4017 Agent's liability.

An agent that violates the Nebraska Uniform Power of Attorney Act is liable to the principal or the principal's successors in interest for the amount required to:

(1) Restore the value of the principal's property to what it would have been had the violation not occurred; and

(2) In a judicial proceeding involving the administration of a power of attorney, the court, as justice may require, may award costs and expenses, including reasonable attorney's fees to any party, to be paid by another party.

Source: Laws 2012, LB1113, § 17.

30-4018 Agent's resignation; notice.

Unless the power of attorney provides a different method for an agent's resignation, an agent may resign by giving notice to the principal and, if the principal is incapacitated:

(1) To the conservator or guardian, if one has been appointed for the principal, and a coagent or successor agent; or

(2) If there is no person described in subdivision (1) of this section, to:

(a) The principal's caregiver;

(b) Another person reasonably believed by the agent to have sufficient interest in the principal's welfare; or

(c) A governmental agency having authority to protect the welfare of the principal.

Source: Laws 2012, LB1113, § 18.

30-4019 Acceptance of and reliance upon acknowledged power of attorney.

(1) For purposes of this section and section 30-4020, acknowledged means purportedly verified before a notary public or other individual authorized to take acknowledgments.

(2) A person that in good faith accepts an acknowledged power of attorney without actual knowledge that the signature is not genuine may rely upon the presumption under section 30-4005 that the signature is genuine.

(3) A person that in good faith accepts an acknowledged power of attorney without actual knowledge that the power of attorney is void, invalid, or terminated, that the purported agent's authority is void, invalid, or terminated, or that the agent is exceeding or improperly exercising the agent's authority may rely upon the power of attorney as if the power of attorney were genuine, valid, and still in effect, the agent's authority were genuine, valid, and still in effect, and the agent had not exceeded and had properly exercised the authority.

(4) A person that is asked to accept an acknowledged power of attorney may request, and rely upon, without further investigation:

(a) An agent's certification under penalty of perjury of any factual matter concerning the principal, agent, or power of attorney;

(b) An English translation of the power of attorney if the power of attorney contains, in whole or in part, language other than English; and

(c) An opinion of counsel as to any matter of law concerning the power of attorney if the person making the request provides in a writing or other record the reason for the request.

(5) An English translation or an opinion of counsel requested under this section must be provided at the principal's expense unless the request is made

more than seven business days after the power of attorney is presented for acceptance.

(6) For purposes of this section and section 30-4020, a person that conducts activities through employees is without actual knowledge of a fact relating to a power of attorney, a principal, or an agent if the employee conducting the transaction involving the power of attorney is without actual knowledge of the fact.

Source: Laws 2012, LB1113, § 19.

30-4020 Liability for refusal to accept acknowledged power of attorney.

(1) Except as otherwise provided in subsection (2) of this section:

(a) A person shall either accept an acknowledged power of attorney or request a certification, a translation, or an opinion of counsel under subsection (4) of section 30-4019 no later than seven business days after presentation of the power of attorney for acceptance;

(b) If a person requests a certification, a translation, or an opinion of counsel under subsection (4) of section 30-4019, the person shall accept the power of attorney no later than five business days after receipt of the certification, translation, or opinion of counsel; and

(c) A person may not require an additional or different form of power of attorney for authority granted in the power of attorney presented.

(2) A person is not required to accept an acknowledged power of attorney if:

(a) The person is not otherwise required to engage in a transaction with the principal in the same circumstances;

(b) Engaging in a transaction with the agent or the principal in the same circumstances would be inconsistent with state or federal law;

(c) The person has actual knowledge of the termination of the agent's authority or of the power of attorney before exercise of the power;

(d) A request for a certification, a translation, or an opinion of counsel under subsection (4) of section 30-4019 is refused;

(e) The person in good faith believes that the power is not valid or that the agent does not have the authority to perform the act requested, whether or not a certification, a translation, or an opinion of counsel under subsection (4) of section 30-4019 has been requested or provided;

(f) The person makes, or has actual knowledge that another person has made, a report to the local adult protective services office stating a good faith belief that the principal may be subject to physical or financial abuse, neglect, exploitation, or abandonment by the agent or a person acting for or with the agent;

(g) The person brought, or has actual knowledge that another person has brought, a judicial proceeding for construction of a power of attorney or review of the agent's conduct; or

(h) The power of attorney becomes effective upon the occurrence of an event or contingency, and neither a certification nor evidence of the occurrence of the event or contingency is presented to the person being asked to accept the power of attorney.

(3) A person may not refuse to accept an acknowledged power of attorney if any of the following applies:

(a) The person's reason for refusal is based exclusively upon the date the power of attorney was executed; or

(b) The person's refusal is based exclusively on a mandate that an additional or different power of attorney form must be used.

(4) A person that refuses in violation of this section to accept an acknowledged power of attorney is subject to:

(a) A court order mandating acceptance of the power of attorney; and

(b) Liability for reasonable attorney's fees and costs incurred in any action or proceeding that confirms the validity of the power of attorney or mandates acceptance of the power of attorney.

Source: Laws 2012, LB1113, § 20.

30-4021 Principles of law and equity.

Unless displaced by a provision of the Nebraska Uniform Power of Attorney Act, the principles of law and equity supplement the act.

Source: Laws 2012, LB1113, § 21.

30-4022 Laws applicable to financial institutions and entities.

The Nebraska Uniform Power of Attorney Act does not supersede any other law applicable to financial institutions or other entities, and the other law controls if inconsistent with the act.

Source: Laws 2012, LB1113, § 22.

30-4023 Remedies under other law.

The remedies under the Nebraska Uniform Power of Attorney Act are not exclusive and do not abrogate any right or remedy under the law of this state other than the act.

Source: Laws 2012, LB1113, § 23.

PART 2

AUTHORITY

30-4024 Authority that requires specific grant; grant of general authority.

(1) An agent under a power of attorney may do the following on behalf of the principal or with the principal's property only if the power of attorney expressly grants the agent the authority and exercise of the authority is not otherwise prohibited by another agreement or instrument to which the authority or property is subject:

(a) Create, amend, revoke, or terminate an inter vivos trust;

(b) Make a gift;

(c) Create or change rights of survivorship;

(d) Create or change a beneficiary designation;

(e) Delegate authority granted under the power of attorney;

(f) Waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan;

(g) Exercise fiduciary powers that the principal has authority to delegate; or

(h) Renounce or disclaim property, including the power of appointment.

(2) Notwithstanding a grant of authority to do an act described in subsection (1) of this section, unless the power of attorney otherwise provides, an agent that is not an ancestor, spouse, or issue of the principal, may not exercise authority under a power of attorney to create in the agent, or in an individual to whom the agent owes a legal obligation of support, an interest in the principal's property, whether by gift, right of survivorship, beneficiary designation, disclaimer, or otherwise.

(3) Subject to subsections (1), (2), (4), and (5) of this section, if a power of attorney grants to an agent authority to do all acts that a principal could do, the agent has the general authority described in sections 30-4027 to 30-4039.

(4) Unless the power of attorney otherwise provides, a grant of authority to make a gift is subject to section 30-4040.

(5) Subject to subsections (1), (2), and (4) of this section, if the subjects over which authority is granted in a power of attorney are similar or overlap, the broadest authority controls.

(6) Authority granted in a power of attorney is exercisable with respect to property that the principal has when the power of attorney is executed or acquired later, whether or not the property is located in this state and whether or not the authority is exercised or the power of attorney is executed in this state.

(7) An act performed by an agent pursuant to a power of attorney has the same effect and inures to the benefit of and binds the principal and the principal's successors in interest as if the principal had performed the act.

Source: Laws 2012, LB1113, § 24.

30-4025 Incorporation of authority.

(1) An agent has authority described in sections 30-4024 to 30-4040 if the power of attorney refers to general authority with respect to the descriptive term for the subjects stated in sections 30-4027 to 30-4040 or cites the section in which the authority is described.

(2) A reference in a power of attorney to general authority with respect to the descriptive term for a subject in sections 30-4027 to 30-4040 or a citation to a section within such sections incorporates the entire section described or cited as if it were set out in full in the power of attorney.

(3) A principal may modify authority incorporated by reference.

Source: Laws 2012, LB1113, § 25.

30-4026 Construction of authority generally.

Except as otherwise provided in the power of attorney, by executing a power of attorney that incorporates by reference a subject described in sections 30-4027 to 30-4040 or that grants to an agent authority to do all acts that a principal could do pursuant to subsection (3) of section 30-4024, a principal authorizes the agent, with respect to that subject, to:

(1) Demand, receive, and obtain by litigation or otherwise, money or another thing of value to which the principal is, may become, or claims to be entitled, and conserve, invest, disburse, or use anything so received or obtained for the purposes intended;

(2) Contract in any manner with any person, on terms agreeable to the agent, to accomplish a purpose of a transaction and perform, rescind, cancel, terminate, reform, restate, release, or modify the contract or another contract made by or on behalf of the principal;

(3) Execute, acknowledge, seal, deliver, file, or record any instrument or communication the agent considers desirable to accomplish a purpose of a transaction, including creating at any time a schedule listing some or all of the principal's property and attaching it to the power of attorney;

(4) Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to a claim existing in favor of or against the principal or intervene in litigation relating to the claim;

(5) Seek on the principal's behalf the assistance of a court or other governmental agency to carry out an act authorized in the power of attorney;

(6) Engage, compensate, and discharge an attorney, accountant, discretionary investment manager, expert witness, or other advisor;

(7) Prepare, execute, and file a record, report, or other document to safeguard or promote the principal's interest under a statute or regulation;

(8) Communicate with any representative or employee of a government or governmental subdivision, agency, or instrumentality, on behalf of the principal;

(9) Access communications intended for, and communicate on behalf of the principal, whether by mail, electronic transmission, telephone, or other means; and

(10) Do any lawful act with respect to the subject and all property related to the subject.

Source: Laws 2012, LB1113, § 26.

30-4027 Real property.

Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to real property authorizes the agent to:

(1) Demand, buy, lease, receive, accept as a gift or as security for an extension of credit, or otherwise acquire or reject an interest in real property or a right incident to real property;

(2) Sell; exchange; convey with or without covenants, representations, or warranties; quitclaim; release; surrender; retain title for security; encumber; partition; consent to partitioning; subject to an easement or covenant; subdivide; apply for zoning or other governmental permits; plat or consent to platting; develop; grant an option concerning; lease; sublease; contribute to an entity in exchange for an interest in that entity; or otherwise grant or dispose of an interest in real property or a right incident to real property;

(3) Pledge or mortgage an interest in real property or right incident to real property as security to borrow money or pay, renew, or extend the time of payment of a debt of the principal or a debt guaranteed by the principal;

(4) Release, assign, satisfy, or enforce by litigation or otherwise a mortgage, deed of trust, conditional sales contract, encumbrance, lien, or other claim to real property which exists or is asserted;

(5) Manage or conserve an interest in real property or a right incident to real property owned or claimed to be owned by the principal, including:

(a) Insuring against liability or casualty or other loss;

(b) Obtaining or regaining possession of or protecting the interest or right by litigation or otherwise;

(c) Paying, assessing, compromising, or contesting taxes or assessments or applying for and receiving refunds in connection with them; and

(d) Purchasing supplies, hiring assistance or labor, and making repairs or alterations to the real property;

(6) Use, develop, alter, replace, remove, erect, or install structures or other improvements upon real property in or incident to which the principal has, or claims to have, an interest or right;

(7) Participate in a reorganization with respect to real property or an entity that owns an interest in or right incident to real property and receive, and hold, and act with respect to stocks and bonds or other property received in a plan of reorganization, including:

(a) Selling or otherwise disposing of them;

(b) Exercising or selling an option, right of conversion, or similar right with respect to them; and

(c) Exercising any voting rights in person or by proxy;

(8) Change the form of title of an interest in or right incident to real property; and

(9) Dedicate to public use, with or without consideration, easements or other real property in which the principal has, or claims to have, an interest.

Source: Laws 2012, LB1113, § 27.

30-4028 Tangible personal property.

Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to tangible personal property authorizes the agent to:

(1) Demand, buy, receive, accept as a gift or as security for an extension of credit, or otherwise acquire or reject ownership or possession of tangible personal property or an interest in tangible personal property;

(2) Sell; exchange; convey with or without covenants, representations, or warranties; quitclaim; release; surrender; create a security interest in; grant options concerning; lease; sublease; or, otherwise dispose of tangible personal property or an interest in tangible personal property;

(3) Grant a security interest in tangible personal property or an interest in tangible personal property as security to borrow money or pay, renew, or extend the time of payment of a debt of the principal or a debt guaranteed by the principal;

(4) Release, assign, satisfy, or enforce by litigation or otherwise, a security interest, lien, or other claim on behalf of the principal, with respect to tangible personal property or an interest in tangible personal property;

(5) Manage or conserve tangible personal property or an interest in tangible personal property on behalf of the principal, including:

- (a) Insuring against liability or casualty or other loss;
 - (b) Obtaining or regaining possession of or protecting the property or interest, by litigation or otherwise;
 - (c) Paying, assessing, compromising, or contesting taxes or assessments or applying for and receiving refunds in connection with taxes or assessments;
 - (d) Moving the property from place to place;
 - (e) Storing the property for hire or on a gratuitous bailment; and
 - (f) Using and making repairs, alterations, or improvements to the property; and
- (6) Change the form of title of an interest in tangible personal property.

Source: Laws 2012, LB1113, § 28.

30-4029 Stocks and bonds.

Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to stocks and bonds authorizes the agent to:

- (1) Buy, sell, and exchange stocks and bonds;
- (2) Establish, continue, modify, or terminate an account with respect to stocks and bonds;
- (3) Pledge stocks and bonds as security to borrow, pay, renew, or extend the time of payment of a debt of the principal;
- (4) Receive certificates and other evidences of ownership with respect to stocks and bonds; and
- (5) Exercise voting rights with respect to stocks and bonds in person or by proxy, enter into voting trusts, and consent to limitations on the right to vote.

Source: Laws 2012, LB1113, § 29.

30-4030 Commodities and options.

Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to commodities and options authorizes the agent to:

- (1) Buy, sell, exchange, assign, settle, and exercise commodity futures contracts and call or put options on stocks or stock indexes traded on a regulated option exchange; and
- (2) Establish, continue, modify, and terminate option accounts.

Source: Laws 2012, LB1113, § 30.

30-4031 Banks and other financial institutions.

Unless the power of attorney otherwise provides, language in a power of attorney granting authority with respect to banks and other financial institutions authorizes the agent to:

- (1) Continue, modify, and terminate an account or other banking arrangement made by or on behalf of the principal;

(2) Establish, modify, and terminate an account or other banking arrangement with a bank, trust company, savings and loan association, credit union, thrift company, brokerage firm, or other financial institution selected by the agent;

(3) Contract for services available from a financial institution, including renting a safe deposit box or space in a vault;

(4) Withdraw, by check, order, electronic funds transfer, or otherwise, money or property of the principal deposited with or left in the custody of a financial institution;

(5) Receive statements of account, vouchers, notices, and similar documents from a financial institution and act with respect to them;

(6) Enter a safe deposit box or vault and withdraw or add to the contents;

(7) Borrow money and pledge as security personal property of the principal necessary to borrow money or pay, renew, or extend the time of payment of a debt of the principal or a debt guaranteed by the principal;

(8) Make, assign, draw, endorse, discount, guarantee, and negotiate promissory notes, checks, drafts, and other negotiable or nonnegotiable paper of the principal or payable to the principal or the principal's order, transfer money, receive the cash or other proceeds of those transactions, and accept a draft drawn by a person upon the principal and pay it when due;

(9) Receive for the principal and act upon a sight draft, warehouse receipt, or other document of title whether tangible or electronic, or other negotiable or nonnegotiable instrument;

(10) Apply for, receive, and use letters of credit, credit and debit cards, electronic transaction authorizations, and traveler's checks from a financial institution and give an indemnity or other agreement in connection with letters of credit; and

(11) Consent to an extension of the time of payment with respect to commercial paper or a financial transaction with a financial institution.

Source: Laws 2012, LB1113, § 31.

30-4032 Operation of entity or business.

Subject to the terms of a document or an agreement governing an entity or an entity ownership interest, and unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to operation of an entity or business authorizes the agent to:

(1) Operate, buy, sell, enlarge, reduce, or terminate an ownership interest;

(2) Perform a duty or discharge a liability and exercise in person or by proxy a right, power, privilege, or option that the principal has, may have, or claims to have;

(3) Enforce the terms of an ownership agreement;

(4) Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation to which the principal is a party because of an ownership interest;

(5) Exercise in person or by proxy, or enforce by litigation or otherwise, a right, power, privilege, or option the principal has or claims to have as the holder of stocks and bonds;

(6) Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation to which the principal is a party concerning stocks and bonds;

(7) With respect to an entity or business owned solely by the principal:

(a) Continue, modify, renegotiate, extend, and terminate a contract made by or on behalf of the principal with respect to the entity or business before execution of the power of attorney;

(b) Determine:

(i) The location of its operation;

(ii) The nature and extent of its business;

(iii) The methods of manufacturing, selling, merchandising, financing, accounting, and advertising employed in its operation;

(iv) The amount and types of insurance carried; and

(v) The mode of engaging, compensating, and dealing with its employees and accountants, attorneys, or other advisors;

(c) Change the name or form of organization under which the entity or business is operated and enter into an ownership agreement with other persons to take over all or part of the operation of the entity or business; and

(d) Demand and receive money due or claimed by the principal or on the principal's behalf in the operation of the entity or business and control and disburse the money in the operation of the entity or business;

(8) Put additional capital into an entity or business in which the principal has an interest;

(9) Join in a plan of reorganization, consolidation, conversion, domestication, or merger of the entity or business;

(10) Sell or liquidate all or part of an entity or business;

(11) Establish the value of an entity or business under a buyout agreement to which the principal is a party;

(12) Prepare, sign, file, and deliver reports, compilations of information, returns, or other papers with respect to an entity or business and make related payments; and

(13) Pay, compromise, or contest taxes, assessments, fines, or penalties and perform any other act to protect the principal from illegal or unnecessary taxation, assessments, fines, or penalties, with respect to an entity or business, including attempts to recover, in any manner permitted by law, money paid before or after the execution of the power of attorney.

Source: Laws 2012, LB1113, § 32.

30-4033 Insurance and annuities.

Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to insurance and annuities authorizes the agent to:

(1) Continue, pay the premium or make a contribution on, modify, exchange, rescind, release, or terminate a contract procured by or on behalf of the principal which insures or provides an annuity to either the principal or another person, whether or not the principal is a beneficiary under the contract;

(2) Procure new, different, and additional contracts of insurance and annuities for the principal and the principal's spouse, children, and other dependents, and select the amount, type of insurance or annuity, and mode of payment;

(3) Pay the premium or make a contribution on, modify, exchange, rescind, release, or terminate a contract of insurance or annuity procured by the agent;

(4) Apply for and receive a loan secured by a contract of insurance or annuity;

(5) Surrender and receive the cash surrender value on a contract of insurance or annuity;

(6) Exercise an election;

(7) Exercise investment powers available under a contract of insurance or annuity;

(8) Change the manner of paying premiums on a contract of insurance or annuity;

(9) Change or convert the type of insurance or annuity with respect to which the principal has or claims to have authority described in this section;

(10) Apply for and procure a benefit or assistance under a statute or regulation to guarantee or pay premiums of a contract of insurance on the life of the principal;

(11) Collect, sell, assign, hypothecate, borrow against, or pledge the interest of the principal in a contract of insurance or annuity;

(12) Select the form and timing of the payment of proceeds from a contract of insurance or annuity; and

(13) Pay, from proceeds or otherwise, compromise or contest, and apply for refunds in connection with, a tax or assessment levied by a taxing authority with respect to a contract of insurance or annuity or its proceeds or liability accruing by reason of the tax or assessment.

Source: Laws 2012, LB1113, § 33.

30-4034 Estates, trusts, and other beneficial interests.

(1) For purposes of this section, estate, trust, or other beneficial interest means a trust, probate estate, guardianship, conservatorship, escrow, or custodianship or a fund from which the principal is, may become, or claims to be, entitled to a share or payment.

(2) Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to estates, trusts, and other beneficial interests authorizes the agent to:

(a) Accept, receive, receipt for, sell, assign, pledge, or exchange a share in or payment from an estate, trust, or other beneficial interest;

(b) Demand or obtain money or another thing of value to which the principal is, may become, or claims to be, entitled by reason of an estate, trust, or other beneficial interest, by litigation or otherwise;

(c) Exercise for the benefit of the principal a presently exercisable general power of appointment held by the principal;

(d) Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation to

ascertain the meaning, validity, or effect of a deed, will, declaration of trust, or other instrument or transaction affecting the interest of the principal;

(e) Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation to remove, substitute, or surcharge a fiduciary;

(f) Conserve, invest, disburse, or use anything received for an authorized purpose; and

(g) Transfer an interest of the principal in real property, stocks and bonds, accounts with financial institutions or securities intermediaries, insurance, annuities, and other property to the trustee of a revocable trust created by the principal as settlor.

Source: Laws 2012, LB1113, § 34.

30-4035 Claims and litigation.

Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to claims and litigation authorizes the agent to:

(1) Assert and maintain before a court or administrative agency a claim, claim for relief, cause of action, counterclaim, offset, recoupment, or defense, including an action to recover property or other thing of value, recover damages sustained by the principal, eliminate or modify tax liability, or seek an injunction, specific performance, or other relief;

(2) Bring an action to determine adverse claims or intervene or otherwise participate in litigation;

(3) Seek an attachment, garnishment, order of arrest, or other preliminary, provisional, or intermediate relief and use an available procedure to effect or satisfy a judgment, order, or decree;

(4) Make or accept a tender, offer of judgment, or admission of facts, submit a controversy on an agreed statement of facts, consent to examination, and bind the principal in litigation;

(5) Submit to alternative dispute resolution, settle, and propose or accept a compromise;

(6) Waive the issuance and service of process upon the principal, accept service of process, appear for the principal, designate persons upon which process directed to the principal may be served, execute and file or deliver stipulations on the principal's behalf, verify pleadings, seek appellate review, procure and give surety and indemnity bonds, contract and pay for the preparation and printing of records and briefs, receive, execute, and file or deliver a consent, waiver, release, confession of judgment, satisfaction of judgment, notice, agreement, or other instrument in connection with the prosecution, settlement, or defense of a claim or litigation;

(7) Act for the principal with respect to bankruptcy or insolvency, whether voluntary or involuntary, concerning the principal or some other person, or with respect to a reorganization, receivership, or application for the appointment of a receiver or trustee which affects an interest of the principal in property or other thing of value;

(8) Pay a judgment, award, or order against the principal or a settlement made in connection with a claim or litigation; and

(9) Receive money or other thing of value paid in settlement of or as proceeds of a claim or litigation.

Source: Laws 2012, LB1113, § 35.

30-4036 Personal and family maintenance.

(1) Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to personal and family maintenance authorizes the agent to:

(a) Perform the acts necessary to maintain the customary standard of living of the principal, the principal's spouse, and the following individuals, whether living when the power of attorney is executed or later born:

(i) The principal's children;

(ii) Other individuals legally entitled to be supported by the principal; and

(iii) The individuals whom the principal has customarily supported or indicated the intent to support;

(b) Make periodic payments of child support and other family maintenance required by a court or governmental agency or an agreement to which the principal is a party;

(c) Provide living quarters for the individuals described in subdivision (1)(a) of this subsection by:

(i) Purchase, lease, or other contract; or

(ii) Paying the operating costs, including interest, amortization payments, repairs, improvements, and taxes, for premises owned by the principal or occupied by those individuals;

(d) Provide normal domestic help, usual vacations and travel expenses, and funds for shelter, clothing, food, appropriate education, including postsecondary and vocational education, and other current living costs for the individuals described in subdivision (1)(a) of this subsection;

(e) Pay expenses for necessary health care and custodial care on behalf of the individuals described in subdivision (1)(a) of this subsection;

(f) Act as the principal's personal representative pursuant to the Health Insurance Portability and Accountability Act, sections 1171 to 1179 of the Social Security Act, 42 U.S.C. 1320d, as amended, and applicable regulations, in making decisions related to the past, present, or future payment for the provision of health care consented to by the principal or anyone authorized under the law of this state to consent to health care on behalf of the principal;

(g) Continue any provision made by the principal for automobiles or other means of transportation, including registering, licensing, insuring, and replacing them, for the individuals described in subdivision (1)(a) of this subsection;

(h) Maintain credit and debit accounts for the convenience of the individuals described in subdivision (1)(a) of this subsection and open new accounts; and

(i) Continue payments incidental to the membership or affiliation of the principal in a religious institution, club, society, order, or other organization or to continue contributions to those organizations.

(2) Authority with respect to personal and family maintenance is neither dependent upon, nor limited by, authority that an agent may or may not have with respect to gifts under the Nebraska Uniform Power of Attorney Act.

Source: Laws 2012, LB1113, § 36.

30-4037 Benefits from governmental programs or civil or military service.

(1) For purposes of this section, benefits from governmental programs or civil or military service means any benefit, program, or assistance provided under a statute or regulation including social security, medicare, and medicaid.

(2) Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to benefits from governmental programs or civil or military service authorizes the agent to:

(a) Execute vouchers in the name of the principal for allowances and reimbursements payable by the United States or a foreign government or by a state or subdivision of a state to the principal, including allowances and reimbursements for transportation of the individuals described in subdivision (1)(a) of section 30-4036 and for shipment of their household effects;

(b) Take possession and order the removal and shipment of property of the principal from a post, warehouse, depot, dock, or other place of storage or safekeeping, either governmental or private, and execute and deliver a release, voucher, receipt, bill of lading, shipping ticket, certificate, or other instrument for that purpose;

(c) Enroll in, apply for, select, reject, change, amend, or discontinue, on the principal's behalf, a benefit or program;

(d) Prepare, file, and maintain a claim of the principal for a benefit or assistance, financial or otherwise, to which the principal may be entitled under a statute or regulation;

(e) Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation concerning any benefit or assistance the principal may be entitled to receive under a statute or regulation; and

(f) Receive the financial proceeds of a claim described in subdivision (2)(d) of this section and conserve, invest, disburse, or use for a lawful purpose anything so received.

Source: Laws 2012, LB1113, § 37.

30-4038 Retirement plans.

(1) For purposes of this section, retirement plan means a plan or account created by an employer, the principal, or another individual to provide retirement benefits or deferred compensation of which the principal is a participant, beneficiary, or owner, including a plan or account under the following sections of the Internal Revenue Code:

(a) An individual retirement account under section 408 of the Internal Revenue Code, 26 U.S.C. 408;

(b) A Roth individual retirement account under section 408A of the Internal Revenue Code, 26 U.S.C. 408A;

(c) A deemed individual retirement account under section 408(q) of the Internal Revenue Code, 26 U.S.C. 408(q);

(d) An annuity or mutual fund custodial account under section 403(b) of the Internal Revenue Code, 26 U.S.C. 403(b);

(e) A pension, profit-sharing, stock bonus, or other retirement plan qualified under section 401(a) of the Internal Revenue Code, 26 U.S.C. 401(a);

(f) A plan under section 457(b) of the Internal Revenue Code, 26 U.S.C. 457(b); and

(g) A nonqualified deferred compensation plan under section 409A of the Internal Revenue Code, 26 U.S.C. 409A.

(2) Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to retirement plans authorizes the agent to:

(a) Select the form and timing of payments under a retirement plan and withdraw benefits from a plan;

(b) Make a rollover, including a direct trustee-to-trustee rollover, of benefits from one retirement plan to another;

(c) Establish a retirement plan in the principal's name, including a beneficiary individual retirement plan;

(d) Make contributions to a retirement plan;

(e) Exercise investment powers available under a retirement plan; and

(f) Borrow from, sell assets to, or purchase assets from a retirement plan.

Source: Laws 2012, LB1113, § 38.

30-4039 Taxes.

Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to taxes authorizes the agent to:

(1) Prepare, sign, and file federal, state, local, and foreign income, gift, payroll, property, Federal Insurance Contributions Act, and other tax returns, claims for refunds, requests for extension of time, petitions regarding tax matters, and any other tax-related documents, including receipts, offers, waivers, consents, including consents and agreements under section 2032A of the Internal Revenue Code, 26 U.S.C. 2032A, closing agreements, and any power of attorney required by the Internal Revenue Service or other taxing authority with respect to a tax year upon which the statute of limitations has not run and the following twenty-five tax years;

(2) Pay taxes due, collect refunds, post bonds, receive confidential information, and contest deficiencies determined by the Internal Revenue Service or other taxing authority;

(3) Exercise any election available to the principal under federal, state, local, or foreign tax law; and

(4) Act for the principal in all tax matters for all periods before the Internal Revenue Service or other taxing authority.

Source: Laws 2012, LB1113, § 39.

30-4040 Gifts.

(1) For purposes of this section, a gift for the benefit of a person includes a gift to a trust, an account under the Nebraska Uniform Transfers to Minors Act

and a tuition savings account or prepaid tuition plan as defined under section 529 of the Internal Revenue Code, 26 U.S.C. 529.

(2) Subject to section 30-4024 and unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to gifts authorizes the agent only to:

(a) Make outright to, or for the benefit of, a person, a gift of any of the principal's property, including by the exercise of a presently exercisable general power of appointment held by the principal, in an amount per donee not to exceed the annual dollar limits of the federal gift tax exclusion under section 2503(b) of the Internal Revenue Code, 26 U.S.C. 2503(b), without regard to whether the federal gift tax exclusion applies to the gift, or if the principal's spouse agrees to consent to a split gift pursuant to section 2513 of the Internal Revenue Code, 26 U.S.C. 2513, in an amount per donee not to exceed twice the annual federal gift tax exclusion limit; and

(b) Consent, pursuant to section 2513 of the Internal Revenue Code, 26 U.S.C. 2513, to the splitting of a gift made by the principal's spouse in an amount per donee not to exceed the aggregate annual gift tax exclusions for both spouses.

(3) An agent may make a gift of the principal's property only as the agent determines is consistent with the principal's objectives if actually known by the agent and, if unknown, as the agent determines is consistent with the principal's best interest based on all relevant factors, including:

- (a) The value and nature of the principal's property;
- (b) The principal's foreseeable obligations and need for maintenance;
- (c) Minimization of taxes, including income, estate, inheritance, generation-skipping transfer, and gift taxes;
- (d) Eligibility for a benefit, a program, or assistance under a statute or regulation; and
- (e) The principal's personal history of making or joining in making gifts.

Source: Laws 2012, LB1113, § 40.

Cross References

Nebraska Uniform Transfers to Minors Act, see section 43-2701.

PART 3

STATUTORY FORMS

30-4041 Statutory form power of attorney.

A document substantially in the following form may be used to create a statutory form power of attorney that has the meaning and effect prescribed by the Nebraska Uniform Power of Attorney Act.

NEBRASKA

STATUTORY FORM POWER OF ATTORNEY

IMPORTANT INFORMATION

This power of attorney authorizes another person (your agent) to make decisions concerning your property for you (the principal). Your agent will be able to make decisions and act with respect to your property (including your money) whether or not you are able to act for yourself. The meaning of

authority over subjects listed on this form is explained in the Nebraska Uniform Power of Attorney Act.

This power of attorney does not authorize the agent to make health care decisions for you.

You should select someone you trust to serve as your agent. Unless you specify otherwise, generally the agent’s authority will continue until you die or revoke the power of attorney or the agent resigns or is unable to act for you.

This form will not revoke a power of attorney previously executed by you unless you add that the previous power of attorney is revoked or that all other powers of attorney are revoked by this power of attorney.

Your agent is entitled to reasonable compensation unless you state otherwise in the Special Instructions.

This form provides for designation of one agent. If you wish to name more than one agent you may name a coagent in the Special Instructions. Coagents are not required to act together unless you include that requirement in the Special Instructions.

If your agent is unable or unwilling to act for you, your power of attorney will end unless you have named a successor agent. You may also name a second successor agent.

This power of attorney becomes effective immediately unless you state otherwise in the Special Instructions.

If you have questions about the power of attorney or the authority you are granting to your agent, you should seek legal advice before signing this form.

DESIGNATION OF AGENT

I (name of principal) name the following person as my agent:

Name of Agent:

Agent’s Address:

Agent’s Telephone Number:

DESIGNATION OF SUCCESSOR AGENT(S) (OPTIONAL)

If my agent is unable or unwilling to act for me, I name as my successor agent:

Name of Successor Agent:

Successor Agent’s Address:

Successor Agent’s Telephone Number:

If my successor agent is unable or unwilling to act for me, I name as my second successor agent:

Name of Second Successor Agent:

Second Successor Agent’s Address:

Second Successor Agent’s Telephone Number:

Release of Information

I agree to, authorize, and allow full release of information, by any governmental agency, business, creditor, or third party who may have information pertaining to my assets or income, to my agent named herein.

GRANT OF GENERAL AUTHORITY

I grant my agent and any successor agent general authority to act for me with respect to the following subjects as defined in the Nebraska Uniform Power of Attorney Act:

(INITIAL each subject you want to include in the agent's general authority. If you wish to grant general authority over all of the subjects you may initial "All Preceding Subjects" instead of initialing each subject.)

- (. . . .) Real Property
- (. . . .) Tangible Personal Property
- (. . . .) Stocks and Bonds
- (. . . .) Commodities and Options
- (. . . .) Banks and Other Financial Institutions
- (. . . .) Operation of Entity or Business
- (. . . .) Insurance and Annuities
- (. . . .) Estates, Trusts, and Other Beneficial Interests
- (. . . .) Claims and Litigation
- (. . . .) Personal and Family Maintenance
- (. . . .) Benefits from Governmental Programs or Civil or Military Service
- (. . . .) Retirement Plans
- (. . . .) Taxes
- (. . . .) All Preceding Subjects

GRANT OF SPECIFIC AUTHORITY (OPTIONAL)

My agent MAY NOT do any of the following specific acts for me UNLESS I have INITIALED the specific authority listed below:

(CAUTION: Granting any of the following will give your agent the authority to take actions that could significantly reduce your property or change how your property is distributed at your death. INITIAL ONLY the specific authority you WANT to give your agent.)

- (. . . .) Create, amend, revoke, or terminate an inter vivos trust
- (. . . .) Make a gift, subject to the limitations of the Nebraska Uniform Power of Attorney Act and any special instructions in this power of attorney
- (. . . .) Create or change rights of survivorship
- (. . . .) Create or change a beneficiary designation
- (. . . .) Delegate to another person to exercise the authority granted under this power of attorney
- (. . . .) Waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan
- (. . . .) Exercise fiduciary powers that the principal has authority to delegate
- (. . . .) Renounce or disclaim an interest in property, including a power of appointment

LIMITATION ON AGENT'S AUTHORITY

Except as otherwise authorized by the Power of Personal and Family Maintenance, an agent MAY NOT use my property to benefit the agent or a person to

whom the agent owes an obligation of support unless I have included that authority in the Special Instructions or the Grant of Specific Authority.

SPECIAL INSTRUCTIONS (OPTIONAL)

You may give special instructions on the following lines:

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

EFFECTIVE DATE

This power of attorney is effective immediately unless I have stated otherwise in the Special Instructions.

NOMINATION OF [CONSERVATOR OR GUARDIAN] (OPTIONAL)

If it becomes necessary for a court to appoint a [conservator or guardian] of my estate or [guardian] of my person, I nominate the following person(s) for appointment:

Name of Nominee for [conservator or guardian] of my estate:

.....

Nominee's Address:

Nominee's Telephone Number:

Name of Nominee for [guardian] of my person:

Nominee's Address:

Nominee's Telephone Number:

RELIANCE ON THIS POWER OF ATTORNEY

Any person, including my agent, may rely upon the validity of this power of attorney or a copy of it unless that person knows it has terminated or is invalid.

SIGNATURE AND ACKNOWLEDGMENT

Your Signature Date

Your Name Printed

Your Address

Your Telephone Number

State of

[County] of

This document was acknowledged before me on , (Date)

by
(Name of Principal)

..... (Seal, if any)
Signature of Notary

My commission expires:

[This document prepared by:

.....
.....]

IMPORTANT INFORMATION FOR AGENT

Agent's Duties

When you accept the authority granted under this power of attorney, a special legal relationship is created between you and the principal. This relationship imposes upon you legal duties that continue until you resign or the power of attorney is terminated or revoked. You must:

- 1. do what you know the principal reasonably expects you to do with the principal's property or, if you do not know the principal's expectations, act in the principal's best interest;
- 2. act in good faith;
- 3. do nothing beyond the authority granted in this power of attorney; and
- 4. disclose your identity as an agent whenever you act for the principal by writing or printing the name of the principal and signing your own name as "agent" in the following manner:

(Principal's Name) by (Your Signature) as Agent

Unless the Special Instructions in this power of attorney state otherwise, you must also:

- 1. act loyally for the principal's benefit;
- 2. avoid conflicts that would impair your ability to act in the principal's best interest;
- 3. act with care, competence, and diligence;
- 4. keep a record of all receipts, disbursements, and transactions made on behalf of the principal;
- 5. cooperate with any person that has authority to make health care decisions for the principal to do what you know the principal reasonably expects or, if you do not know the principal's expectations, to act in the principal's best interest; and
- 6. attempt to preserve the principal's estate plan if you know the plan and preserving the plan is consistent with the principal's best interest.

Termination of Agent's Authority

You must stop acting on behalf of the principal if you learn of any event that terminates this power of attorney or your authority under this power of attorney. Events that terminate a power of attorney or your authority to act under a power of attorney include:

- 1. death of the principal;
- 2. the principal's revocation of the power of attorney or your authority;

- 3. the occurrence of a termination event stated in the power of attorney;
- 4. the purpose of the power of attorney being fully accomplished; or
- 5. if you are married to the principal, a legal action filed with a court to end your marriage, or for your legal separation, unless the Special Instructions in this power of attorney state that such an action will not terminate your authority.

Liability of Agent

The meaning of the authority granted to you is defined in the Nebraska Uniform Power of Attorney Act. If you violate the Nebraska Uniform Power of Attorney Act or act outside the authority granted, you may be liable for any damages caused by your violation.

If there is anything about this document or your duties that you do not understand, you should seek legal advice.

OPTIONAL SIGNATURE OF AGENT

I HAVE READ AND ACCEPT THE DUTIES AND LIABILITIES OF THE AGENT AS SPECIFIED IN THIS POWER OF ATTORNEY

Agent’s Signature:

Date:

Source: Laws 2012, LB1113, § 41.

30-4042 Agent’s certification.

The following optional form may be used by an agent to certify facts concerning a power of attorney.

AGENT’S CERTIFICATION AS TO THE VALIDITY OF POWER OF ATTORNEY AND AGENT’S AUTHORITY

State of

[County] of

I, (Name of Agent), certify under penalty of perjury that (Name of Principal) granted me authority as an agent or successor agent in a power of attorney dated

I further certify that to my knowledge:

(1) the Principal is alive and has not revoked the Power of Attorney or my authority to act under the Power of Attorney and the Power of Attorney and my authority to act under the Power of Attorney have not terminated;

(2) if the Power of Attorney was drafted to become effective upon the happening of an event or contingency, the event or contingency has occurred;

(3) if I was named as a successor agent, the prior agent is no longer able or willing to serve; and

(4)
.....
.....

(Insert other relevant statements)

SIGNATURE AND ACKNOWLEDGMENT

.....

Agent's Signature

Date

.....

Agent's Name Printed

.....

Agent's Address

.....

Agent's Telephone Number

This document was acknowledged before me on ,
(Date)

by
(Name of Agent)

..... (Seal, if any)
Signature of Notary

My commission expires:

This document prepared by:
.....

Source: Laws 2012, LB1113, § 42.

PART 4

MISCELLANEOUS PROVISIONS

30-4043 Uniformity of application and construction.

In applying and construing the Nebraska Uniform Power of Attorney Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among the states that enact it.

Source: Laws 2012, LB1113, § 43.

30-4044 Relation to federal Electronic Signatures in Global and National Commerce Act.

The Nebraska Uniform Power of Attorney Act modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 et seq., but does not modify, limit, or supersede section 101(c) of such act, 15 U.S.C. 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of such act, 15 U.S.C. 7003(b).

Source: Laws 2012, LB1113, § 44.

30-4045 Effect on existing powers of attorney.

Except as otherwise provided in the Nebraska Uniform Power of Attorney Act, on January 1, 2013:

- (1) The act applies to a power of attorney created before, on, or after January 1, 2013;
- (2) The act applies to a judicial proceeding concerning a power of attorney commenced on or after January 1, 2013;

(3) The act applies to a judicial proceeding concerning a power of attorney commenced before January 1, 2013, unless the court finds that application of a provision of the act would substantially interfere with the effective conduct of the judicial proceeding or prejudice the rights of a party, in which case that provision does not apply and the superseded law applies; and

(4) An act done before January 1, 2013, is not affected by the act.

Source: Laws 2012, LB1113, § 45.

ARTICLE 41

PUBLIC GUARDIANSHIP ACT

Section

- 30-4101. Act, how cited.
- 30-4102. Legislative findings.
- 30-4103. Terms, defined.
- 30-4104. Office of Public Guardian; created; Public Guardian; qualifications; duties.
- 30-4105. Office of Public Guardian; duties.
- 30-4106. Advisory Council on Public Guardianship; created; members.
- 30-4107. Advisory Council on Public Guardianship; members; terms; vacancy; officers.
- 30-4108. Advisory Council on Public Guardianship; duties; meetings; expenses.
- 30-4109. Public Guardian; duties.
- 30-4110. Rules.
- 30-4111. Reports; contents.
- 30-4112. Appointment of Public Guardian as guardian or conservator.
- 30-4113. Fees.
- 30-4114. Successor guardian or successor conservator; report; court filing.
- 30-4115. Public Guardian; limitation on appointment; notice.
- 30-4116. Public Guardian; appointment; powers; duties.
- 30-4117. Discharge of Public Guardian; when.
- 30-4118. Public Guardianship Cash Fund; created; use; investment.

30-4101 Act, how cited.

Sections 30-4101 to 30-4118 shall be known and may be cited as the Public Guardianship Act.

Source: Laws 2014, LB920, § 1.

Operative date January 1, 2015.

30-4102 Legislative findings.

(1) The Legislature finds that the present system of obtaining a guardian or conservator for an individual, which often depends on volunteers, is inadequate when there is no willing and qualified family member or other person available or willing to serve as guardian or conservator for such individual. The Legislature finds that there is a need to provide guardians and conservators when there is no one suitable or available with priority to serve the needs of such individual. The Legislature intends that establishment of the Office of Public Guardian will provide services for individuals when no private guardian or private conservator is available. The Legislature also finds that alternatives to full guardianship and less intrusive means of intervention should always be explored, including, but not limited to, limited guardianship, temporary guardianship, conservatorship, or the appointment of a payee. It is the intent of the Legislature to provide a public guardian or public conservator only to those individuals whose needs cannot be met through less intrusive means of intervention.

(2) The Legislature finds that:

(a) All individuals in need of a guardian or conservator shall have the opportunity to have one appointed for them;

(b) The priorities for appointment in sections 30-2601 to 30-2661 are appropriate in most instances;

(c) There are individuals in need of guardians or conservators for whom persons that have priority are unwilling, unable, or inappropriate to become a guardian or conservator;

(d) Guardians and conservators under the current system do not always carry out the assigned duties in a way that protects the individual and, in fact, sometimes carry out the duties in a way that abuses or neglects the individual; and

(e) For those for whom no person is available for appointment as guardian or conservator, the Office of Public Guardian may provide necessary services.

Source: Laws 2014, LB920, § 2.

Operative date January 1, 2015.

30-4103 Terms, defined.

For purposes of the Public Guardianship Act:

(1) Council means the Advisory Council on Public Guardianship;

(2) Office means the Office of Public Guardian;

(3) Private conservator means an individual or a corporation with general power to serve as trustee who is not with the office and who is appointed by the court to act as conservator for a protected person;

(4) Private guardian means any person who is not with the office and who is appointed by the court to act as guardian for a ward;

(5) Protected person is as defined in section 30-2601;

(6) Public Guardian means the director of the office;

(7) Successor conservator means an individual or a corporation with general power to serve as trustee who is recruited by the office to become a conservator for a protected person previously served by the office;

(8) Successor guardian means a person or entity who is recruited by the office to become a guardian for a ward previously served by the office; and

(9) Ward is as defined in section 30-2601.

Source: Laws 2014, LB920, § 3.

Operative date January 1, 2015.

30-4104 Office of Public Guardian; created; Public Guardian; qualifications; duties.

The office is created within the judicial branch of government and is directly responsible to the State Court Administrator. The State Court Administrator shall appoint a director of the office who shall be known as the Public Guardian. The Public Guardian shall be hired based on a broad knowledge of human development, intellectual disabilities, sociology, and psychology and shall have business acuity and experience in public education and volunteer recruitment. The Public Guardian shall hire a deputy public guardian and up to twelve associate public guardians who shall serve at the pleasure of the Public

Guardian and perform such duties as assigned by the Public Guardian. The Public Guardian shall assume all the duties and responsibilities of a guardian and conservator for any individual appointed to his or her supervision and may designate authority to act on his or her behalf to the deputy public guardian and associate public guardians. The Public Guardian shall administer public guardianship and public conservatorship and shall serve as staff to the council. The Public Guardian may hire support staff as required.

Source: Laws 2014, LB920, § 4.
Operative date January 1, 2015.

30-4105 Office of Public Guardian; duties.

The office:

- (1) Shall provide immediate response when a guardian or conservator is needed in an emergency situation;
- (2) Shall provide an option upon the resignation, removal, or discharge of a guardian or conservator so that there is no lapse in service to the ward or protected person;
- (3) Shall provide equal access and protection for all individuals in need of guardianship or conservatorship services;
- (4) Shall promote or provide public education to increase the awareness of the duties of guardians and conservators and encourage more people to serve as private guardians or private conservators;
- (5) Shall recruit members of the general public or family members to serve as guardians or conservators and provide adequate training and support to enhance their success;
- (6) Shall act as a resource to persons already serving as guardians or conservators for education, information, and support;
- (7) Shall safeguard the rights of individuals by exploring all options available to support individuals in the least restrictive manner possible and seek full guardianship only as a last resort; and
- (8) Shall model the highest standard of practice for guardians and conservators to improve the performance of all guardians and conservators in the state.

Source: Laws 2014, LB920, § 5.
Operative date January 1, 2015.

30-4106 Advisory Council on Public Guardianship; created; members.

The Advisory Council on Public Guardianship is created. The council shall be appointed by the State Court Administrator, be comprised of individuals from a variety of disciplines who are knowledgeable in guardianship and conservatorship, and be representative of the geographical and cultural diversity of the state and reflect gender fairness. The council shall consist of the following members: A representative of the Nebraska County Court Judges Association, attorneys licensed to practice law in this state, social workers, mental health professionals, professionals with expertise in the aging population, developmental disability professionals, and other interested groups or individuals.

Source: Laws 2014, LB920, § 6.
Operative date January 1, 2015.

30-4107 Advisory Council on Public Guardianship; members; terms; vacancy; officers.

The State Court Administrator shall appoint initial members of the council for staggered terms of one, two, or three years as designated by the State Court Administrator. All subsequent appointments shall be made for terms of three years. Any vacancy on the council shall be filled in the same manner in which the original appointment was made and for the duration of the term vacated. Appointments of initial members of the council shall be made within ninety days after January 1, 2015. The council shall select a chairperson, a vice-chairperson, and such other officers as it deems necessary.

Source: Laws 2014, LB920, § 7.

Operative date January 1, 2015.

30-4108 Advisory Council on Public Guardianship; duties; meetings; expenses.

(1) The council shall advise the Public Guardian on the administration of public guardianship and public conservatorship.

(2) The council shall meet at least four times per year and at other times deemed necessary to perform its functions upon the call of the chairperson. Members of the council shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

Source: Laws 2014, LB920, § 8.

Operative date January 1, 2015.

30-4109 Public Guardian; duties.

Consistent with the purposes and objectives of the Public Guardianship Act and in consultation with the council, the Public Guardian shall:

(1) Develop a uniform system of reporting and collecting statistical data regarding guardianships and conservatorships;

(2) Develop and adopt a standard of practice and code of ethics for public guardianship and public conservatorship;

(3) Prepare a biennial budget for the implementation of the act;

(4) Develop guidelines for a sliding scale of fees to be charged for public guardianship and public conservatorship services;

(5) Maintain, in conjunction with private and other public resources, a curricula for training sessions to be made available for successor guardians and successor conservators and private guardians and private conservators;

(6) Maintain training programs available statewide to offer the training curricula for interested parties to include:

(a) Helping a guardian understand his or her ward's disabilities and a conservator understand his or her fiduciary duties with respect to his or her protected person;

(b) Helping a guardian encourage increased independence on the part of his or her ward, as appropriate;

(c) Helping a guardian with the preparation and revision of guardianship plans and reports and a conservator with the preparation and revision of accountings; and

(d) Advising a guardian or conservator on ways to secure rights, benefits, and services to which his or her ward or protected person is entitled;

(7) Promote public awareness of guardianship and conservatorship, the responsibilities attached, and the need for more private guardians and private conservators; and

(8) Apply for and receive funds from public and private sources for carrying out the purposes and obligations of the act.

Source: Laws 2014, LB920, § 9.

Operative date January 1, 2015.

30-4110 Rules.

The Supreme Court, upon recommendation by the Public Guardian, in consultation with the council, shall promulgate rules to carry out the Public Guardianship Act.

Source: Laws 2014, LB920, § 10.

Operative date January 1, 2015.

30-4111 Reports; contents.

The Public Guardian shall report to the State Court Administrator as directed by the State Court Administrator. The Public Guardian shall report to the Chief Justice and the Legislature on the implementation of the Public Guardianship Act on or before January 1 of each year. The report to the Legislature shall be made electronically. The report shall include the number and types of guardianships and conservatorships for which the Public Guardian has been appointed, including full guardianships, limited guardianships, and temporary guardianships, the disposition of those appointments, the amount of guardianship and conservatorship fees charged and collected under the act, and the status of the waiting list for public guardianship and public conservatorship services.

Source: Laws 2014, LB920, § 11.

Operative date January 1, 2015.

30-4112 Appointment of Public Guardian as guardian or conservator.

A court may order appointment of the Public Guardian as a guardian or conservator only after notice to the Public Guardian and a determination that the appointment or order is necessary and will not result in the Public Guardian having more appointments than permitted by section 30-4115. The determination of necessity may require the court to ascertain whether there is any other alternative to public guardianship or public conservatorship.

Source: Laws 2014, LB920, § 12.

Operative date January 1, 2015.

30-4113 Fees.

The office shall charge fees pursuant to the guidelines developed pursuant to section 30-4109 unless modified or waived by the court.

Source: Laws 2014, LB920, § 13.

Operative date January 1, 2015.

30-4114 Successor guardian or successor conservator; report; court filing.

(1) Once the Public Guardian is appointed as guardian or conservator, the office shall make a reasonable effort to locate a successor guardian or successor conservator. By June 30 and January 1 of each year, the office shall file an aggregate report with the State Court Administrator describing its efforts to locate a successor guardian or successor conservator.

(2) Upon location of a successor guardian or successor conservator, the office shall file a motion with the court for termination or modification of the guardianship or conservatorship. Availability of a successor guardian or successor conservator shall be deemed a change in the suitability of the office for carrying out its powers and duties under section 30-4105.

Source: Laws 2014, LB920, § 14.

Operative date January 1, 2015.

30-4115 Public Guardian; limitation on appointment; notice.

The Public Guardian may accept an appointment as a guardian or conservator for an individual not to exceed an average of forty individuals per associate public guardian hired by the office. When the average has been reached, the Public Guardian shall not accept further appointments. The Public Guardian, upon reaching the maximum number of appointments, shall notify the State Court Administrator that the maximum number of appointments has been reached.

Source: Laws 2014, LB920, § 15.

Operative date January 1, 2015.

30-4116 Public Guardian; appointment; powers; duties.

(1) When the court appoints the Public Guardian as guardian or conservator for an individual, the Public Guardian immediately succeeds to (a) all powers and duties of a guardian provided in sections 30-2626 and 30-2628, if appointed a guardian, or (b) all powers and duties of a conservator provided in sections 30-2646, 30-2647, 30-2653, 30-2654, 30-2655, 30-2656, and 30-2657, if appointed a conservator.

(2) The Public Guardian shall:

(a) Be considered as an interested party in the welfare of the ward or protected person for purposes of filing a motion for termination or modification of a public guardianship or public conservatorship;

(b) Visit the facility in which the ward or protected person is to be placed if it is proposed that the individual be placed outside his or her home; and

(c) Monitor the ward or protected person and his or her care and progress on a continuing basis. Monitoring shall, at a minimum, consist of monthly personal contact with the ward or protected person. The Public Guardian shall maintain a written record of each visit with a ward or protected person. The Public Guardian shall maintain periodic contact with all individuals and agencies, public or private, providing care or related services to the ward or protected person.

Source: Laws 2014, LB920, § 16.

Operative date January 1, 2015.

30-4117 Discharge of Public Guardian; when.

The Public Guardian may be discharged by a court with respect to any of the authority granted over a ward or protected person upon petition of such individual, any interested party, or the Public Guardian or upon the court's own motion when it appears that the services of the Public Guardian are no longer necessary.

Source: Laws 2014, LB920, § 17.
Operative date January 1, 2015.

30-4118 Public Guardianship Cash Fund; created; use; investment.

The Public Guardianship Cash Fund is created. The State Court Administrator shall administer the fund. The fund shall consist of money remitted pursuant to the Public Guardianship Act. The fund shall only be used to support the Public Guardianship 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 2014, LB920, § 18.
Operative date January 1, 2015.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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



CHAPTER 31

DRAINAGE

Article.

1. Drainage by County Authorities. 31-113.
4. Drainage Districts Organized by Vote of Landowners. 31-409, 31-409.02.
7. Sanitary and Improvement Districts.
 - (b) Districts Formed under Act of 1949. 31-735.
 - (f) Recall of Trustees. 31-787, 31-789.

ARTICLE 1

DRAINAGE BY COUNTY AUTHORITIES

Section

31-113. Drainage improvements; allowance of compensation and assessment of damages; when and how made.

31-113 Drainage improvements; allowance of compensation and assessment of damages; when and how made.

The county board on actual view of the premises shall fix and allow such compensation for land appropriated and assess such damages as will in its judgment accrue from the construction of the improvement to each person or corporation making application as provided by section 31-112 and without such application to each person with an intellectual disability, person with a mental disorder, or minor owning lands taken or affected by such improvement.

Source: Laws 1881, c. 51, § 13, p. 240; Laws 1911, c. 140, § 13, p. 457; R.S.1913, § 1730; C.S.1922, § 1677; C.S.1929, § 31-113; R.S. 1943, § 31-113; Laws 1986, LB 1177, § 13; Laws 2013, LB23, § 6.

ARTICLE 4

DRAINAGE DISTRICTS ORGANIZED BY VOTE OF LANDOWNERS

Section

31-409. Directors; qualification; officers; annual election; vacancies; term.
31-409.02. Annual election; notice; contents.

31-409 Directors; qualification; officers; annual election; vacancies; term.

A majority of the directors shall be residents of the county or counties in which the district is located. Except as provided in section 31-409.03, any person or the officer or representative of any corporation owning or controlling any land assessed for benefits may be a director. The person elected a director receiving the least number of votes shall hold office for one year, the next higher for two years, and so on, and the term of each shall be adjusted so as to make the term of one director expire each year. The officers, consisting of a president, a treasurer, and a secretary, shall be chosen by the directors from their own number and for a term of one year. Unless the directors choose by February fifteenth of a given year to use the procedures provided in section

31-409.01, annual elections of directors shall be held on the second Tuesday of April each year, at the county courthouse or at such other place designated by the board pursuant to section 31-409.03. The annual election shall be omitted if such date occurs less than nine months after the first election. Vacancies in the office of directors may be filled by the remaining directors until the next election. All directors and officers shall hold office until their successors are elected and qualified.

Source: Laws 1907, c. 153, § 9, p. 478; R.S.1913, § 1874; Laws 1921, c. 275, § 1, p. 905; C.S.1922, § 1821; C.S.1929, § 31-509; R.S.1943, § 31-409; Laws 1951, c. 96, § 2, p. 265; Laws 1983, LB 191, § 1; Laws 1988, LB 1078, § 1; Laws 2011, LB342, § 1.

31-409.02 Annual election; notice; contents.

Notice of an annual election held pursuant to section 31-409, 31-409.01, or 31-409.03 shall be published once each week for two consecutive weeks in a newspaper of general circulation in the district, or the precinct if the district has been divided into voting precincts as provided in section 31-409.03, designated by the district. The last publication shall not be less than thirty days prior to the election. The notice shall include the date and location or locations of the election and the hours for voting, the number of directors to be elected, the names of those whose terms will expire, and the procedure for filing as a candidate.

Source: Laws 1983, LB 191, § 3; Laws 1988, LB 1078, § 2; Laws 2011, LB342, § 2.

ARTICLE 7

SANITARY AND IMPROVEMENT DISTRICTS

(b) DISTRICTS FORMED UNDER ACT OF 1949

Section

31-735. District; trustees; election; procedure; term; notice; qualified voters.

(f) RECALL OF TRUSTEES

31-787. Trustee; removal by recall; petition; procedure.

31-789. Signature verification; effect.

(b) DISTRICTS FORMED UNDER ACT OF 1949

31-735 District; trustees; election; procedure; term; notice; qualified voters.

(1) On the first Tuesday after the second Monday in September which is at least fifteen months after the judgment of the district court creating a sanitary and improvement district and on the first Tuesday after the second Monday in September each two years thereafter, the board of trustees shall cause a special election to be held, at which election a board of trustees of five in number shall be elected. Each member elected to the board of trustees shall be elected to a term of two years and shall hold office until such member's successor is elected and qualified. Any person desiring to file for the office of trustee may file for such office with the election commissioner, or county clerk in counties having no election commissioner, of the county in which the greater proportion in area of the district is located not later than fifty days before the election. If such person will serve on the board of trustees as a designated representative of a limited partnership, general partnership, limited liability company, public,

private, or municipal corporation, estate, or trust which owns real estate in the district, the filing shall indicate that fact and shall include appropriate documentation evidencing such fact. No filing fee shall be required. A person filing for the office of trustee to be elected at the election held four years after the first election of trustees and each election thereafter shall designate whether he or she is a candidate for election by the resident owners of such district or whether he or she is a candidate for election by all of the owners of real estate located in the district. If a person filing for the office of trustee is a designated representative of a limited partnership, a general partnership, a limited liability company, a public, private, or municipal corporation, an estate, or a trust which owns real estate in the district, the name of such entity shall accompany the name of the candidate on the ballot in the following form: (Name of candidate) to represent (name of entity) as a member of the board. The name of each candidate shall appear on only one ballot.

The name of a person may be written in and voted for as a candidate for the office of trustee, and such write-in candidate may be elected to the office of trustee. A write-in candidate for the office of trustee who will serve as a designated representative of a limited partnership, a general partnership, a limited liability company, a public, private, or municipal corporation, an estate, or a trust which owns real estate in the district shall not be elected to the office of trustee unless (a) each vote is accompanied by the name of the entity which the candidate will represent and (b) within ten days after the date of the election the candidate provides the county clerk or election commissioner with appropriate documentation evidencing his or her representation of the entity. Votes cast which do not carry such accompanying designation shall not be counted.

A trustee shall be an owner of real estate located in the district or shall be a person designated to serve as a representative on the board of trustees if the real estate is owned by a limited partnership, a general partnership, a limited liability company, a public, private, or municipal corporation, an estate, or a trust. Notice of the date of the election shall be mailed by the clerk of the district not later than sixty-five days prior to the election to each person who is entitled to vote at the election for trustees whose property ownership or lease giving a right to vote is of record on the records of the register of deeds as of a date designated by the election commissioner or county clerk, which date shall be not more than seventy-five days prior to the election.

(2) For any sanitary and improvement district, persons whose ownership or right to vote becomes of record or is received after the date specified pursuant to subsection (1) of this section may vote when such person establishes their right to vote to the satisfaction of the election board. At the first election and at the election held two years after the first election, any person may cast one vote for each trustee for each acre of unplatted land or fraction thereof and one vote for each platted lot which he or she may own in the district. At the election held four years after the first election of trustees, two members of the board of trustees shall be elected by the legal property owners resident within such sanitary and improvement district and three members shall be elected by all of the owners of real estate located in the district pursuant to this section. Every resident property owner may cast one vote for a candidate for each office of trustee to be filled by election of resident property owners only. Such resident property owners may also each cast one vote for each acre of unplatted land or fraction thereof and for each platted lot owned within the district for a

candidate for each office of trustee to be filled by election of all property owners. For each office of trustee to be filled by election of all property owners of the district, every legal property owner not resident within such sanitary and improvement district may cast one vote for each acre of unplatted land or fraction thereof and one vote for each platted lot which he or she owns in the district. At the election held eight years after the first election of trustees and at each election thereafter, three members of the board of trustees shall be elected by the legal property owners resident within such sanitary and improvement district and two members shall be elected by all of the owners of real estate located in the district pursuant to this section, except that if more than fifty percent of the homes in any sanitary and improvement district are used as a second, seasonal, or recreational residence, the owners of such property shall be considered legal property owners resident within such district for purposes of electing trustees, and at the election held six years after the first election of trustees and at each election thereafter, three members of the board of trustees shall be elected by the legal property owners resident within such sanitary and improvement district and two members shall be elected by all of the owners of real estate located in the district pursuant to this section. If there are not any legal property owners resident within such district or if not less than ninety percent of the area of the district is owned for other than residential uses, the five members shall be elected by the legal property owners of all property within such district as provided in this section. Any public, private, or municipal corporation owning any land or lot in the district may vote at such election the same as an individual. For purposes of voting for trustees, each condominium apartment under a condominium property regime established prior to January 1, 1984, under the Condominium Property Act or established after January 1, 1984, under the Nebraska Condominium Act shall be deemed to be a platted lot and the lessee or the owner of the lessee's interest, under any lease for an initial term of not less than twenty years which requires the lessee to pay taxes and special assessments levied on the leased property, shall be deemed to be the owner of the property so leased and entitled to cast the vote of such property. When ownership of a platted lot or unplatted land is held jointly by two or more persons, whether as joint tenants, tenants in common, limited partners, members of a limited liability company, or any other form of joint ownership, only one person shall be entitled to cast the vote of such property. The executor, administrator, guardian, or trustee of any person or estate interested shall have the right to vote. No corporation, estate, or irrevocable trust shall be deemed to be a resident owner for purposes of voting for trustees. Should two or more persons or officials claim the right to vote on the same tract, the election board shall determine the party entitled to vote. Such board shall select one of their number chairperson and one of their number clerk. In case of a vacancy on such board, the remaining trustees shall fill the vacancy on such board until the next election.

(3) The election commissioner or county clerk shall hold any election required by subsection (1) of this section by sealed mail ballot by notifying the board of trustees on or before July 1 of a given year. The election commissioner or county clerk shall, at least twenty days prior to the election, mail a ballot and return envelope to each person who is entitled to vote at the election and whose property ownership or lease giving a right to vote is of record with the register of deeds as of the date designated by the election commissioner or county clerk, which date shall not be more than seventy-five days prior to the election. The

ballot and return envelope shall include: (a) The names and addresses of the candidates; (b) room for write-in candidates; and (c) instructions on how to vote and return the ballot. Such ballots shall be returned to the election commissioner or county clerk no later than 5 p.m. on the date set for the election.

Source: Laws 1949, c. 78, § 9, p. 198; Laws 1971, LB 188, § 3; Laws 1974, LB 757, § 10; Laws 1976, LB 313, § 14; Laws 1977, LB 228, § 2; Laws 1981, LB 37, § 1; Laws 1982, LB 359, § 1; Laws 1983, LB 433, § 71; Laws 1984, LB 1105, § 1; Laws 1986, LB 483, § 1; Laws 1987, LB 587, § 1; Laws 1987, LB 652, § 4; Laws 1992, LB 764, § 2; Laws 1993, LB 121, § 195; Laws 1997, LB 874, § 9; Laws 1999, LB 740, § 1; Laws 2005, LB 401, § 1; Laws 2009, LB412, § 1.

Cross References

Condominium Property Act, see section 76-801.

Nebraska Condominium Act, see section 76-825.

(f) RECALL OF TRUSTEES

31-787 Trustee; removal by recall; petition; procedure.

(1) A trustee of a sanitary and improvement district may be removed from office by recall pursuant to sections 31-786 to 31-793. A petition for an election to recall a trustee shall be sufficient if it complies with the requirements of this section.

(2) The signers of the petition shall be persons who were, on the date the initial petition papers are issued under subsection (7) of this section, eligible to vote in a district election as provided in section 31-735. A person's eligibility to sign a petition shall be the same as the person's eligibility to cast one or more votes at a district election under section 31-735. Only one person shall be allowed to sign on behalf of joint owners of property in the district or on behalf of a public, private, or municipal corporation that owns property in the district. If the trustee whose recall is sought was elected by vote of resident owners only, then only resident owners shall be allowed to sign the petition. If the trustee whose recall is sought was elected by vote of all owners of property, then all owners shall be allowed to sign the petition. Resident owner means qualified resident voter. All owners means all qualified resident voters and all qualified property owning voters.

(3) The filing clerk shall assign to each signature a count equal to the number of votes that the signer was eligible to cast on the date he or she signed. The number of votes that a signer was eligible to cast shall be based on section 31-735. If the signature was made by or for an owner of more than one parcel of property, the signature made by or on behalf of such owner shall be assigned a count equal to the total number of votes which the owner was eligible to cast.

(4) The filing clerk shall total the count assigned to the signatures on the petition. The petition shall be sufficient if the total is at least equal to thirty-five percent of the highest number of votes that were cast for a candidate at the previous district election for the trustee positions in the same category as the trustee whose recall is sought by the petition. The categories of trustees shall be the same as provided in section 31-735.

(5) The signatures shall be affixed to petition papers and shall be considered part of the petition.

(6) The petition papers shall be procured from the filing clerk. Prior to the issuance of such petition papers, an affidavit shall be signed and filed with the filing clerk by at least one qualified resident voter of the district, if the trustee whose recall is being sought was elected solely by qualified resident voters, or at least one qualified resident voter or qualified property owning voter, if the trustee whose recall is being sought was elected by other qualified resident voters and qualified property owning voters. Such voter or voters shall be deemed to be the principal circulator or circulators of the recall petition. The affidavit shall state the name of the trustee sought to be removed and whether qualified property owning voters participated in the election of the trustee and shall request that the filing clerk issue initial petition papers to the principal circulator for circulation. The filing clerk shall notify the principal circulator or circulators that the necessary signatures must be gathered within thirty days after the date of issuing the petitions.

(7) The filing clerk, upon issuing the initial petition papers or any subsequent petition papers, shall enter in a record, to be kept in his or her office, the name of the principal circulator or circulators to whom the papers were issued, the date of issuance, the number of papers issued, and whether qualified property owning voters may participate in signing the petitions. The filing clerk shall certify on the papers the name of the principal circulator or circulators to whom the papers were issued, the date they were issued, and whether qualified property owning voters may participate in signing the petitions. No petition paper shall be accepted as part of the petition unless it bears such certificate. The principal circulator or circulators who check out petitions from the filing clerk may distribute such petitions to persons who may act as circulators of such petitions.

Source: Laws 1997, LB 874, § 2; Laws 2002, LB 176, § 5; Laws 2003, LB 444, § 2; Laws 2012, LB1121, § 1.

31-789 Signature verification; effect.

(1) The principal circulator or circulators shall file, as one instrument, all petition papers comprising a recall petition for signature verification with the filing clerk within thirty days after the filing clerk issues the initial petition papers to the principal circulator or circulators as provided in section 31-787.

(2) Within fifteen days after the filing of the petition, the filing clerk shall ascertain whether or not the petition is signed by sufficient qualified resident voters and qualified property owning voters as provided in section 31-787. No new signatures may be added after the initial filing of the petition papers. No signatures may be removed unless the filing clerk receives an affidavit signed by the person requesting that his or her signature be removed before the petitions are filed with the filing clerk for signature verification.

(3) If the petition is found to be sufficient, the filing clerk shall attach to the petition a certificate showing the result of such examination. If the petition is found not to be sufficient, the filing clerk shall file the petition in his or her office without prejudice to the filing of a new petition for the same purpose.

Source: Laws 1997, LB 874, § 4; Laws 2002, LB 176, § 7; Laws 2012, LB1121, § 2.

CHAPTER 32

ELECTIONS

Article.

1. General Provisions and Definitions. 32-101, 32-122.
2. Election Officials.
 - (a) Secretary of State. 32-204, 32-206.
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ARTICLE 1

GENERAL PROVISIONS AND DEFINITIONS

Section

32-101. Act, how cited.

32-122. Member of the Legislature; start of second half of term of office.

32-101 Act, how cited.

Sections 32-101 to 32-1551 shall be known and may be cited as the Election Act.

Source: Laws 1994, LB 76, § 1; Laws 1995, LB 337, § 1; Laws 1995, LB 514, § 1; Laws 1996, LB 964, § 1; Laws 1997, LB 764, § 8; Laws 2001, LB 768, § 1; Laws 2002, LB 1054, § 7; Laws 2003, LB 181, § 1; Laws 2003, LB 358, § 1; Laws 2003, LB 359, § 1; Laws 2003, LB 521, § 3; Laws 2005, LB 401, § 2; Laws 2005, LB 566, § 1; Laws 2010, LB951, § 1; Laws 2013, LB299, § 1; Laws 2013, LB349, § 1; Laws 2014, LB661, § 1; Laws 2014, LB946, § 3.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB661, section 1, with LB946, section 3, to reflect all amendments.

Note: Changes made by LB661 became effective July 18, 2014. Changes made by LB946 became operative January 1, 2015.

32-122 Member of the Legislature; start of second half of term of office.

The second half of a term of office for a member of the Legislature starts on the day of the meeting of the Legislature at which members are regularly sworn

in to office in the second calendar year which begins after the four-year term begins.

Source: Laws 2014, LB946, § 11.
Operative date January 1, 2015.

ARTICLE 2 ELECTION OFFICIALS

(a) SECRETARY OF STATE

Section

32-204. Election Administration Fund; created; use; investment.

32-206. Official election calendar; publish; contents; delivery of copy; filing or other acts; time.

(b) COUNTY ELECTION OFFICIALS

32-208. Election commissioner; qualifications; appointment to elective office; effect.

32-209. Chief deputy election commissioner; qualifications; appointment; oath; bond; duties.

32-210. Chief deputy election commissioner; vacancy; procedure for filling.

(f) GUIDELINES FOR ELECTION WORKERS

32-243. Secretary of State; develop and publish guidelines for election workers; contents.

(a) SECRETARY OF STATE

32-204 Election Administration Fund; created; use; investment.

The Election Administration Fund is hereby created. The fund shall consist of federal funds, state funds, gifts, and grants appropriated for the administration of elections. The Secretary of State shall use the fund for voting systems, provisional voting, computerized statewide voter registration lists, voter registration, training or informational materials related to elections, and any other costs related to elections. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1994, LB 76, § 24; Laws 1995, LB 7, § 29; Laws 1997, LB 764, § 13; Laws 2003, LB 14, § 1; Laws 2014, LB661, § 2.
Effective date July 18, 2014.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

32-206 Official election calendar; publish; contents; delivery of copy; filing or other acts; time.

(1) The Secretary of State shall publish an official election calendar by November 1 prior to the statewide primary election. Such calendar, to be approved as to form by the Attorney General, shall set forth the various election deadline dates and other pertinent data as determined by the Secretary of State. The official election calendar shall be merely a guideline and shall in no way legally bind the Secretary of State or the Attorney General.

(2) The Secretary of State shall deliver a copy of the official election calendar to the state party headquarters of each recognized political party within ten days after publication under subsection (1) of this section.

(3) Except as provided in sections 32-302 and 32-306, any filing or other act required to be performed by a specified day shall be performed by 5 p.m. of such day, except that if such day falls upon a Saturday, Sunday, or legal holiday, performance shall be required on the next business day.

Source: Laws 1994, LB 76, § 26; Laws 2012, LB878, § 1; Laws 2014, LB1048, § 1.

Effective date July 18, 2014.

(b) COUNTY ELECTION OFFICIALS

32-208 Election commissioner; qualifications; appointment to elective office; effect.

The election commissioner in counties having a population of more than one hundred thousand inhabitants shall be a registered voter, a resident of such county for at least one year, and of good moral character and integrity and capacity. No person who is a candidate for any elective office or is a deputy, clerk, or employee of any person who is a candidate for any elective office shall be eligible for the office of election commissioner. The election commissioner shall not hold any other elective office or become a candidate for an elective office during his or her term of office or within six months after leaving office. An election commissioner may be appointed to an elective office during his or her term of office as election commissioner, and acceptance of such appointment shall be deemed to be his or her resignation from the office of election commissioner.

Source: Laws 1994, LB 76, § 28; Laws 1997, LB 764, § 14; Laws 2001, LB 226, § 1; Laws 2003, LB 707, § 1; Laws 2011, LB449, § 1.

32-209 Chief deputy election commissioner; qualifications; appointment; oath; bond; duties.

(1) The election commissioner in counties having a population of more than one hundred thousand inhabitants shall appoint a chief deputy election commissioner in the manner provided in section 32-210. The chief deputy election commissioner shall be a member of a different political party than the election commissioner, shall be a registered voter in the county and of the party he or she is to represent, and shall be a resident of such county for at least one year.

(2) The chief deputy election commissioner shall hold office until the term of the election commissioner expires.

(3) Before entering upon his or her duties, the chief deputy election commissioner shall take and subscribe an oath in the form provided in section 11-101.01.

(4) The chief deputy election commissioner shall give bond to the State of Nebraska in the sum of five thousand dollars with security to be approved by the Governor conditioned on the faithful performance of the duties of such office.

(5) The chief deputy election commissioner shall perform duties assigned by the election commissioner. In the absence of the election commissioner, the chief deputy election commissioner shall perform all the duties of the election commissioner consistent with the policies and procedures established by the election commissioner. The chief deputy election commissioner shall also be

responsible for carrying out any directions properly made and given by the election commissioner prior to his or her absence.

Source: Laws 1994, LB 76, § 29; Laws 2001, LB 226, § 2; Laws 2014, LB946, § 4.

Operative date January 1, 2015.

32-210 Chief deputy election commissioner; vacancy; procedure for filling.

The election commissioner in counties having a population of more than one hundred thousand inhabitants shall, within ten days after being appointed or being notified that a vacancy exists in the office of chief deputy election commissioner, notify by registered or certified mail the county chairperson of the political parties from which a chief deputy election commissioner may be appointed that an appointment needs to be made. The county chairperson of the political parties shall call a meeting of a committee comprised of the county chairperson, vice-chairperson, secretary, and treasurer of the political parties within ten days after receiving the letter for the purpose of preparing a list of three or more candidates. The list shall be submitted to the election commissioner within five days after the meeting, and the election commissioner shall select a chief deputy election commissioner from the list of names of candidates submitted within ten days after receiving all lists. If a political party does not submit a list within the timeframes required by this section, the election commissioner shall select a chief deputy election commissioner from the lists received.

Source: Laws 1994, LB 76, § 30; Laws 1997, LB 764, § 15; Laws 2014, LB946, § 5.

Operative date January 1, 2015.

(f) GUIDELINES FOR ELECTION WORKERS

32-243 Secretary of State; develop and publish guidelines for election workers; contents.

The Secretary of State shall develop and publish guidelines for election workers appointed pursuant to sections 32-220 to 32-240. The guidelines shall include provisions for the conduct of election workers with regard to the conduct of elections on election day. The guidelines may cover other conduct with regard to election workers and, in that regard, shall take into account variations in counties with regards to election workers appointed under sections 32-221 to 32-228 which apply to counties which have an election commissioner as provided in section 32-207 or 32-211 and election workers appointed under sections 32-230 to 32-240 which apply to counties which do not have an election commissioner. The guidelines shall be instructional in nature and shall not be construed to bind election commissioners or county clerks.

Source: Laws 2013, LB299, § 2.

ARTICLE 3

REGISTRATION OF VOTERS

Section

32-304. Registration of electors electronically; application process; application; contents; Secretary of State; Department of Motor Vehicles; duties.

Section	
32-305.	Deputy registrar; application; training; when; oath; violation; effect.
32-308.	Registration list; verification; voter registration application; Department of Motor Vehicles; duties; registration; when; confidentiality; persons involved in registration; status.
32-309.	Voter registration application; delivery; when; confidentiality.
32-310.	Voter registration; State Department of Education; Department of Health and Human Services; duties; confidentiality; persons involved in registration; status; delivery of applications; when; registration; when.
32-311.	Registration of elector; personal application; place or time.
32-312.	Registration application; contents.
32-312.05.	Voter registration record; effective date.
32-315.	Change of name or address; election commissioner or county clerk; duties.
32-321.	Voter registration applications; availability; Secretary of State; designated voter registration agency; mailing deadline; notice to applicant; when required; payment of postage costs.
32-323.	Validity of registration for petition purposes; when.
32-325.	Update of voter registration record; deadline; effect.
32-328.	Voter registration register; precinct list; issuance of ballots; correction of errors; procedures.
32-329.	Registration list; maintenance; voter registration register; verification; training; procedure.

32-304 Registration of electors electronically; application process; application; contents; Secretary of State; Department of Motor Vehicles; duties.

(1) The Secretary of State in conjunction with the Department of Motor Vehicles shall, on or before July 1, 2015, develop and implement a registration application process which may be used statewide to register to vote and update voter registration records electronically using the Secretary of State's web site. An applicant who has a valid Nebraska motor vehicle operator's license or state identification card may use the application process to register to vote or to update his or her voter registration record with changes in his or her personal information or other information related to his or her eligibility to vote. For each electronic application, the Secretary of State shall obtain a copy of the electronic representation of the applicant's signature from the Department of Motor Vehicles' records of his or her motor vehicle operator's license or state identification card for purposes of voter registration.

(2) The application shall contain substantially all the information provided in section 32-312 and the following informational statements:

(a) An applicant who submits this application electronically is affirming that the information in the application is true. Any applicant who submits this application electronically knowing that any of the information in the application is false shall be guilty of a Class IV felony under section 32-1502 of the statutes of Nebraska. The penalty for a Class IV felony is up to five years imprisonment, a fine of up to ten thousand dollars, or both;

(b) An applicant who submits this application electronically is agreeing to the use of his or her signature from the Department of Motor Vehicles' records of his or her motor vehicle operator's license or state identification card for purposes of voter registration;

(c) To vote at the polling place on election day, the completed application must be submitted on or before the third Friday before the election; and

(d) The election commissioner or county clerk will, upon receipt of the application for registration, send an acknowledgment of registration to the applicant indicating whether the application is proper or not.

Source: Laws 2014, LB661, § 3.

Effective date July 18, 2014.

32-305 Deputy registrar; application; training; when; oath; violation; effect.

(1) Any registered voter may apply to the election commissioner or county clerk to be appointed as a deputy registrar for the purpose of registering voters. The application form shall be prescribed by the election commissioner, county clerk, or Secretary of State. The election commissioner or county clerk shall make training available for deputy registrars in the county he or she serves. The deputy registrar shall notify the election commissioner or county clerk of the location and time of proposed voter registration and the names and party affiliations of the deputy registrars. The election commissioner or county clerk, at his or her discretion, may approve or disapprove the deputy registrar's plans for voter registration and shall notify the deputy registrar of such decision.

(2) Any person appointed as a deputy registrar shall attend a training session conducted by an election commissioner or county clerk. A person who attends and successfully completes a training session after January 1, 1995, shall be qualified as a deputy registrar for any county in the state and shall receive a certificate verifying successful completion of the training and indicating his or her qualification as a deputy registrar to conduct registration in any county in the state.

(3) Before entering upon his or her duties, the deputy registrar shall take and subscribe to the following oath:

You do solemnly swear that you will support the Constitution of the United States and the Constitution of Nebraska and will faithfully and impartially perform the duties of the office of deputy registrar according to law and to the best of your ability.

(4) In order to remain qualified to conduct voter registration as a deputy registrar in any county in this state, a deputy registrar shall complete a training session at least once every three years unless the Secretary of State determines that substantial changes have occurred in the voter registration process requiring additional training. The training session may vary in length but shall not exceed four hours. The Secretary of State shall inspect and review all training programs, procedures, and practices to assure that they relate to the position of a deputy registrar and his or her duties.

(5) Any deputy registrar who violates any registration procedure, rule, regulation, or guideline may have his or her status as a deputy registrar revoked by the election commissioner, county clerk, or Secretary of State.

Source: Laws 1994, LB 76, § 67; Laws 1997, LB 764, § 30; Laws 2011, LB449, § 2.

32-308 Registration list; verification; voter registration application; Department of Motor Vehicles; duties; registration; when; confidentiality; persons involved in registration; status.

(1) The Secretary of State and the Director of Motor Vehicles shall enter into an agreement to match information in the computerized statewide voter regis-

tration list with information in the data base of the Department of Motor Vehicles to the extent required to enable each such official to verify the accuracy of the information provided on applications for voter registration. The Director of Motor Vehicles shall enter into an agreement with the Commissioner of Social Security under section 205(r)(8) of the federal Social Security Act, 42 U.S.C. 405(r)(8), as such section existed on April 17, 2003, for purposes of the Election Act.

(2) The Department of Motor Vehicles, with the assistance of the Secretary of State, shall prescribe a voter registration application which may be used to register to vote or change his or her address for voting purposes at the same time an elector applies for an original or renewal motor vehicle operator's license, an original or renewal state identification card, or a replacement thereof. The voter registration application shall contain the information required pursuant to section 32-312 and shall be designed so that it does not require the duplication of information in the application for the motor vehicle operator's license or state identification card, except that it may require a second signature of the applicant. The department and the Secretary of State shall make the voter registration application available to any person applying for an operator's license or state identification card. The application shall be completed at the office of the department by the close of business on the third Friday preceding any election to be registered to vote at such election. A registration application received after the deadline shall not be processed by the election commissioner or county clerk until after the election.

(3) The Department of Motor Vehicles, in conjunction with the Secretary of State, shall develop a process to electronically transmit voter registration application information received under subsection (2) of this section to the election commissioner or county clerk of the county in which the applicant resides within the time limits prescribed in subsection (4) of this section. The Director of Motor Vehicles shall designate an implementation date for the process which shall be on or before January 1, 2016.

(4) The voter registration application information shall be transmitted to the election commissioner or county clerk of the county in which the applicant resides not later than ten days after receipt, except that if the voter registration application information is received within five days prior to the third Friday preceding any election, it shall be transmitted not later than five days after its original submission. Any information on whether an applicant registers or declines to register and the location of the office at which he or she registers shall be confidential and shall only be used for voter registration purposes.

(5) For each voter registration application for which information is transmitted electronically pursuant to this section, the Secretary of State shall obtain a copy of the electronic representation of the applicant's signature from the Department of Motor Vehicles' records of his or her motor vehicle operator's license or state identification card for purposes of voter registration. Each voter registration application electronically transmitted under this section shall include information provided by the applicant that includes whether the applicant is a citizen of the United States, whether the applicant is of sufficient age to register to vote, the applicant's residence address, the applicant's postal address if different from the residence address, the date of birth of the applicant, the party affiliation of the applicant or an indication that the applicant is not affiliated with any political party, the applicant's motor vehicle

operator's license number, the applicant's previous registration location by city, county, or state, if applicable, and the applicant's signature.

(6) State agency personnel involved in the voter registration process pursuant to this section and section 32-309 shall not be considered deputy registrars or agents or employees of the election commissioner or county clerk.

Source: Laws 1994, LB 76, § 70; Laws 1997, LB 764, § 32; Laws 2003, LB 357, § 6; Laws 2005, LB 566, § 7; Laws 2014, LB661, § 4; Laws 2014, LB777, § 1.
Effective date July 18, 2014.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB661, section 4, with LB777, section 1, to reflect all amendments.

32-309 Voter registration application; delivery; when; confidentiality.

Upon receipt of a completed voter registration application under subsection (2) of section 32-308, any person who issues motor vehicle operators' licenses or state identification cards shall, until the implementation date designated by the Director of Motor Vehicles pursuant to subsection (3) of section 32-308, deliver the completed voter registration application to the election commissioner or county clerk of the county in which the person is located not later than ten days after receipt by the person, except that if the voter registration application is received within five days prior to the third Friday preceding any election, it shall be delivered not later than five days after its original filing date. The election commissioner or county clerk shall, if necessary, forward the voter registration application to the election commissioner or county clerk of the county in which the applicant resides within such prescribed time limits. Any information on whether an applicant registers or declines to register and the location of the office at which he or she registers shall be confidential and shall only be used for voter registration purposes.

Source: Laws 1994, LB 76, § 71; Laws 2005, LB 566, § 8; Laws 2014, LB661, § 5.
Effective date July 18, 2014.

32-310 Voter registration; State Department of Education; Department of Health and Human Services; duties; confidentiality; persons involved in registration; status; delivery of applications; when; registration; when.

(1) The State Department of Education and the Department of Health and Human Services shall provide the opportunity to register to vote at the time of application, review, or change of address for the following programs, as applicable: (a) The Supplemental Nutrition Assistance Program; (b) the medic-aid program; (c) the WIC program as defined in section 71-2225; (d) the aid to dependent children program; (e) the vocational rehabilitation program; and (f) any other public assistance program or program primarily for the purpose of providing services to persons with disabilities. If the application, review, or change of address is accomplished through an agent or contractor of the department, the agent or contractor shall provide the opportunity to register to vote. Any information on whether an applicant registers or declines to register and the agency at which he or she registers shall be confidential and shall only be used for voter registration purposes.

(2) The department, agent, or contractor shall make the mail-in registration application described in section 32-320 available at the time of application,

review, or change of address and shall provide assistance, if necessary, to the applicant in completing the application to register to vote. The department shall retain records indicating whether an applicant accepted or declined the opportunity to register to vote.

(3) Department personnel, agents, and contractors involved in the voter registration process pursuant to this section shall not be considered deputy registrars or agents or employees of the election commissioner or county clerk.

(4) The applicant may return the completed voter registration application to the department, agent, or contractor or may personally mail or deliver the application to the election commissioner or county clerk as provided in section 32-321. If the applicant returns the completed application to the department, agent, or contractor, the department, agent, or contractor shall deliver the application to the election commissioner or county clerk of the county in which the office of the department, agent, or contractor is located not later than ten days after receipt by the department, agent, or contractor, except that if the application is returned to the department, agent, or contractor within five days prior to the third Friday preceding any election, it shall be delivered not later than five days after the date it is returned. The election commissioner or county clerk shall, if necessary, forward the application to the election commissioner or county clerk of the county in which the applicant resides within such prescribed time limits. The application shall be completed and returned to the department, agency, or contractor by the close of business on the third Friday preceding any election to be registered to vote at such election. A registration application received after the deadline shall not be processed by the election commissioner or county clerk until after the election.

(5) The departments shall adopt and promulgate rules and regulations to ensure compliance with this section.

Source: Laws 1994, LB 76, § 72; Laws 1996, LB 1044, § 93; Laws 1997, LB 764, § 33; Laws 2005, LB 566, § 9; Laws 2007, LB296, § 51; Laws 2009, LB288, § 1.

32-311 Registration of elector; personal application; place or time.

Any elector may personally apply to register to vote at (1) the office of the election commissioner or county clerk, (2) a registration site at which a deputy registrar is in attendance, (3) a department listed in section 32-310 at the time of an application, review, or change of address as provided in such section, or (4) the Department of Motor Vehicles while applying for a motor vehicle operator's license or state identification card as provided in section 32-308.

Source: Laws 1994, LB 76, § 73; Laws 2014, LB661, § 6.
Effective date July 18, 2014.

32-312 Registration application; contents.

The registration application prescribed by the Secretary of State pursuant to section 32-304 or 32-311.01 shall provide the instructional statements and request the information from the applicant as provided in this section.

CITIZENSHIP—"Are you a citizen of the United States of America?" with boxes to check to indicate whether the applicant is or is not a citizen of the United States.

AGE—“Are you at least eighteen years of age or will you be eighteen years of age on or before the first Tuesday following the first Monday of November of this year?” with boxes to check to indicate whether or not the applicant will be eighteen years of age or older on election day.

WARNING—“If you checked ‘no’ in response to either of these questions, do not complete this application.”.

NAME—the name of the applicant giving the first and last name in full, the middle name in full or the middle initial, and the maiden name of the applicant, if applicable.

RESIDENCE—the name and number of the street, avenue, or other location of the dwelling where the applicant resides if there is a number. If the registrant resides in a hotel, apartment, tenement house, or institution, such additional information shall be included as will give the exact location of such registrant’s place of residence. If the registrant lives in an incorporated or unincorporated area not identified by the use of roads, road names, or house numbers, the registrant shall state the section, township, and range of his or her residence and the corporate name of the school district as described in section 79-405 in which he or she is located.

POSTAL ADDRESS—the address at which the applicant receives mail if different from the residence address.

ADDRESS OF LAST REGISTRATION—the name and number of the street, avenue, or other location of the dwelling from which the applicant last registered.

TELEPHONE NUMBERS—the telephone number of the applicant at work and at home. At the request of the applicant, a designation shall be made that the telephone number is an unlisted number, and such designation shall preclude the listing of the applicant’s telephone number on any list of voter registrations.

EMAIL ADDRESS—an email address of the applicant. At the request of the applicant, a designation shall be made that the email address is private, and such designation shall preclude the listing of the applicant’s email address on any list of voter registrations.

DRIVER’S LICENSE NUMBER OR LAST FOUR DIGITS OF SOCIAL SECURITY NUMBER—if the applicant has a Nebraska driver’s license, the license number, and if the applicant does not have a Nebraska driver’s license, the last four digits of the applicant’s social security number.

DATE OF APPLICATION FOR REGISTRATION—the month, day, and year when the applicant presented himself or herself for registration, when the applicant completed and signed the registration application if the application was submitted by mail or delivered to the election official by the applicant’s personal messenger or personal agent, or when the completed application was submitted if the registration application was completed pursuant to section 32-304.

PLACE OF BIRTH—show the state, country, kingdom, empire, or dominion where the applicant was born.

DATE OF BIRTH—show the date of the applicant’s birth. The applicant shall be at least eighteen years of age or attain eighteen years of age on or before the first Tuesday after the first Monday in November to have the right to register and vote in any election in the present calendar year.

REGISTRATION TAKEN BY—show the signature of the authorized official or staff member accepting the application pursuant to section 32-309 or 32-310 or at least one of the deputy registrars taking the application pursuant to section 32-306, if applicable.

PARTY AFFILIATION—show the party affiliation of the applicant as Democrat, Republican, or Other or show no party affiliation as Nonpartisan. (Note: If you wish to vote in both partisan and nonpartisan primary elections for state and local offices, you must indicate a political party affiliation on the registration application. If you register without a political party affiliation (nonpartisan), you will receive only the nonpartisan ballots for state and local offices at primary elections. If you register without a political party affiliation, you may vote in partisan primary elections for congressional offices.)

OTHER—information the Secretary of State determines will assist in the proper and accurate registration of the voter.

Immediately following the spaces for inserting information as provided in this section, the following statement shall be printed:

To the best of my knowledge and belief, I declare under penalty of election falsification that:

- (1) I live in the State of Nebraska at the address provided in this application;
- (2) I have not been convicted of a felony or, if convicted, it has been at least two years since I completed my sentence for the felony, including any parole term;
- (3) I have not been officially found to be non compos mentis (mentally incompetent); and
- (4) I am a citizen of the United States.

Any registrant who signs this application knowing that any of the information in the application is false shall be guilty of a Class IV felony under section 32-1502 of the statutes of Nebraska. The penalty for a Class IV felony is up to five years imprisonment, a fine of up to ten thousand dollars, or both.

APPLICANT'S SIGNATURE—require the applicant to affix his or her signature to the application.

Source: Laws 1994, LB 76, § 74; Laws 1996, LB 900, § 1037; Laws 1997, LB 764, § 34; Laws 2003, LB 357, § 7; Laws 2003, LB 359, § 2; Laws 2005, LB 53, § 4; Laws 2005, LB 566, § 11; Laws 2011, LB449, § 3; Laws 2014, LB661, § 7.
Effective date July 18, 2014.

32-312.05 Voter registration record; effective date.

The date that a person's voter registration record or an update of his or her voter registration record becomes effective is the date the person presented himself or herself in person to register, the date the registration application was delivered to the election commissioner or county clerk, or the date the registration application was received by the election commissioner or county clerk if the person submitted the registration application by mail or pursuant to section 32-304 or 32-308.

Source: Laws 2005, LB 566, § 16; Laws 2014, LB661, § 8.
Effective date July 18, 2014.

32-315 Change of name or address; election commissioner or county clerk; duties.

Upon receiving a completed voter registration application pursuant to section 32-308, 32-309, or 32-310 indicating that a voter who is registered in the county has changed his or her name or moved to another residence within the same county, the election commissioner or county clerk shall change the voter registration record of the registered voter to the new name or new address and shall send an acknowledgment card to the registered voter indicating that the change of registration has been completed and the address of the voter's new polling place.

Source: Laws 1994, LB 76, § 77; Laws 1997, LB 764, § 36; Laws 1999, LB 234, § 3; Laws 2005, LB 566, § 18; Laws 2014, LB661, § 9. Effective date July 18, 2014.

32-321 Voter registration applications; availability; Secretary of State; designated voter registration agency; mailing deadline; notice to applicant; when required; payment of postage costs.

(1) Any elector may request a voter registration application from the office of the Secretary of State or the election commissioner or county clerk. The Secretary of State and the election commissioner or county clerk shall make registration applications prescribed by the Secretary of State available and may place the applications in public places. The Secretary of State and the election commissioner or county clerk may require that all unused applications be returned to his or her office and may place reasonable limits on the amount of applications requested.

(2) If an elector returns the completed application to the office of the Secretary of State or submits an application to the Secretary of State pursuant to section 32-304, the office shall deliver the application to the election commissioner or county clerk of the county in which the elector resides not later than ten days after receipt by the office, except that if the application is returned to the office or submitted pursuant to section 32-304 within five days prior to the third Friday preceding any election, it shall be delivered not later than five days after the date it is returned. The deadline for returning a completed application to the office of the Secretary of State or submitting an application pursuant to section 32-304 is the close of business on the third Friday preceding an election to be registered to vote at such election. A registration application received after the deadline shall not be processed by the election commissioner or county clerk until after the election. The office of the Secretary of State shall be a designated voter registration agency for purposes of section 7 of the National Voter Registration Act of 1993, 42 U.S.C. 1973gg-5, as such section existed on March 11, 2008.

(3) If an elector mails the registration application to the election commissioner or county clerk:

(a)(i) The application shall be postmarked on or before the third Friday before the next election; or

(ii) The application shall be received not later than the second Tuesday before the next election if the postmark is unreadable; and

(b) The application shall be processed by the election office as a proper registration for the voter to be entitled to vote on the day of the next election.

(4) If the registration application arrives after the registration deadline, the application shall not be processed until after the election. Written notice shall be given to any applicant whose registration application failed to meet the registration deadline or was found to be incorrect or incomplete and shall state the specific reason for rejection. If the application is incomplete, the election commissioner or county clerk shall notify the applicant of the failure to provide the required information, including failure to provide identification if required, and provide the applicant with the opportunity to submit an identification document as described in section 32-318.01 prior to the deadline for voter registration or to complete and submit a corrected registration application in a timely manner to allow for the proper registration of the applicant prior to the next election. All postage costs related to returning registration applications to the election commissioner or county clerk shall be paid by the registrant.

Source: Laws 1994, LB 76, § 83; Laws 1997, LB 764, § 39; Laws 2005, LB 566, § 22; Laws 2008, LB750, § 3; Laws 2014, LB661, § 10.
Effective date July 18, 2014.

32-323 Validity of registration for petition purposes; when.

Registration pursuant to section 32-304 or 32-308 or by mail shall not constitute a valid registration for purposes of signing any type of petition requiring the validation of the signatures of registered voters until a complete and correct registration application has been received by the election commissioner or county clerk. A signature on a petition shall be considered a valid signature as of the date that the election commissioner or county clerk receives the registration application of the registrant.

Source: Laws 1994, LB 76, § 85; Laws 1997, LB 764, § 41; Laws 2005, LB 566, § 24; Laws 2014, LB661, § 11.
Effective date July 18, 2014.

32-325 Update of voter registration record; deadline; effect.

(1) A registration application completed and signed by a registered voter seeking to update his or her voter registration record shall be completed in person at or delivered or mailed to the office of the election commissioner or county clerk or submitted pursuant to section 32-304 to the Secretary of State. To avoid additional requirements at the polling place pursuant to section 32-914.01, 32-914.02, or 32-915, an application to update a voter registration record must be:

(a) Completed or delivered by the applicant in person at the office of the election commissioner or county clerk on or before the deadline prescribed in section 32-302; or

(b) Delivered by a personal messenger or personal agent, submitted pursuant to section 32-304, or mailed so that it is received by the election commissioner or county clerk on or before the deadline prescribed in section 32-321.

(2) After verifying the signature on the previous registration of the registered voter, the election commissioner or county clerk shall make the change of name, party affiliation, or address on all pertinent election records. The election commissioner or county clerk shall send an acknowledgment card to the

registered voter indicating that the change of registration has been completed and shall include the address of the registered voter's new polling place.

Source: Laws 1994, LB 76, § 87; Laws 1997, LB 764, § 43; Laws 2005, LB 566, § 26; Laws 2014, LB661, § 12.

Effective date July 18, 2014.

32-328 Voter registration register; precinct list; issuance of ballots; correction of errors; procedures.

(1) The election commissioner or county clerk shall, upon the personal application of any registered voter or whenever informed of any error and after due investigation, correct any error in the voter registration register. For such purpose, the election commissioner or county clerk may summon witnesses and compel their attendance to appear at the office of the election commissioner or county clerk to give testimony pertaining to residence, qualifications, or any other facts required to be entered in the voter registration register. Such testimony shall be transcribed and become a part of his or her records.

(2) If the name of any registered voter of any precinct does not appear on the precinct list of registered voters through an error and the election commissioner or county clerk informs the precinct inspector or judge of election that credible evidence exists that substantiates that an error has been made, the precinct inspector or judge of election shall enter the correction in the precinct list of registered voters, initial the correction, and authorize the receiving board to issue the proper ballots to the voter as directed by the election commissioner or county clerk and receive his or her vote. The election commissioner or county clerk shall designate whether the voter is entitled to a regular ballot or a provisional ballot as provided in section 32-915. The election commissioner or county clerk shall implement the policy regarding designation of ballots uniformly throughout the county. All corrections shall be entered on the voter registration register as soon as possible after the election.

Source: Laws 1994, LB 76, § 90; Laws 1999, LB 234, § 6; Laws 2005, LB 566, § 28; Laws 2010, LB325, § 1.

32-329 Registration list; maintenance; voter registration register; verification; training; procedure.

(1) The Secretary of State with the assistance of the election commissioners and county clerks shall perform list maintenance with respect to the computerized statewide voter registration list on a regular basis. The list maintenance shall be conducted in a manner that ensures that:

- (a) The name of each registered voter appears in the computerized list;
- (b) Only persons who have been entered into the register in error or who are not eligible to vote are removed from the computerized list; and
- (c) Duplicate names are eliminated from the computerized list.

(2) The election commissioner or county clerk shall verify the voter registration register by using (a) the National Change of Address program of the United States Postal Service and a confirmation notice pursuant to subsection (3) of this section or (b) the biennial mailing of a nonforwardable notice to each registered voter. The Secretary of State shall provide biennial training for the election commissioners and county clerks responsible for maintaining voter

registration lists. No name shall be removed from the voter registration register for the sole reason that such person has not voted for any length of time.

(3) When an election commissioner or county clerk receives information from the National Change of Address program of the United States Postal Service that a registered voter has moved from the address at which he or she is registered to vote, the election commissioner or county clerk shall update the voter registration register to indicate that the voter may have moved and mail a confirmation notice by forwardable first-class mail. If a nonforwardable notice under subdivision (2)(b) of this section is returned as undeliverable, the election commissioner or county clerk shall mail a confirmation notice by forwardable first-class mail. The confirmation notice shall include a confirmation letter and a preaddressed, postage-paid confirmation card. The confirmation letter shall contain statements substantially as follows:

(a) The election commissioner or county clerk has received information that you have moved to a different residence address from that appearing on the voter registration register;

(b) If you have not moved or you have moved to a new residence within this county, you should return the enclosed confirmation card by the regular registration deadline prescribed in section 32-302. If you fail to return the card by the deadline, you will be required to affirm or confirm your address prior to being allowed to vote. If you are required to affirm or confirm your address, it may result in a delay at your polling place; and

(c) If you have moved out of the county, you must reregister to be eligible to vote. This can be accomplished by mail or in person. For further information, contact your local election commissioner or county clerk.

(4) The election commissioner or county clerk shall maintain for a period of not less than two years a record of each confirmation letter indicating the date it was mailed and the person to whom it was mailed.

(5) If information from the National Change of Address program or the nonforwardable notice under subdivision (2)(b) of this section indicates that the voter has moved outside the jurisdiction and the election commissioner or county clerk receives no response to the confirmation letter and the voter does not offer to vote at any election held prior to and including the second statewide federal general election following the mailing of the confirmation notice, the voter's registration shall be canceled and his or her name shall be deleted from the voter registration register.

Source: Laws 1994, LB 76, § 91; Laws 1997, LB 764, § 44; Laws 1999, LB 234, § 7; Laws 2003, LB 357, § 8; Laws 2005, LB 566, § 29; Laws 2010, LB325, § 2.

ARTICLE 4 TIME OF ELECTIONS

Section
32-405. Special election; when held.

32-405 Special election; when held.

Any special election under the Election Act shall be held on the first Tuesday following the second Monday of the selected month unless otherwise specifically provided. No special election shall be held under the Election Act in April,

May, June, October, November, or December of an even-numbered year unless it is held in conjunction with the statewide primary or general election. A special election for a Class III, IV, or V school district which is located in whole or in part in a county in which a city of the primary or metropolitan class is located may be held in conjunction with the primary or general election for a city of the primary or metropolitan class which is governed by a home rule charter.

Source: Laws 2003, LB 521, § 4; Laws 2014, LB946, § 6.
Operative date January 1, 2015.

**ARTICLE 5
OFFICERS AND ISSUES**

(a) OFFICES AND OFFICEHOLDERS

Section

- 32-504. Congressional districts; numbers; boundaries; established by maps; Clerk of Legislature; Secretary of State; duties.
- 32-505. Congressional districts; population figures and maps; basis.
- 32-508. Members of the Legislature; districts; terms; qualifications; nonpartisan ballot.
- 32-512. Public power district; public power and irrigation district; board of directors; nonpartisan ballot; terms; qualifications; qualified voters.
- 32-519. County assessor; election; when required; terms; qualifications; partisan ballot.
- 32-524. Clerk of the district court; election; when required; terms; partisan ballot.
- 32-525. County surveyor; election; when required; terms; qualifications; question of electing county surveyor; county board; powers; form of ballot; partisan ballot.
- 32-540. Metropolitan utilities district; board of directors; election subdivisions; board; duties; nonpartisan ballot; terms; qualifications.
- 32-542. Class II school district; school board members; terms; qualifications.
- 32-543. Class III school district; board of education members; terms; qualifications.
- 32-545. Class V school district; board of education members; districts; qualifications; terms; nonpartisan ballot.
- 32-546.01. Learning community coordinating council; members; election; appointment; vacancies; terms; per diem; expenses.

(b) LOCAL ELECTIONS

- 32-552. Election districts; adjustment of boundaries; when; procedure; Class IV school district; Class V school district; districts.
- 32-554. Village, county, school district, or certain cities; elections at large or by district or ward; procedure.
- 32-555.01. Learning community; districts; redistricting.

(c) VACANCIES

- 32-567. Vacancies; offices listed; how filled.
- 32-568. Cities and villages; vacancy; how filled.
- 32-570. School board; vacancy; how filled.

(a) OFFICES AND OFFICEHOLDERS

32-504 Congressional districts; numbers; boundaries; established by maps; Clerk of Legislature; Secretary of State; duties.

(1) Based on the 2010 Census of Population by the United States Department of Commerce, Bureau of the Census, the State of Nebraska is hereby divided into three districts for electing Representatives in the Congress of the United States, and each district shall be entitled to elect one representative.

(2) The numbers and boundaries of the districts are designated and established by maps identified and labeled as maps CON11-30001-1, CON11-30001A, CON11-30001-2, CON11-30001-3, CON11-30001-3A, filed with the Clerk of the Legislature, and incorporated by reference as part of Laws 2011, LB704.

(3)(a) The Clerk of the Legislature shall transfer possession of the maps referred to in subsection (2) of this section to the Secretary of State on May 27, 2011.

(b) When questions of interpretation of district boundaries arise, the maps referred to in subsection (2) of this section in possession of the Secretary of State shall serve as the indication of the legislative intent in drawing the district boundaries.

(c) Each election commissioner or county clerk shall obtain copies of the maps referred to in subsection (2) of this section for the election commissioner's or clerk's county from the Secretary of State.

(d) The Secretary of State shall also have available for viewing on his or her web site the maps referred to in subsection (2) of this section identifying the boundaries for the districts.

Source: Laws 1994, LB 76, § 100; Laws 2001, LB 851, § 1; Laws 2011, LB704, § 1.

32-505 Congressional districts; population figures and maps; basis.

For purposes of section 32-504, the Legislature adopts the official population figures and maps from the 2010 Census Redistricting (Public Law 94-171) TIGER/Line Shapefiles published by the United States Department of Commerce, Bureau of the Census.

Source: Laws 1994, LB 76, § 101; Laws 2001, LB 851, § 2; Laws 2011, LB704, § 2.

32-508 Members of the Legislature; districts; terms; qualifications; nonpartisan ballot.

The State of Nebraska is divided into forty-nine legislative districts as provided and described in sections 50-1153 and 50-1154. The members of the Legislature from the even-numbered districts shall be elected for terms of four years at the statewide general election in 1994 and each four years thereafter. The members of the Legislature from the odd-numbered districts shall be elected for terms of four years at the statewide general election in 1996 and each four years thereafter. Candidates for the Legislature shall meet the qualifications found in Article III, sections 8 and 9, of the Constitution of Nebraska. The members of the Legislature shall be elected on the nonpartisan ballot.

Source: Laws 1994, LB 76, § 104; Laws 2011, LB703, § 1.

32-512 Public power district; public power and irrigation district; board of directors; nonpartisan ballot; terms; qualifications; qualified voters.

(1) After the selection of the original board of directors of a public power district as provided for in sections 70-803 and 70-805 or a district as provided for in sections 70-604 and 70-609, their successors shall be nominated and elected on the nonpartisan ballot, except that in districts receiving annual gross revenue of less than forty million dollars, the candidates for the board of

directors shall not appear on the ballot in the primary election. The term of each elected director shall be not more than six years or until his or her successor is elected and qualified. Candidates for the board of directors shall meet the qualifications found in sections 70-610 and 70-619.

(2) Registered voters residing within the chartered territory and registered voters duly certified in accordance with section 70-604.03 shall be qualified to vote in the district as certified pursuant to section 70-611. The registered voters of a subdivision created under subsection (1) of section 70-612 may only cast their ballots for candidates for directors to be elected from such subdivision and for candidates for directors to be elected at large from the whole district. The registered voters of a subdivision created under subsection (2) or (3) of section 70-612 may only cast their ballots for candidates for directors to be elected from such subdivision.

Source: Laws 1994, LB 76, § 108; Laws 2013, LB646, § 1.

32-519 County assessor; election; when required; terms; qualifications; partisan ballot.

(1) Except as provided in section 22-417, at the statewide general election in 1990 and each four years thereafter, a county assessor shall be elected in each county having a population of more than three thousand five hundred inhabitants and more than one thousand two hundred tax returns. The county assessor shall serve for a term of four years.

(2) The county board of any county shall order the submission of the question of electing a county assessor in the county to the registered voters of the county at the next statewide general election upon presentation of a petition to the county board (a) conforming to the provisions of section 32-628, (b) not less than sixty days before any statewide general election, (c) signed by at least ten percent of the registered voters of the county secured in not less than two-fifths of the townships or precincts of the county, and (d) asking that the question be submitted to the registered voters in the county. The form of submission upon the ballot shall be as follows: For election of county assessor; Against election of county assessor. If a majority of the votes cast on the question are against the election of a county assessor in such county, the duties of the county assessor shall be performed by the county clerk and the office of county assessor shall either cease with the expiration of the term of the incumbent or continue to be abolished if no such office exists at such time. If a majority of the votes cast on the question are in favor of the election of a county assessor, the office shall continue or a county assessor shall be elected at the next statewide general election.

(3) The county assessor shall meet the qualifications found in sections 23-3202 and 23-3204. The county assessor shall be elected on the partisan ballot.

Source: Laws 1994, LB 76, § 115; Laws 1996, LB 1085, § 46; Laws 2009, LB121, § 4.

32-524 Clerk of the district court; election; when required; terms; partisan ballot.

(1) Except as provided in section 22-417:

(a) In counties having a population of seven thousand inhabitants or more, there shall be elected one clerk of the district court at the statewide general election in 1962 and every four years thereafter; and

(b) In counties having a population of less than seven thousand inhabitants, there shall be elected a clerk of the district court at the first statewide general election following a determination by the county board and the district judge for the county that such officer should be elected and each four years thereafter. When such a determination is not made in such a county, the county clerk shall be ex officio clerk of the district court and perform the duties by law devolving upon that officer, unless there is an agreement between the State Court Administrator and the county board that the clerk of the county court for such county shall be the ex officio clerk of the district court and perform such duties.

(2) In any county upon presentation of a petition to the county board (a) not less than sixty days before the statewide general election in 1976 or every four years thereafter, (b) signed by registered voters of the county equal in numbers to at least fifteen percent of the total vote cast for Governor at the most recent gubernatorial election in the county, secured in not less than two-fifths of the townships or precincts of the county, and (c) asking that the question of not electing a clerk of the district court in the county be submitted to the registered voters therein, the county board, at the next statewide general election, shall order the submission of the question to the registered voters of the county. The form of submission upon the ballot shall be as follows:

For election of a clerk of the district court;

Against election of a clerk of the district court.

(3) If a majority of the votes cast on the question are against the election of a clerk of the district court in such county, the duties of the clerk of the district court shall be performed by the county clerk, unless there is an agreement between the State Court Administrator and the county board that the clerk of the county court for such county shall be the ex officio clerk of the district court and perform such duties, and the office of clerk of the district court shall either cease with the expiration of the term of the incumbent or continue to be abolished if no such office exists at such time.

(4) If a majority of the votes cast on the question are in favor of the election of a clerk of the district court, the office shall continue or a clerk of the district court shall be elected at the next statewide general election as provided in subsection (1) of this section.

(5) The term of the clerk of the district court shall be four years or until his or her successor is elected and qualified. The clerk of the district court shall meet the qualifications found in section 24-337.04. The clerk of the district court shall be elected on the partisan ballot.

Source: Laws 1994, LB 76, § 120; Laws 1996, LB 1085, § 47; Laws 2009, LB7, § 2; Laws 2011, LB669, § 24.

32-525 County surveyor; election; when required; terms; qualifications; question of electing county surveyor; county board; powers; form of ballot; partisan ballot.

(1) Except as provided in section 22-417 and except for counties which vote not to elect the county surveyor as provided in subsection (2) or (4) of this

section, a county surveyor on either a full-time or part-time basis, as determined by the county board in accordance with section 23-1901, shall be elected in each county having a population of less than one hundred fifty thousand inhabitants at the statewide general election in 1990 and each four years thereafter.

(2)(a) Except as provided in section 22-417 and in subsection (3) of this section, in each county having a population of less than one hundred fifty thousand inhabitants, the question of electing a county surveyor in the county shall be submitted to the registered voters of the county at the statewide general election in 2020. The form of submission upon the ballot shall be as follows: For election of county surveyor; Against election of county surveyor.

(b) If a majority of the votes cast on the question are against the election of a county surveyor in such county, the office of county surveyor shall cease as an elected office with the expiration of the term of the incumbent or shall remain as it exists if no elected official holds that office. In such counties, the office shall be filled as provided in subsection (2) of section 23-1901.01.

(c) If a majority of the votes cast on the question are in favor of the election of a county surveyor, the office shall continue to be elected as provided in subsection (1) of this section or, if no elected county surveyor is in office, a county surveyor shall be elected at the next statewide general election as provided in subsection (1) of this section.

(3) If a county having a population of less than one hundred fifty thousand inhabitants has an elected county surveyor in office on January 1, 2020, the county board may, prior to February 1, 2020, following a public hearing, adopt a resolution to continue to elect the county surveyor for the county and not to submit the question pursuant to subsection (2) of this section.

(4)(a) Beginning in 2021, in each county having a population of less than one hundred fifty thousand inhabitants, the county board shall submit the question of electing a county surveyor in the county to the registered voters of the county at the next statewide general election if (i) the county board, by majority vote of all the members of the county board, adopts a resolution on or before September 1 prior to the next statewide general election to submit the question to the voters or (ii) a petition conforming to section 32-628 asking for the submission of the question to the voters is presented to the election commissioner or county clerk on or before September 1 prior to the next statewide general election signed by at least ten percent of the registered voters of the county. The election commissioner or county clerk shall verify the signatures pursuant to section 32-631 and place the question on the ballot if he or she determines that at least ten percent of the registered voters of the county have signed the petition.

(b) The form of submission upon the ballot shall be as follows: For election of county surveyor; Against election of county surveyor.

(c) If a majority of the votes cast on the question are against the election of a county surveyor in such county, the office of county surveyor shall cease as an elected office with the expiration of the term of the incumbent or shall remain as it exists if no elected official holds that office. In such counties, the office shall be filled as provided in subsection (2) of section 23-1901.01.

(d) If a majority of the votes cast on the question are in favor of the election of a county surveyor, the office shall continue to be elected as provided in subsection (1) of this section or, if no elected county surveyor is in office, a

county surveyor shall be elected at the next statewide general election as provided in subsection (1) of this section.

(5) The term of the county surveyor shall be four years or until his or her successor is elected and qualified. The county surveyor shall meet the qualifications found in sections 23-1901 and 23-1901.01. The county surveyor shall be elected on the partisan ballot.

Source: Laws 1994, LB 76, § 121; Laws 1996, LB 1085, § 48; Laws 2014, LB946, § 7.

Operative date January 1, 2015.

32-540 Metropolitan utilities district; board of directors; election subdivisions; board; duties; nonpartisan ballot; terms; qualifications.

(1) Except as otherwise provided in subsection (2) of this section, in each metropolitan utilities district service area, two of the members of the board of directors shall be chosen at large by the registered voters within the district at the time of the statewide primary and statewide general elections held in the even-numbered years, except that at the primary and general elections held in 1978 and every six years thereafter, three members, one of whom shall be known as the outside member, shall be elected at large by the registered voters within the district.

(2)(a) The board of directors of a metropolitan utilities district may by resolution provide for the division of the territory of the district into seven election subdivisions composed of substantially equal population and compact and contiguous territory and number the subdivisions consecutively. One member of the board of directors shall be elected from each subdivision.

(b) If the board of directors provides for seven election subdivisions prior to February 1, 2016, the board of directors shall assign each position on the board of directors to represent a numbered election subdivision for the remainder of the term of office for which the member is elected, regardless of whether the member resides in the subdivision, and shall make such assignments so that members representing election subdivisions numbered one and two hold office until the first Tuesday after the first Monday in January 2019 or until their successors are elected and qualified, members representing election subdivisions numbered three, four, and five hold office until the first Tuesday after the first Monday in January 2021 or until their successors are elected and qualified, and members representing election subdivisions six and seven hold office until the first Tuesday after the first Monday in January 2023 or until their successors are elected and qualified.

(c) A successor who resides in the numbered election subdivision shall be nominated and elected at the statewide primary and general elections held in the calendar year prior to the expiration of the term of the member who represents such numbered election subdivision.

(d) After each federal decennial census, the board of directors shall create new boundaries for the election subdivisions. In establishing the boundaries of the election subdivisions, the board of directors shall follow county lines wherever practicable, shall provide for the subdivisions to be composed of substantially equal population and compact and contiguous territory, and shall, as nearly as possible, follow the precinct lines created by the election commissioner or county clerk after each federal decennial census.

(3) Nomination and election of all directors shall be by nonpartisan ballot. Except as provided in subsection (2) of this section, members of the board shall hold office for a period of six years from the first Tuesday after the first Monday in January following their election or until their successors are elected and qualified. The directors shall meet the qualifications found in sections 14-2102 and 14-2103.

Source: Laws 1994, LB 76, § 136; Laws 2014, LB1014, § 3.
Effective date July 18, 2014.

32-542 Class II school district; school board members; terms; qualifications.

(1) Members of the school board of a Class II school district shall be elected at the statewide general election. The school board of a Class II school district shall have no fewer than five members and no more than nine members as provided in section 79-550. The number of members to be elected at the statewide general election and the terms for which they will be elected shall be determined by the election commissioner or county clerk with the aid of the secretary of the school board. Terms shall be staggered so that approximately one-half of the members are elected to each board at each general election for terms of four years. When it becomes necessary to establish the staggering of terms by electing at-large members for terms of different duration at the same election, candidates receiving the greatest number of votes shall be elected for the longest terms. When a Class II school district is created by a Class I school district which determines by a majority vote to establish a high school pursuant to section 79-406, the school board shall be elected at the next statewide general election and approximately one-half of the members receiving the highest number of votes shall be elected for terms of four years, and the members receiving the next highest number of votes shall be elected for terms of two years.

(2) Each member's term of office shall begin on the date of the first regular meeting of the board in January following the statewide general election at which he or she is elected and, except as otherwise provided in this section, shall continue for four years or until the member's successor is elected and qualified. The school board members of a Class II school district shall meet the qualifications found in section 79-543.

Source: Laws 1994, LB 76, § 138; Laws 1996, LB 900, § 1041; Laws 1996, LB 967, § 1; Laws 2005, LB 126, § 7; Referendum 2006, No. 422; Laws 2014, LB946, § 8.
Operative date January 1, 2015.

32-543 Class III school district; board of education members; terms; qualifications.

(1) If a caucus is held for nominations under section 79-549 for a Class III school district, the board of education shall consist of six members to be elected by the registered voters of the school district at the statewide primary election. Two members shall be elected at each election for a term of six years. The members shall meet the qualifications found in section 79-543.

(2) Except as provided in subsection (1) of this section, members of the board of education of a Class III school district shall be nominated at the statewide primary election and elected at the statewide general election. The board of education of a Class III school district shall have no fewer than five members

and no more than nine members as provided in section 79-549 or 79-550, and the members shall be nominated and elected at large or by district or ward as provided in section 32-554 or nominated by district or ward and elected at large as provided in section 79-550. The number of members to be nominated at the statewide primary election and elected at the statewide general election and the terms for which they will be nominated and elected shall be determined by the election commissioner or county clerk with the aid of the elected secretary of the board of education of the district. The terms of office of members of such board shall expire on the first Thursday after the first Tuesday in January. Terms shall be staggered so that approximately one-half of the members are elected to the board at each general election for terms of four years. When it becomes necessary to establish the staggering of terms by electing members for terms of different duration at the same election, candidates receiving the greatest number of votes shall be elected for the longest terms. The members shall meet the qualifications found in section 79-543.

Source: Laws 1994, LB 76, § 139; Laws 1996, LB 900, § 1042; Laws 1997, LB 595, § 1; Laws 1997, LB 764, § 48; Laws 2006, LB 1024, § 4; Laws 2014, LB946, § 9.
Operative date January 1, 2015.

32-545 Class V school district; board of education members; districts; qualifications; terms; nonpartisan ballot.

(1) A member of the board of education of a Class V school district shall be elected from each district provided for in section 32-552. Such election shall be held on the date provided in subsection (3) or (4) of this section. The members of such board of education shall meet the qualifications found in sections 79-543 and 79-552.

(2) The term of office of each member serving on February 12, 2013, expires on the fourth Monday after such election in 2013.

(3) At the election on the date provided in section 14-201 for the election of elective officers of a city of the metropolitan class for 2013, members of the board shall be elected to serve for terms as provided in subsection (4) of this section, from and including the fourth Monday after their election or until their successors are elected and qualified.

(4)(a) In 2013, candidates from all districts for election to such board of education shall be nominated at the primary election held for nomination of candidates for city council pursuant to section 14-204. Candidates for election to such board of education shall be nominated upon a nonpartisan ballot.

(b) In 2014, candidates for election to such board of education from even-numbered districts shall be nominated at the statewide primary election and elected at the statewide general election and shall take office on the first Monday in January 2015. Terms of the members elected from such even-numbered districts in 2013 shall expire on such date. In 2016, candidates for election to such board of education from odd-numbered districts shall be nominated at the statewide primary election and elected at the statewide general election and shall take office on the first Monday in January 2017. Terms of the members elected from odd-numbered districts in 2013 shall expire on such date. Thereafter, all members shall be nominated at the statewide primary election and elected at the statewide general election, shall take office on the first Monday in January following their election, and shall serve terms of

four years or until their successors are elected and qualified. Candidates for election to such board of education shall be nominated upon the nonpartisan ballot.

Source: Laws 1994, LB 76, § 141; Laws 1996, LB 900, § 1044; Laws 2013, LB125, § 1.

32-546.01 Learning community coordinating council; members; election; appointment; vacancies; terms; per diem; expenses.

(1) Each learning community shall be governed by a learning community coordinating council consisting of eighteen voting members, with twelve members elected on a nonpartisan ballot from six numbered subcouncil districts created pursuant to section 32-555.01 and with six members appointed from such subcouncil districts pursuant to this section. Each voter shall be allowed to cast votes for one candidate at both the primary and general elections to represent the subcouncil district in which the voter resides. The four candidates receiving the most votes at the primary election shall advance to the general election. The two candidates receiving the most votes at the general election shall be elected. A candidate shall reside in the subcouncil district for which he or she is a candidate. Coordinating council members shall be elected on the nonpartisan ballot.

(2) The initial elected members shall be nominated at the statewide primary election and elected at the statewide general election immediately following the certification of the establishment of the learning community, and subsequent members shall be nominated at subsequent statewide primary elections and elected at subsequent statewide general elections. Except as provided in this section, such elections shall be conducted pursuant to the Election Act.

(3) Vacancies in office for elected members shall occur as set forth in section 32-560. Whenever any such vacancy occurs, the remaining elected members of such council shall appoint an individual residing within the geographical boundaries of the subcouncil district for the balance of the unexpired term.

(4) Members elected to represent odd-numbered districts in the first election for the learning community coordinating council shall be elected for two-year terms. Members elected to represent even-numbered districts in the first election for the learning community coordinating council shall be elected for four-year terms. Members elected in subsequent elections shall be elected for four-year terms and until their successors are elected and qualified.

(5) The appointed members shall be appointed in November of each even-numbered year after the general election. Appointed members shall be school board members of school districts in the learning community either elected to take office the following January or continuing their current term of office for the following two years. For learning communities to be established the following January pursuant to orders issued pursuant to section 79-2102, the Secretary of State shall hold a meeting of the school board members of the school districts in such learning community to appoint one member from such school boards to represent each of the subcouncil districts on the coordinating council of such learning community. For subsequent appointments, the current appointed members of the coordinating council shall hold a meeting of the school board members of such school districts to appoint one member from such school boards to represent each of the subcouncil districts on the coordinating council of the learning community. The appointed members shall be

selected by the school board members of the school districts in the learning community who reside in the subcouncil district to be represented pursuant to a secret ballot, shall reside in the subcouncil district to be represented, and shall be appointed for two-year terms and until their successors are appointed and qualified.

(6) Vacancies in office for appointed members shall occur upon the resignation, death, or disqualification from office of an appointed member. Disqualification from office shall include ceasing membership on the school board for which membership qualified the member for the appointment to the learning community coordinating council or ceasing to reside in the subcouncil district represented by such member of the learning community coordinating council. Whenever such vacancy occurs, the remaining appointed members shall hold a meeting of the school board members of the school districts in such learning community to appoint a member from such school boards who lives in the subcouncil district to be represented to serve for the balance of the unexpired term.

(7) Each learning community coordinating council shall also have a nonvoting member from each member school district which does not have either an elected or an appointed member who resides in the school district on the council. Such nonvoting members shall be appointed by the school board of the school district to be represented to serve for two-year terms, and notice of the nonvoting member selected shall be submitted to the Secretary of State by such board prior to December 31 of each even-numbered year. Each such nonvoting member shall be a resident of the appointing school district and shall not be a school administrator employed by such school district. Whenever a vacancy occurs, the school board of such school district shall appoint a new nonvoting member and submit notice to the Secretary of State and to the learning community coordinating council.

(8) Members of a learning community coordinating council shall take office on the first Thursday after the first Tuesday in January following their election or appointment, except that members appointed to fill vacancies shall take office immediately following administration of the oath of office. Each voting member elected or appointed prior to April 6, 2010, shall be paid a per diem in an amount determined by such council up to two hundred dollars per day for official meetings of the council and the achievement subcouncil for which he or she is a member, for meetings that occur during the term of office for which the election or appointment of the member took place prior to April 6, 2010, up to a maximum of twelve thousand dollars per fiscal year. Each voting member shall be eligible for reimbursement of reasonable expenses related to service on the learning community coordinating council. Each nonvoting member shall be eligible for reimbursement of reasonable expenses related to service on the learning community coordinating council.

Source: Laws 2007, LB641, § 49; Laws 2008, LB1154, § 3; Laws 2009, LB392, § 5; Laws 2010, LB937, § 1; Laws 2010, LB1070, § 1.

(b) LOCAL ELECTIONS

32-552 Election districts; adjustment of boundaries; when; procedure; Class IV school district; Class V school district; districts.

(1) At least five months prior to an election, the governing board of any political subdivision requesting the adjustment of the boundaries of election

districts shall provide written notification to the election commissioner or county clerk of the need and necessity of his or her office to perform such adjustments.

(2) After the next federal decennial census, the election commissioner of the county in which the greater part of a Class IV school district is situated shall, subject to review by the school board, divide the school district into seven numbered districts, substantially equal in population as determined by the most recent federal decennial census. The election commissioner shall consider the location of schools within the district and their boundaries. The election commissioner shall adjust the boundaries of the election districts, subject to final review and adjustment by the school board, to conform to changes in the territory and population of the school district and also following each federal decennial census. Except when specific procedures are otherwise provided, section 32-553 shall apply to all Class IV school districts.

(3) For purposes of election of members to the board of education of a Class V school district:

(a)(i) The Legislature hereby divides such school district into nine numbered election districts of compact and contiguous territory and of as nearly equal population as may be practical. Each election district shall be entitled to one member on the board of education of such Class V school district. The Legislature adopts the official population figures and maps from the 2010 Census Redistricting (Public Law 94-171) TIGER/Line Shapefiles published by the United States Department of Commerce, Bureau of the Census. The numbers and boundaries of the election districts are designated and established by a map identified and labeled as OPS-13-002, filed with the Clerk of the Legislature, and incorporated by reference as part of Laws 2013, LB125. Such districts are drawn using the boundaries of the Class V school district as they existed on February 12, 2013; (ii) the Clerk of the Legislature shall transfer possession of the map referred to in subdivision (a)(i) of this subsection to the Secretary of State and the election commissioner of the county in which the greater part of the school district is situated on February 12, 2013; (iii) when questions of interpretation of such election district boundaries arise, the map referred to in subdivision (a)(i) of this subsection in possession of such election commissioner shall serve as the indication of the legislative intent in drawing the election district boundaries; (iv) the Secretary of State and such election commissioner shall also have available for viewing on his or her web site the map referred to in subdivision (a)(i) of this subsection identifying the boundaries for such election districts; and (v) the twelve numbered districts in existence on January 1, 2013, shall remain unchanged until the terms of members elected at the election in May 2013 begin; and

(b) After the next federal decennial census after February 12, 2013, the election commissioner of the county in which the greater part of a Class V school district is situated shall divide the school district into nine numbered districts of compact and contiguous territory and of as nearly equal population as may be practical. The election commissioner shall adjust the boundaries of such districts, subject to final review and adjustment by the school board, to conform to changes in the territory of the school district and also following each federal decennial census.

Source: Laws 1994, LB 76, § 148; Laws 1997, LB 764, § 49; Laws 2002, LB 935, § 5; Laws 2013, LB125, § 2.

32-554 Village, county, school district, or certain cities; elections at large or by district or ward; procedure.

(1)(a) Any city not under a home rule charter, village, county, or school district nominating and electing members to its governing board at large may, either by majority vote of the governing body or by petition of registered voters pursuant to subsection (2) of this section, submit, at a general election, the question of nominating and electing members to its governing board by district or ward.

(b) Any city not under a home rule charter, village, county having not more than three hundred thousand inhabitants, or school district nominating and electing members to its governing board by district or ward may, either by majority vote of the governing body or by petition of registered voters pursuant to subsection (2) of this section, submit, at a general election, the question of nominating and electing members to its governing board at large.

(c) Any city of the first class, except a city having adopted the commissioner or city manager plan of government, nominating and electing members to its governing body by ward may, either by ordinance by majority vote of the governing body or by petition of registered voters pursuant to subsection (2) of this section, submit, at a general election, the question of nominating and electing some of the members to its governing body by ward and some at large. No more than four members of the city council may be elected on an at-large basis, and at least four members of the city council shall be elected by ward. The ordinance of the governing body or petition shall specify the number of at-large members to be elected. At the first election in which one or more at-large members are to be elected to the city council, the members shall be elected to serve for initial terms of office of the following lengths: (i) If one at-large member is to be elected, he or she shall serve for a four-year term; (ii) if two at-large members are to be elected, the candidate receiving the highest number of votes shall be elected to serve for a four-year term and the other elected member shall be elected to serve for a two-year term; (iii) if three at-large members are to be elected, the two candidates receiving the highest number of votes shall be elected to serve for four-year terms and the other elected member shall be elected to serve for a two-year term; and (iv) if four at-large members are to be elected, the two candidates receiving the highest number of votes shall be elected to serve for four-year terms and the other elected members shall be elected to serve for two-year terms. Following the initial term of office, all at-large council members shall be elected to serve for four-year terms. No candidate may file as both an at-large candidate and a candidate by ward at the same election.

(2) Petitions for submission of the question shall be signed by registered voters of the city, village, county, or school district desiring to change the procedures for electing the governing board of the city, village, county, or school district. The petition or petitions shall be signed by registered voters equal in number to twenty-five percent of the votes cast for the person receiving the highest number of votes in the city, village, county, or school district at the preceding general election for electing the last member or members to its governing board. Each sheet of the petition shall have printed the full and correct copy of the question as it will appear on the official ballot. The petitions shall be filed with the county clerk or election commissioner not less than seventy days prior to the date of the general election, and no signatures shall be

added or removed from the petitions after they have been so filed. Petitions shall be verified as provided in section 32-631. If the petition or petitions are found to contain the required number of valid signatures, the county clerk or election commissioner shall place the question on a separate ballot to be issued to the registered voters of the city, village, county, or school district entitled to vote on the question.

(3)(a) Any city, village, county, or school district voting to change from nominating and electing the members of its governing board by district or ward to nominating and electing some or all of such members at large shall notify the public and instruct the filing officer to accept the appropriate filings on an at-large basis. Candidates to be elected at large shall be nominated and elected on an at-large basis at the next primary and general election following submission of the question.

(b) Any city, village, county, or school district voting to change from nominating and electing the members of its governing board at large to nominating and electing by district or ward shall notify the public and instruct the filing officer to accept all filings by district or ward. Candidates shall be nominated and elected by district or ward at the next primary and general election following submission of the question. When district or ward elections have been approved by the majority of the electorate, the governing board of any city, village, county, or school district approving such question shall establish districts substantially equal in population as determined by the most recent federal decennial census except as provided in subsection (2) of section 32-553.

(4) Except as provided in section 14-201, each city not under a home rule charter, village, county, and school district which votes to nominate and elect members to its governing board by district or ward shall establish districts or wards so that approximately one-half of the members of its governing board may be nominated and elected from districts or wards at each election. Districts or wards shall be created not later than October 1 in the year following the general election at which the question was voted upon. If the governing board fails to draw district boundaries by October 1, the procedures set forth in section 32-555 shall be followed.

Source: Laws 1994, LB 76, § 150; Laws 1997, LB 595, § 3; Laws 1997, LB 764, § 50; Laws 2001, LB 730, § 4; Laws 2003, LB 444, § 4; Laws 2005, LB 566, § 30; Laws 2013, LB299, § 3.

32-555.01 Learning community; districts; redistricting.

The election commissioners of the applicable counties, pursuant to certification of the establishment of a learning community pursuant to section 79-2102, shall divide the territory of the new learning community into six numbered districts for the purpose of electing members to the learning community coordinating council in compliance with section 32-553 and for the purpose of organizing achievement subcouncils pursuant to section 79-2117. Such districts shall be compact and contiguous and substantially equal in population. The newly established subcouncil districts shall be certified to the Secretary of State on or before November 1 immediately following such certification. The newly established subcouncil districts shall apply beginning with the election of the first council members for such learning community. Following the drawing of initial subcouncil districts pursuant to this section, additional redistricting

thereafter shall be undertaken by the learning community coordinating council according to section 32-553.

Source: Laws 2007, LB641, § 37; Laws 2009, LB392, § 6.

(c) VACANCIES

32-567 Vacancies; offices listed; how filled.

Vacancies in office shall be filled as follows:

(1) In state and judicial district offices and in the membership of any board or commission created by the state when no other method is provided, by the Governor;

(2) In county offices, by the county board;

(3) In the membership of the county board, by the county clerk, county attorney, and county treasurer;

(4) In the membership of the city council, according to section 32-568 or 32-569, as applicable;

(5) In township offices, by the township board or, if there are two or more vacancies on the township board, by the county board;

(6) In offices in public power and irrigation districts, according to section 70-615;

(7) In offices in natural resources districts, according to section 2-3215;

(8) In offices in community college areas, according to section 85-1514;

(9) In offices in educational service units, according to section 79-1217;

(10) In offices in hospital districts, according to section 23-3534;

(11) In offices in metropolitan utilities districts, according to section 14-2104;

(12) In membership on airport authority boards, according to section 3-502, 3-611, or 3-703, as applicable;

(13) In membership on the board of trustees of a road improvement district, according to section 39-1607;

(14) In membership on the council of a municipal county, by the council; and

(15) For learning community coordinating councils, according to section 32-546.01.

Unless otherwise provided by law, all vacancies shall be filled within forty-five days after the vacancy occurs unless good cause is shown that the requirement imposes an undue burden.

Source: Laws 1994, LB 76, § 163; Laws 1996, LB 900, § 1046; Laws 2001, LB 142, § 38; Laws 2007, LB641, § 1; Laws 2014, LB946, § 10.

Operative date January 1, 2015.

Cross References

Public Service Commission, vacancy, how filled, see section 75-103.

State Board of Education, vacancy, how filled, see section 79-314.

32-568 Cities and villages; vacancy; how filled.

(1) If any vacancy occurs in the office of city council member of a city of the metropolitan class, the remaining members of the council shall appoint a

person to fill such vacancy from the district in which the vacancy occurred for the remainder of the term. The person thus appointed shall qualify and give bond as by law provided for council members elected to such office. A vacancy in the office of mayor of a city of the metropolitan class shall be filled as provided by local law.

(2) The city council of a city of the primary class may provide for filling any vacancies that occur in any elective office by appointment by the mayor, with the advice and consent of the council, to hold office until the next general city election. In case of vacancy in the office of mayor of a city of the primary class or his or her absence or disability, the president of the council shall exercise the powers and duties of the office until such vacancy is filled or disability removed or, in case of temporary absence, until the mayor returns, and such acting mayor shall perform such other duties as may be required by law.

(3) In a city of the first class except a city which has adopted the commissioner or city manager plan of government, any vacancy on the council resulting from causes other than expiration of the term shall be filled by appointment by the mayor with the consent of the city council to hold office for the remainder of the term. When there is a vacancy in the office of the mayor in a city of the first class, the president of the city council shall serve as mayor for the unexpired term. In case of any temporary absence or disability on the part of the mayor, the president of the council shall exercise the powers and duties of the office of mayor until such disability is removed, or in case of temporary absence until the mayor returns, and shall perform such other duties as may be required by law.

(4) Any vacancy on the city council of a city of the second class shall be filled as provided in section 32-569. In the case of any vacancy in the office of mayor, or in case of his or her disability or absence, the president of the council shall exercise the office of mayor for the unexpired term, until such disability is removed, or in case of temporary absence, until the mayor returns. If the president of the council assumes the office of mayor for the unexpired term, there shall be a vacancy on the council.

(5) A vacancy on the board of trustees of a village shall be filled as provided in section 32-569, except that the board of trustees of a village situated in more than one county shall have power to fill by appointment any vacancy that may occur in their number.

(6) If any vacancy occurs in the office of council member in a city under the commission plan of government, the vacancy shall be filled as provided in section 32-569. If an incumbent in a city under the commission plan of government files for a city office other than the office he or she holds, the office he or she holds shall become vacant as of the date of the commencement of the term of the office for which he or she has filed. If such vacancy results in an unexpired term, such vacancy shall be filled by election for the remainder of the unexpired term. In a city under the commission plan of government, the vice president of the city council shall perform the duties of the mayor of the city in the absence or inability of the mayor to serve. If a vacancy occurs in the office of mayor by death or otherwise, the vice president shall perform the duties of mayor of the city until such time as the council shall fill such vacancy, which shall be done at the first council meeting after such vacancy occurs or as soon thereafter as may be practicable.

(7) If a vacancy occurs in the office of council member in a city under a city manager plan, a successor council member shall be elected at the next regular city election to serve for the remainder of the term, except that a majority of the remaining members of the council shall appoint a registered voter to serve as council member until the successor is so elected and has qualified. If the council members are elected by ward, the council member elected or appointed to fill the vacancy shall be a registered voter of the ward in which the vacancy exists. If for any reason the seats of one-half or more of the members of the council become vacant, the Secretary of State shall conduct a special election to fill the vacancies for the unexpired portion of each term. A vacancy in any office to which the council elects shall be filled by the council for the unexpired term.

(8) Vacancies in city offices in any city under home rule charter shall be filled as provided in the home rule charter.

Source: Laws 1994, LB 76, § 164; Laws 1997, LB 734, § 2; Laws 1997, LB 764, § 53; Laws 2006, LB 1067, § 1; Laws 2012, LB878, § 2.

32-570 School board; vacancy; how filled.

(1) A vacancy in the membership of a school board shall occur as set forth in section 32-560 or in the case of absences, unless excused by a majority of the remaining members of the board, when a member is absent from the district for a continuous period of sixty days at one time or from more than two consecutive regular meetings of the board. The resignation of a member or any other reason for a vacancy shall be made a part of the minutes of the school board. The school board shall give notice of the date the vacancy occurred, the office vacated, and the length of the unexpired term (a) in writing to the election commissioner or county clerk and (b) by a notice published in a newspaper of general circulation in the school district.

(2) A person appointed to fill a vacancy on the school board of a Class I school district by the remaining members of the board shall hold office until the beginning of the next school year. A board member of a Class I school district elected to fill a vacancy at a regular or special school district meeting shall serve for the remainder of the unexpired term or until a successor is elected and qualified.

(3) Except as provided in subsection (4) of this section, a vacancy in the membership of a school board of a Class II, III, IV, or VI school district resulting from any cause other than the expiration of a term shall be filled by appointment of a qualified registered voter by the remaining members of the board. If the vacancy occurs in a Class II school district prior to July 1 preceding the general election in the middle of the vacated term, the appointee shall serve until a registered voter is elected at such general election for the remainder of the unexpired term. If the vacancy occurs in a Class III, IV, or VI school district prior to February 1 preceding the general election in the middle of the vacated term, the appointee shall serve until a registered voter is nominated at the next primary election and elected at the following general election for the remainder of the unexpired term. If the vacancy occurs on or after the applicable deadline, the appointment shall be for the remainder of the unexpired term. A registered voter appointed or elected pursuant to this subsection shall meet the same requirements as the member whose office is vacant.

(4) Any vacancy in the membership of a school board of a school district described in section 79-549 which does not nominate candidates at a primary election and elect members at the following general election shall be filled by appointment of a qualified registered voter by the remaining members of the board. If the vacancy occurs at least twenty days prior to the first regular caucus to be held during the term that was vacated, the appointee shall serve until a registered voter is nominated and elected to fill the vacancy for the remainder of the term in the manner provided for nomination and election of board members in the district. If the vacancy occurred less than twenty days prior to the first regular caucus and at least twenty days prior to the second regular caucus to be held during the term that was vacated, the appointee shall serve until a registered voter is nominated and elected to fill the vacancy for the remainder of the term in the manner provided for nomination and election of board members in the district. If the vacancy occurred less than twenty days prior to the second regular caucus held during the term that was vacated or after such caucus, the appointment shall be for the remainder of the unexpired term.

(5) A vacancy in the membership of a school board of a Class V school district resulting from any cause other than the expiration of a term shall be filled by appointment of a qualified registered voter by the remaining members of the board for the remainder of the unexpired term. A registered voter appointed pursuant to this subsection shall meet the same requirements as the member whose office is vacant.

(6) If any school board fails to fill a vacancy on the board, the vacancy may be filled by election at a special election or school district meeting called for that purpose. Such election or meeting shall be called in the same manner and subject to the same procedures as other special elections or school district meetings.

(7) If there are vacancies in the offices of one-half or more of the members of a school board, the Secretary of State shall conduct a special school district election to fill such vacancies.

Source: Laws 1994, LB 76, § 166; Laws 1999, LB 272, § 15; Laws 2010, LB965, § 1; Laws 2012, LB878, § 3; Laws 2013, LB125, § 3.

ARTICLE 6

FILING AND NOMINATION PROCEDURES

Section

- 32-602. Candidate; general requirements; limitation on filing for office.
- 32-604. Multiple office holding; when allowed.
- 32-605. Defeated candidate; prohibited acts; exception.
- 32-606. Candidate filing form; filing period.
- 32-607. Candidate filing forms; contents; filing officers.
- 32-608. Filing fees; payment; amount; not required; when; refund; when allowed.
- 32-610. Partisan elections; candidate; requirements.
- 32-613. President; nominating petition; consent of candidate required; form of petition.
- 32-614. President; petition candidates or advocated or recognized candidates; placing on ballot; affidavit of rejection of candidacy; purged candidate, when.
- 32-615. Write-in candidate; requirements.
- 32-616. Nomination for general election; other methods.
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- 32-620. President and Vice President; candidates; certification; new political party; how treated; requirements; nonpartisan status; filing; application; contents.

Section

- 32-623. Declination of nomination; deadline; notice, to whom given; vacancy, how filled.
- 32-627. Partisan office; vacancy on ballot; how filled.
- 32-628. Petitions; requirements.
- 32-629. Petitions; signer; qualification; exception; circulator; qualification.
- 32-632. Petition; removal of name; procedure.
- 32-633. President; write-in campaign; filing; application; contents.

32-602 Candidate; general requirements; limitation on filing for office.

(1) Any person seeking an elective office shall be a registered voter at the time of filing for the office pursuant to section 32-606 or 32-611.

(2) Any person filing for office shall meet the constitutional and statutory requirements of the office for which he or she is filing. If a person is filing for a partisan office, he or she shall be a registered voter affiliated with the appropriate political party if required pursuant to section 32-702. If the person is required to sign a contract or comply with a bonding or equivalent commercial insurance policy requirement prior to holding such office, he or she shall be at least nineteen years of age at the time of filing for the office.

(3) A person shall not be eligible to file for an office if he or she holds the office and his or her term of office expires after the beginning of the term of office for which he or she would be filing. This subsection does not apply to filing for an office to represent a different district, ward, subdistrict, or subdivision of the same governmental entity as the office held at the time of filing.

(4) The governing body of the political subdivision swearing in the officer shall determine whether the person meets all requirements prior to swearing in the officer.

Source: Laws 1994, LB 76, § 170; Laws 2004, LB 884, § 17; Laws 2011, LB499, § 1.

32-604 Multiple office holding; when allowed.

(1) Except as provided in subsection (2) or (4) of this section, no person shall be precluded from being elected or appointed to or holding an elective office for the reason that he or she has been elected or appointed to or holds another elective office.

(2) No person serving as a member of the Legislature or in an elective office described in Article IV, section 1 or 20, or Article VII, section 3 or 10, of the Constitution of Nebraska shall simultaneously serve in any other elective office, except that such a person may simultaneously serve in another elective office which is filled at an election held in conjunction with the annual meeting of a public body.

(3) Whenever an incumbent serving as a member of the Legislature or in an elective office described in Article IV, section 1 or 20, or Article VII, section 3 or 10, of the Constitution of Nebraska assumes another elective office, except an elective office filled at an election held in conjunction with the annual meeting of a public body, the office first held by the incumbent shall be deemed vacant.

(4) No person serving in a high elective office shall simultaneously serve in any other high elective office, except that a county attorney may serve as the

county attorney for more than one county if appointed under subsection (2) of section 23-1201.01.

(5) Notwithstanding subsection (4) of this section, any person holding more than one high elective office upon July 15, 2010, shall be entitled to serve the remainder of all terms for which he or she was elected or appointed.

(6) For purposes of this section, (a) elective office has the meaning found in section 32-109 and includes an office which is filled at an election held in conjunction with the annual meeting of a public body created by an act of the Legislature but does not include a member of a learning community coordinating council appointed pursuant to subsection (5) or (7) of section 32-546.01 and (b) high elective office means a member of the Legislature, an elective office described in Article IV, section 1 or 20, or Article VII, section 3 or 10, of the Constitution of Nebraska, or a county, city, community college area, learning community, or school district elective office.

Source: Laws 1994, LB 76, § 172; Laws 1997, LB 221, § 3; Laws 2003, LB 84, § 2; Laws 2007, LB641, § 2; Laws 2008, LB1154, § 4; Laws 2010, LB951, § 2.

32-605 Defeated candidate; prohibited acts; exception.

No candidate defeated at a primary election shall be permitted to file an affidavit declaring a write-in candidacy, file by petition, or file a nomination, if nominated by party convention or committee, for the following general election for the same office except as provided in section 32-615, 32-616, or 32-625.

Source: Laws 1994, LB 76, § 173; Laws 2002, LB 251, § 3; Laws 2014, LB144, § 1.
Effective date July 18, 2014.

32-606 Candidate filing form; filing period.

(1) Any candidate may place his or her name on the primary election ballot by filing a candidate filing form prescribed by the Secretary of State as provided in section 32-607. If a candidate for an elective office is an incumbent of any elective office, the filing period for filing the candidate filing form shall be between December 1 and February 15 prior to the date of the primary election, except for candidates for election in 2013 to the board of education of a Class V school district. No incumbent who resigns from elective office prior to the expiration of his or her term shall file for any office after February 15 of that election year. Incumbent and nonincumbent candidates for election in 2013 to the board of education of a Class V school district and all other candidates shall file for office between December 1 and March 1 prior to the date of the primary election. A candidate filing form may be transmitted by facsimile for the offices listed in subdivision (1) of section 32-607 if (a) the transmission is received in the office of the filing officer by the filing deadline and (b) the original filing form is mailed to the filing officer with a legible postmark bearing a date on or prior to the filing deadline and is in the office of the filing officer no later than seven days after the filing deadline.

(2) Any candidate for a township office in a county under township organization, the board of trustees of a village, the board of directors of a reclamation district, the county weed district board, the board of directors of a public power district receiving annual gross revenue of less than forty million dollars, the school board of a Class II school district, or the board of an educational service

unit may place his or her name on the general election ballot by filing a candidate filing form prescribed by the Secretary of State as provided in section 32-607. If a candidate for an elective office is an incumbent of any elective office, the filing period for filing the candidate filing form shall be between December 1 and July 15 prior to the date of the general election. No incumbent who resigns from elective office prior to the expiration of his or her term shall file for any office after July 15 of that election year. All other candidates shall file for office between December 1 and August 1 prior to the date of the general election. A candidate filing form may be transmitted by facsimile for the offices listed in subdivision (1) of section 32-607 if (a) the transmission is received in the office of the filing officer by the filing deadline and (b) the original filing form is mailed to the filing officer with a legible postmark bearing a date on or prior to the filing deadline and is in the office of the filing officer no later than seven days after the filing deadline.

(3) Any city having a home rule charter may provide for filing deadlines for any person desiring to be a candidate for the office of council member or mayor.

Source: Laws 1994, LB 76, § 174; Laws 1996, LB 967, § 2; Laws 1997, LB 764, § 54; Laws 1999, LB 802, § 12; Laws 2007, LB641, § 3; Laws 2009, LB392, § 7; Laws 2011, LB449, § 4; Laws 2011, LB550, § 1; Laws 2013, LB125, § 4.

32-607 Candidate filing forms; contents; filing officers.

All candidate filing forms shall contain the following statement: I hereby swear that I will abide by the laws of the State of Nebraska regarding the results of the primary and general elections, that I am a registered voter and qualified to be elected, and that I will serve if elected. Candidate filing forms shall also contain the candidate's name; residence address; mailing address if different from the residence address; telephone number; office sought; and party affiliation if the office sought is a partisan office. Candidate filing forms shall be filed with the following filing officers:

(1) For candidates for national, state, or congressional office, directors of public power and irrigation districts, directors of reclamation districts, directors of natural resources districts, members of the boards of educational service units, members of governing boards of community colleges, delegates to national conventions, and other offices filled by election held in more than one county and judges desiring retention, in the office of the Secretary of State;

(2) For officers elected within a county, in the office of the election commissioner or county clerk. If the candidate is not a resident of the county, he or she shall submit a certificate of registration obtained under section 32-316 with the candidate filing form;

(3) For officers in school districts which include land in adjoining counties, in the office of the election commissioner or county clerk of the county in which the greatest number of registered voters entitled to vote for the officers reside. If the candidate is not a resident of the county, he or she shall submit a certificate of registration obtained under section 32-316 with the candidate filing form; and

(4) For city or village officers, in the office of the election commissioner or county clerk.

Source: Laws 1994, LB 76, § 175; Laws 1997, LB 764, § 55; Laws 1999, LB 571, § 2; Laws 2007, LB603, § 3; Laws 2009, LB501, § 2; Laws 2010, LB325, § 3.

32-608 Filing fees; payment; amount; not required; when; refund; when allowed.

(1) Except as provided in subsection (4) or (5) of this section, a filing fee shall be paid by or on behalf of each candidate prior to filing for office. For candidates who file in the office of the Secretary of State as provided in subdivision (1) of section 32-607, the filing fee shall be paid to the Secretary of State who shall remit the fee to the State Treasurer for credit to the Election Administration Fund. For candidates for any city or village office, the filing fee shall be paid to the city or village treasurer of the city or village in which the candidate resides. For candidates who file in the office of the election commissioner or county clerk, the filing fee shall be paid to the election commissioner or county clerk in the county in which the office is sought. The election commissioner or county clerk shall remit the fee to the county treasurer. The fee shall be placed in the general fund of the county, city, or village. No candidate filing forms shall be filed until the proper payment or the proper receipt showing the payment of such filing fee is presented to the filing officer. On the day of the filing deadline, the city or village treasurer's office shall remain open to receive filing fees until the hour of the filing deadline.

(2) Except as provided in subsection (4) or (5) of this section, the filing fees shall be as follows:

(a) For the office of United States Senator, state officers, including members of the Legislature, Representatives in Congress, county officers, and city or village officers, except the mayor or council members of cities having a home rule charter, a sum equal to one percent of the annual salary as of November 30 of the year preceding the election for the office for which he or she files as a candidate;

(b) For directors of public power and irrigation districts in districts receiving annual gross revenue of forty million dollars or more, twenty-five dollars, and in districts receiving annual gross revenue of less than forty million dollars, ten dollars;

(c) For directors of reclamation districts, ten dollars; and

(d) For Regents of the University of Nebraska, members of the State Board of Education, and directors of metropolitan utilities districts, twenty-five dollars.

(3) All declared write-in candidates shall pay the filing fees that are required for the office at the time that they present the write-in affidavit to the filing officer. Any undeclared write-in candidate who is nominated or elected by write-in votes shall pay the filing fee required for the office within ten days after the canvass of votes by the county canvassing board and shall file the receipt with the person issuing the certificate of nomination or the certificate of election prior to the certificate being issued.

(4) No filing fee shall be required for any candidate filing for an office in which a per diem is paid rather than a salary or for which there is a salary of less than five hundred dollars per year. No filing fee shall be required for any

candidate for membership on a school board, on the board of an educational service unit, on the board of governors of a community college area, on the board of directors of a natural resources district, or on the board of trustees of a sanitary and improvement district.

(5) No filing fee shall be required of any candidate completing an affidavit requesting to file for elective office in forma pauperis. A pauper shall mean a person whose income and other resources for maintenance are found under assistance standards to be insufficient for meeting the cost of his or her requirements and whose reserve of cash or other available resources does not exceed the maximum available resources that an eligible individual may own. Available resources shall include every type of property or interest in property that an individual owns and may convert into cash except:

- (a) Real property used as a home;
- (b) Household goods of a moderate value used in the home; and
- (c) Assets to a maximum value of three thousand dollars used by a recipient in a planned effort directed towards self-support.

(6) If any candidate dies prior to an election, the spouse of the candidate may file a claim for refund of the filing fee with the proper governing body prior to the date of the election. Upon approval of the claim by the proper governing body, the filing fee shall be refunded.

Source: Laws 1994, LB 76, § 176; Laws 1997, LB 764, § 56; Laws 1998, LB 896, § 9; Laws 1998, LB 1161, § 12; Laws 1999, LB 272, § 16; Laws 1999, LB 802, § 13; Laws 2003, LB 537, § 1; Laws 2004, LB 323, § 2; Laws 2014, LB946, § 12.
Operative date January 1, 2015.

32-610 Partisan elections; candidate; requirements.

No person shall be allowed to file a candidate filing form as a partisan candidate or to have his or her name placed upon a primary election ballot of a political party if subsection (2) of section 32-720 applies to the political party. For any other political party, no person shall be allowed to file a candidate filing form as a partisan candidate or to have his or her name placed upon a primary election ballot of a political party unless (1) he or she is a registered voter of the political party if required pursuant to section 32-702 and (2) at one of the two immediately preceding statewide general elections, (a) a candidate nominated by the political party polled at least five percent of the entire vote in the state in a statewide race or (b) a combination of candidates nominated by the political party for a combination of districts that encompass all of the voters of the entire state polled at least five percent of the vote in each of their respective districts. A candidate filing form filed in violation of this section shall be void.

Source: Laws 1994, LB 76, § 178; Laws 2012, LB1035, § 1; Laws 2014, LB1048, § 2.
Effective date July 18, 2014.

32-613 President; nominating petition; consent of candidate required; form of petition.

Any petition to place a person's name on the primary election ballot for President of the United States shall contain the names of not less than one

hundred voters registered with the appropriate political party from each congressional district of the state, except that if the political party dissolves as provided in subsection (2) of section 32-720, the Secretary of State shall not accept a petition under this section. The name of the candidate for President shall be placed upon the ballot only when written consent of such person has been filed with the Secretary of State not less than sixty days before the primary election. The form of the petition shall comply with the requirements of section 32-628 and shall as nearly as possible conform to the form prescribed by the Secretary of State.

Source: Laws 1994, LB 76, § 181; Laws 1997, LB 764, § 59; Laws 2014, LB1048, § 3.
Effective date July 18, 2014.

32-614 President; petition candidates or advocated or recognized candidates; placing on ballot; affidavit of rejection of candidacy; purged candidate, when.

The names of persons in the political party (1) who are presented by petition of their supporters to be party candidates for President of the United States or (2) who have been determined by the Secretary of State to be generally advocated or recognized as candidates in national news media throughout the United States shall be printed on the primary election ballot for the office of President of the United States. This section does not apply if the political party dissolves as provided in subsection (2) of section 32-720.

If a person does not want his or her name on the Nebraska primary election ballot, he or she shall, by March 10 of the presidential election year, execute and file an affidavit with the Secretary of State stating without qualification that he or she is not now and does not intend to become a candidate for office of President of the United States at the next presidential election in Nebraska or any other state. If a presidential candidate files such affidavit removing his or her name and subsequently becomes a presidential candidate in another state, the candidate's affidavit in Nebraska shall be purged and shall have no force and effect. The Secretary of State shall then place such candidate's name on the primary election ballot.

Source: Laws 1994, LB 76, § 182; Laws 1997, LB 764, § 60; Laws 2014, LB1048, § 4.
Effective date July 18, 2014.

32-615 Write-in candidate; requirements.

(1) Except as otherwise provided in subsection (2) of this section, any candidate engaged in or pursuing a write-in campaign shall file a notarized affidavit of his or her intent together with the receipt for any filing fee with the filing officer as provided in section 32-608 no earlier than December 1 and no later than ten days prior to the election.

(2) For any county office elected pursuant to sections 32-517 to 32-529 which is subject to subdivision (1)(b) of section 32-811, a candidate may engage in or pursue a write-in campaign if he or she files a notarized affidavit of his or her intent together with the receipt for the filing fee with the filing officer as provided in section 32-608 on or before March 3 of the year of the statewide primary election. If such an affidavit is filed as prescribed, the election commissioner or county clerk shall place that county office on the statewide

primary election ballot with the names of the candidate properly filed for the nomination of the applicable political party and a line for write-in candidates.

(3) A candidate who has been defeated as a candidate in the primary election or defeated as a write-in candidate in the primary election shall not be eligible as a write-in candidate for the same office in the general election unless (a) a vacancy on the ballot exists pursuant to section 32-625 or (b) the candidate was a candidate for an office described in sections 32-512 to 32-550 and the candidate lost the election as a result of a determination pursuant to section 32-1122 in the case of a tie vote.

(4) A candidate who files a notarized affidavit shall be entitled to all write-in votes for the candidate even if only the last name of the candidate has been written if such last name is reasonably close to the proper spelling.

Source: Laws 1994, LB 76, § 183; Laws 2002, LB 251, § 4; Laws 2003, LB 537, § 2; Laws 2011, LB449, § 5; Laws 2014, LB56, § 1; Laws 2014, LB144, § 2.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB56, section 1, with LB144, section 2, to reflect all amendments.

Note: Changes made by LB56 became effective February 19, 2014. Changes made by LB144 became effective July 18, 2014.

32-616 Nomination for general election; other methods.

(1) Any registered voter who was not a candidate in the primary election and who was not registered to vote with a party affiliation on or after March 1 and before the general election in the calendar year of the general election may have his or her name placed on the general election ballot for a partisan office by filing petitions as prescribed in sections 32-617 to 32-621 or by nomination by political party convention or committee pursuant to section 32-627 or 32-710.

(2) Any candidate who was defeated in the primary election and any registered voter who was not a candidate in the primary election may have his or her name placed on the general election ballot if a vacancy exists on the ballot under subsection (2) of section 32-625 and the candidate files for the office by petition as prescribed in sections 32-617 and 32-618, files as a write-in candidate as prescribed in section 32-615, or is nominated by political party convention or committee pursuant to section 32-627 or 32-710.

Source: Laws 1994, LB 76, § 184; Laws 1997, LB 764, § 61; Laws 2002, LB 251, § 5; Laws 2011, LB368, § 1; Laws 2011, LB449, § 6; Laws 2014, LB946, § 13.

Operative date January 1, 2015.

32-617 Nomination by petition; requirements; procedure.

(1) Petitions for nomination for partisan and nonpartisan offices shall conform to the requirements of section 32-628. Petitions shall state the office to be filled and the name and address of the candidate. Petitions for partisan office shall also indicate the party affiliation of the candidate. A sample copy of the petition shall be filed with the filing officer prior to circulation. Petitions shall be signed by registered voters residing in the district or political subdivision in which the officer is to be elected and shall be filed with the filing officer in the same manner as provided for candidate filing forms in section 32-607. Petition signers and petition circulators shall conform to the requirements of sections 32-629 and 32-630. No petition for nomination shall be filed unless there is

attached thereto a receipt showing the payment of the filing fee required pursuant to section 32-608. Such petitions shall be filed by September 1 in the year of the general election.

(2) The filing officer shall verify the signatures according to section 32-631. Within three days after the signatures on a petition for nomination have been verified pursuant to such section and the filing officer has determined that pursuant to section 32-618 a sufficient number of registered voters signed the petitions, the filing officer shall notify the candidate so nominated by registered or certified mail, and the candidate shall, within five days after the date of receiving such notification, file with such officer his or her acceptance of the nomination or his or her name will not be printed on the ballot.

(3) A candidate placed on the ballot by petition shall be termed a candidate by petition. The words BY PETITION shall be printed upon the ballot after the name of each candidate by petition.

Source: Laws 1994, LB 76, § 185; Laws 2003, LB 537, § 3; Laws 2011, LB499, § 2.

32-618 Nomination by petition; number of signatures required.

(1) The number of signatures of registered voters needed to place the name of a candidate upon the nonpartisan ballot for the general election shall be as follows:

(a) For each nonpartisan office other than members of the Board of Regents of the University of Nebraska and board members of a Class III school district, at least ten percent of the total number of registered voters voting for Governor or President of the United States at the immediately preceding general election in the district or political subdivision in which the officer is to be elected, not to exceed two thousand;

(b) For members of the Board of Regents of the University of Nebraska, at least ten percent of the total number of registered voters voting for Governor or President of the United States at the immediately preceding general election in the regent district in which the officer is to be elected, not to exceed one thousand; and

(c) For board members of a Class III school district, at least twenty percent of the total number of votes cast for the board member receiving the highest number of votes at the immediately preceding general election in the school district.

(2) The number of signatures of registered voters needed to place the name of a candidate upon the partisan ballot for the general election shall be as follows:

(a) For each partisan office to be filled by the registered voters of the entire state, at least four thousand, and at least seven hundred fifty signatures shall be obtained in each congressional district in the state; and

(b) For each partisan office to be filled by the registered voters of a county or political subdivision, at least twenty percent of the total vote for Governor or President of the United States at the immediately preceding general election within the county or political subdivision, not to exceed two thousand.

The number of signatures shall not be required to exceed one-fourth of the total number of registered voters voting for the office at the immediately

preceding general election when the nomination is for a partisan office to be filled by the registered voters of a county.

Source: Laws 1994, LB 76, § 186; Laws 1997, LB 764, § 62; Laws 2003, LB 181, § 5; Laws 2003, LB 461, § 3; Laws 2007, LB298, § 1; Laws 2011, LB399, § 1.

32-620 President and Vice President; candidates; certification; new political party; how treated; requirements; nonpartisan status; filing; application; contents.

(1) Partisan candidates for the offices of President and Vice President of the United States on the general election ballot shall be certified to the Governor and Secretary of State by the national nominating convention as provided by law.

(2) Candidates for the offices of President and Vice President of the United States of newly established political parties may obtain general election ballot position by filing with the Secretary of State an application containing:

- (a) The name or names to be printed on the ballot;
- (b) The name of the political party;
- (c) The written consent of the designated vice-presidential candidate to have his or her name printed on the ballot; and
- (d) The names and addresses of the persons who will represent the applicant as presidential elector candidates together with the written consent of such persons to become candidates.

(3) Candidates for the offices of President and Vice President of the United States of nonpartisan status may obtain general election ballot position by filing with the Secretary of State:

- (a) An application containing:
 - (i) The name or names to be printed on the ballot;
 - (ii) The status of the candidacy as nonpartisan;
 - (iii) The written consent of the designated vice-presidential candidate to have his or her name printed on the ballot; and
 - (iv) The names and addresses of the persons who will represent the applicant as presidential elector candidates together with the written consent of such persons to become candidates; and
- (b) A petition signed by not less than two thousand five hundred registered voters. Such petitions shall conform to the requirements of section 32-628 and shall be filed with the Secretary of State by August 1 in the year of the presidential general election.

Source: Laws 1994, LB 76, § 188; Laws 1997, LB 764, § 64; Laws 2013, LB349, § 3.

32-623 Declination of nomination; deadline; notice, to whom given; vacancy, how filled.

If any person nominated for elective office for the general election notifies the filing officer with whom the candidate filing form or other acceptance of nomination was filed by filing a statement, in writing and duly acknowledged, that he or she declines such nomination on or before September 1 before the

election, the person's name shall not be printed on the ballot, but no declination shall be effective after such date. The filing officer shall inform one or more persons whose names are attached to the nomination if the candidate was nominated by a political party convention or committee or, if nominated at a primary election, the chairperson or secretary of the campaign or political party committee of his or her political party if there is one within the jurisdiction of the filing officer and, if not, at least three of the prominent members of the candidate's political party within the jurisdiction of the filing officer that such candidate has declined the nomination by mailing or delivering to them personally notice of such fact. Such declination shall create a vacancy on the ballot which may be filled pursuant to section 32-627. In lieu of filing a declination with the Secretary of State, the person so nominated may file a declination with the election commissioner or county clerk in the county in which he or she resides. Any election commissioner or county clerk receiving such a declination shall within five days after its receipt forward a copy of the written declination statement to the Secretary of State. The Secretary of State shall make notifications required by this section for all individuals for whom he or she receives a copy of the written declination statement.

Source: Laws 1994, LB 76, § 191; Laws 2012, LB503, § 1.

32-627 Partisan office; vacancy on ballot; how filled.

(1) If a vacancy on the ballot arises for any partisan office except President and Vice President of the United States before a general election, the vacancy shall be filled by the majority vote of the proper committee of the same political party. If the vacancy exists for an office serving only a particular district of the state, only those members of the political party committee who reside within that district shall participate in selecting the candidate to fill the vacancy. No vacancy on the ballot shall be deemed to have occurred if a political party makes no nomination of a candidate at the primary election for the office. If a vacancy on the ballot arises for Governor, the vacancy shall be filled by the majority vote of the proper committee of the same political party, and the candidate for Governor shall select a person of the same political party to be the candidate for Lieutenant Governor on the general election ballot. If a vacancy on the ballot arises for the Lieutenant Governor on or before September 1, the candidate for Governor shall select a new candidate for Lieutenant Governor in the same manner as required in section 32-619.01.

(2) The chairperson and secretary of the executive committee for the political party shall make and file with the filing officer a certificate setting forth the cause of the vacancy, the name of the person so nominated, the office for which he or she was nominated, the name of the person for which the new nominee is to be substituted, the place of residence of the person so nominated, the street and number of the residence or place of business of the person so nominated if such person resides in a city, and the name of the political party with which the person so nominated affiliates which such committee represents. The certificate shall be signed by the chairperson and secretary with the name and places of their residences and sworn to by them before some officer authorized to administer oaths. If there is no executive committee of the political party or in lieu of the executive committee filling such vacancy, a mass convention of the political party may fill the vacancy and the chairperson and secretary of such convention shall make and file with the filing officer a certificate in form and manner substantially as is required to be filed by the chairperson and secretary

was qualified to sign the petition, and that the affiant stated to each signer the object of the petition as printed on the petition before he or she affixed his or her signature to the petition.

Circulator

Address

Subscribed and sworn to before me, a notary public, this day of 20.... at, Nebraska.

Notary Public

(4) Each sheet of a petition shall have upon its face and in plain view of persons who sign the petition a statement in letters not smaller than sixteen-point type in red print on the petition. If the petition is circulated by a paid circulator, the statement shall be as follows: This petition is circulated by a paid circulator. If the petition is circulated by a circulator who is not being paid, the statement shall be as follows: This petition is circulated by a volunteer circulator.

Source: Laws 1994, LB 76, § 196; Laws 1995, LB 337, § 3; Laws 1997, LB 460, § 1; Laws 1999, LB 234, § 9; Laws 2002, LB 1054, § 18; Laws 2003, LB 444, § 5; Laws 2008, LB39, § 1; Laws 2012, LB759, § 1.

32-629 Petitions; signer; qualification; exception; circulator; qualification.

(1) Except as otherwise provided in section 32-1404 for initiative and referendum petitions, only a registered voter of the State of Nebraska shall qualify as a valid signer of a petition and may sign petitions under the Election Act.

(2) Only a person who is at least eighteen years of age shall qualify as a valid circulator of a petition and may circulate petitions under the Election Act.

Source: Laws 1994, LB 76, § 197; Laws 2003, LB 444, § 6; Laws 2008, LB39, § 2; Laws 2012, LB759, § 2.

32-632 Petition; removal of name; procedure.

Any person may remove his or her name from a petition by an affidavit signed and sworn to by such person before the election commissioner, the county clerk, or a notary public. The affidavit shall be presented to the Secretary of State, election commissioner, or county clerk prior to or on the day the petition is filed for verification with the election commissioner or county clerk.

Source: Laws 1994, LB 76, § 200; Laws 1997, LB 764, § 67; Laws 2011, LB499, § 3.

32-633 President; write-in campaign; filing; application; contents.

Any person engaged in or pursuing a write-in campaign for the office of President of the United States shall file with the Secretary of State a notarized affidavit of his or her intent together with an application containing:

- (1) The name of the person pursuing the write-in campaign;
- (2) The written consent of the designated vice-presidential candidate; and

(3) The names and addresses of the persons who will represent the applicant as presidential elector candidates together with the written consent of such persons to become candidates.

Source: Laws 2013, LB349, § 2.

ARTICLE 7

POLITICAL PARTIES

Section

- 32-701. Political party; file delegate selection plan; contents; President; preference vote.
- 32-702. Partisan primary election; candidate; affiliation required; when; rule or revocation of rule; when effective.
- 32-703. Delegates to national convention; selection or election; national party rules; state political party; duty.
- 32-704. Candidates; delegate or alternate delegate to national convention; filing form; contents; Secretary of State; duties.
- 32-706. Repealed. Laws 2014, LB 1048, § 13.
- 32-707. County conventions; time; place; notice; registration of delegates; procedure.
- 32-708. Repealed. Laws 2014, LB 1048, § 13.
- 32-709. Repealed. Laws 2014, LB 1048, § 13.
- 32-710. State postprimary conventions; when held; organization; platform; selection of presidential electors.
- 32-711. Repealed. Laws 2014, LB 1048, § 13.
- 32-713. Presidential electors; notice of appointment; meeting; pledge.
- 32-714. Presidential electors; vacancies; how filled; meeting; procedure; violation of pledge; effect.
- 32-718. Repealed. Laws 2012, LB 1035, § 5.
- 32-719. Political party conventions; individual vote; unit voting prohibited.
- 32-720. Division of political party ballot; preference; how determined; dissolution of political party; procedure; effect.

32-701 Political party; file delegate selection plan; contents; President; preference vote.

(1) Each political party which is organized in Nebraska shall file a copy of the party's plan for selecting delegates and alternate delegates to the party's national convention with the Secretary of State on or before December 1 of the calendar year prior to each presidential election year and shall include a summary of the contents of the plan. The delegate selection plan shall:

(a) Require that at least eighty percent of the delegates and alternate delegates are committed to a candidate for President of the United States based on the results of a caucus or the primary election;

(b) Specify whether the delegates and alternate delegates are committed to a candidate for President of the United States based on the results of (i) a caucus system which is open to all Nebraska residents who are affiliated with the party for purposes of registering to vote in Nebraska, (ii) election at the statewide primary election, or (iii) a combination of the methods listed in subdivisions (i) and (ii) of this subdivision;

(c) Specify how the delegates and alternate delegates are committed for purposes of voting for candidates for President of the United States based on the results of the caucus or primary election; and

(d) Provide that the delegates and alternate delegates are either awarded to the winner of the caucus or primary election or awarded proportionally, based on the number of votes received by each presidential candidate at the caucus or

primary election, to each presidential candidate who received at least fifteen percent of the votes for the nomination.

(2) When candidates for the office of President of the United States are to be nominated, every registered voter of a political party shall have the opportunity to vote his or her preference on his or her party nominating ballot for his or her choice for one person to be the candidate of his or her political party for President of the United States by writing the name of the person of his or her choice for President in the blank space to be left upon the ballot for such purpose and making a cross or mark in the square or oval opposite the written name or by making a cross or mark in the square or oval opposite the printed name of the person of his or her choice.

Source: Laws 1994, LB 76, § 201; Laws 2014, LB1048, § 5.
Effective date July 18, 2014.

32-702 Partisan primary election; candidate; affiliation required; when; rule or revocation of rule; when effective.

Any political party may, by the adoption of a rule, require that any individual whose name is placed on such party's partisan primary election ballot be a registered voter affiliated with such party. If the political party adopts or revokes the rule and notifies the Secretary of State by filing the rule or notice of the revocation with the Secretary of State prior to December 1 of the calendar year before a statewide primary election, the rule or revocation is effective for the next and subsequent statewide primary elections. If a rule or notice of revocation is filed with the Secretary of State on or after December 1 of the calendar year before a statewide primary election and on or before the day of the statewide primary election, the rule or revocation is effective for the subsequent statewide primary elections.

Source: Laws 1994, LB 76, § 202; Laws 2014, LB1048, § 6.
Effective date July 18, 2014.

32-703 Delegates to national convention; selection or election; national party rules; state political party; duty.

In each presidential election year, the total number of delegates and alternate delegates representing this state at the national conventions of the political parties and their method of selection or election shall be determined by the rules of the national political party holding the convention. The Secretary of State in consultation with the Attorney General shall have the authority to do all things necessary in the administration of the Election Act, including ballot preparation, separation of ballots, and ballot instructions, to comply with and carry out the intent of national political party rules and court decisions. Whenever the act is in conformity with national political party rules as to the election of delegates, the election procedures found in the act shall be followed. The state political party shall furnish a copy of the national political party rules regarding selection of delegates to the Secretary of State no later than December 1 of the year preceding each presidential election year.

Source: Laws 1994, LB 76, § 203; Laws 1997, LB 764, § 68; Laws 2014, LB1048, § 7.
Effective date July 18, 2014.

32-704 Candidates; delegate or alternate delegate to national convention; filing form; contents; Secretary of State; duties.

Any person seeking to be elected as a delegate or alternate delegate to the national convention of a political party shall submit a filing form under this section regardless of the method of election used by the political party. The filing form for nomination of a candidate for election as a delegate or alternate delegate to the national convention of a political party shall (1) contain a statement of commitment to a candidate for the office of President of the United States or that he or she is uncommitted, (2) include a pledge swearing to support the candidate for President of the United States to which the candidate for delegate or alternate delegate to the national convention is committed until (a) such candidate receives less than thirty-five percent of the votes for nomination by such convention or releases the delegate from such commitment or (b) two convention nominating ballots have been taken, and (3) be filed with the Secretary of State. No filing form for nomination shall be accepted unless signed by the candidate. The Secretary of State shall prescribe the filing form for nomination.

Source: Laws 1994, LB 76, § 204; Laws 2014, LB1048, § 8.
Effective date July 18, 2014.

32-706 Repealed. Laws 2014, LB 1048, § 13.**32-707 County conventions; time; place; notice; registration of delegates; procedure.**

(1) A political party may conduct county conventions at an hour and place to be designated by a political party. The political party shall cause to be published, at least seven days prior to the date of the county convention, an official notice of the date, time, and place of the convention. The political party may elect to have delegates to the county convention register with the election commissioner or county clerk.

(2) If a political party elects to have delegates to the county convention register with the election commissioner or county clerk, such delegates shall register with the election commissioner or county clerk on or before March 1 of each year in which the political party conducts a county convention. The election commissioner or county clerk shall deliver to the state chairperson of a political party the roll, properly certified, showing the name, address, and precinct of each delegate registered for such convention, no later than March 15 of each presidential election year. If there is not a full quota of delegates for the county convention as established by the political party, the delegates at the county convention may select delegates to fill the quota from the registered voters affiliated with the political party in the county.

Source: Laws 1994, LB 76, § 207; Laws 1997, LB 764, § 69; Laws 2009, LB133, § 1; Laws 2014, LB1048, § 9.
Effective date July 18, 2014.

32-708 Repealed. Laws 2014, LB 1048, § 13.**32-709 Repealed. Laws 2014, LB 1048, § 13.****32-710 State postprimary conventions; when held; organization; platform; selection of presidential electors.**

Each political party shall hold a state postprimary convention biennially on a date to be fixed by the state central committee but not later than September 1. Candidates for elective offices may be nominated at such conventions pursuant to section 32-627 or 32-721. Such nominations shall be certified to the Secretary of State by the chairperson and secretary of the convention. The certificates shall have the same force and effect as nominations in primary elections. A political party may not nominate a candidate at the convention for an office for which the party did not nominate a candidate at the primary election except as provided for new political parties in section 32-621. The convention shall formulate and promulgate a state platform, select a state central committee, select electors for President and Vice President of the United States, and transact the business which is properly before it. One presidential elector shall be chosen from each congressional district, and two presidential electors shall be chosen at large. The officers of the convention shall certify the names of the electors to the Governor and Secretary of State.

Source: Laws 1994, LB 76, § 210; Laws 1997, LB 764, § 70; Laws 2011, LB368, § 2.

32-711 Repealed. Laws 2014, LB 1048, § 13.

32-713 Presidential electors; notice of appointment; meeting; pledge.

(1) The certificates of appointment for presidential electors shall be served by the Governor on each person appointed. The Governor shall notify the presidential electors to be at the State Capitol at noon on the first Monday after the second Wednesday in December after appointment and report to the Governor at his or her office in the capitol as being in attendance. The Governor shall serve the certificates of appointment by registered or certified mail. In submitting this state's certificate of ascertainment as required by 3 U.S.C. 6, the Governor shall certify this state's presidential electors and state in the certificate that:

(a) The presidential electors will serve as presidential electors unless a vacancy occurs in the office of presidential elector before the end of the meeting at which the presidential electors cast their votes, in which case a substitute presidential elector will fill the vacancy; and

(b) If a substitute presidential elector is appointed to fill a vacancy, the Governor will submit an amended certificate of ascertainment stating the names on the final list of this state's presidential electors.

(2) The presidential electors shall convene at 2 p.m. of such Monday at the Governor's office in the capitol. Each presidential elector shall execute the following pledge: As a presidential elector duly selected (or appointed) for this position, I agree to serve and to mark my ballots for President and Vice President for the presidential and vice-presidential candidates who received the highest number of votes in the state if I am an at-large presidential elector or the highest number of votes in my congressional district if I am a congressional district presidential elector.

Source: Laws 1994, LB 76, § 213; Laws 2014, LB946, § 14.
Operative date January 1, 2015.

32-714 Presidential electors; vacancies; how filled; meeting; procedure; violation of pledge; effect.

(1) The Governor shall provide each presidential elector with a list of all the presidential electors. If any presidential elector is absent or if there is a deficiency in the proper number of presidential electors, those present shall elect from the citizens of the state so many persons as will supply the deficiency and immediately issue a certificate of election, signed by those present or a majority of them, to the person or persons so chosen. In case of failure to elect as required in this subsection by 3 p.m. of such day or in case of a vacancy created under subsection (4) of this section, the Governor shall fill the vacancies by appointment. Each appointee shall execute the pledge in section 32-713. After all vacancies are filled, the presidential electors shall proceed with the election of a President of the United States and a Vice President of the United States and certify their votes in conformity with the Constitution and laws of the United States.

(2) The Secretary of State shall provide each presidential elector with a presidential and vice-presidential ballot. Each at-large presidential elector shall mark his or her ballot for the presidential and vice-presidential candidates who received the highest number of votes in the state and consistent with his or her pledge. Each congressional district presidential elector shall mark his or her ballot for the presidential and vice-presidential candidates who received the highest number of votes in his or her congressional district and consistent with his or her pledge.

(3) Each presidential elector shall present the completed ballot to the Secretary of State. The Secretary of State shall examine each ballot and accept as cast each ballot marked by a presidential elector consistent with his or her pledge. The Secretary of State shall not accept and shall not count the ballot if the presidential elector has not marked the ballot or has marked the ballot in violation of his or her pledge.

(4) A presidential elector who refuses to present a ballot, who attempts to present an unmarked ballot, or who attempts to present a ballot marked in violation of his or her pledge vacates the office of presidential elector.

Source: Laws 1994, LB 76, § 214; Laws 2014, LB946, § 15.
Operative date January 1, 2015.

32-718 Repealed. Laws 2012, LB 1035, § 5.

32-719 Political party conventions; individual vote; unit voting prohibited.

At all political party conventions held under sections 32-707 and 32-710, each delegate shall be entitled to register his or her individual vote, and it shall be unlawful to attempt to bind any delegate by any political party or convention rules requiring the delegates from any political subdivision to such convention to vote as one unit.

Source: Laws 1994, LB 76, § 219; Laws 2014, LB1048, § 10.
Effective date July 18, 2014.

32-720 Division of political party ballot; preference; how determined; dissolution of political party; procedure; effect.

(1) In case of a division of any political party, the Secretary of State shall give the preference of party name to the convention held at the time and place designated in the call of the regularly constituted political party authorities, and if the other faction presents no other party name, the Secretary of State shall

select a name or title and place the same on the ballot before the list of candidates of such faction. The action of the preceding national convention of such party, regularly called, shall determine the action of the Secretary of State or the court in its decision. The Secretary of State may be compelled by peremptory order of mandamus to perform such duty.

(2) A political party may dissolve by filing a notice of dissolution with the Secretary of State. The notice shall be filed by the executive committee or state central committee of the political party or, if no such committee exists, by an officer of the political party. If the notice is filed prior to December 1 of the calendar year before the statewide primary election, the Secretary of State shall not accept any filings for the political party or place the political party on the statewide primary election ballot for the statewide primary election.

Source: Laws 1994, LB 76, § 220; Laws 2014, LB1048, § 11.
Effective date July 18, 2014.

ARTICLE 8

NOTICE, PUBLICATION, AND PRINTING OF BALLOTS

Section

- 32-808. Ballots for early voting; delivery; special ballot; publication of application form.
- 32-809. Statewide primary election; official ballot; form; contents.
- 32-811. Political subdivisions; certain county officers; political party convention delegates; names not on ballot; when.
- 32-815. General election ballot; partisan candidates; placement and rotation of names.
- 32-816. Official ballots; write-in space provided; exceptions; requirements.

32-808 Ballots for early voting; delivery; special ballot; publication of application form.

(1) Except as otherwise provided in section 32-939.02, ballots for early voting to be mailed pursuant to section 32-941 shall be ready for delivery to registered voters at least thirty-five days prior to each statewide primary or general election and at least fifteen days prior to all other elections.

(2) The election commissioner or county clerk shall not mail or issue any ballot for early voting if the election to which such ballot pertains has already been held.

(3) The election commissioner or county clerk shall publish in a newspaper of general circulation in the county an application form to be used by registered voters in making an application for a ballot for early voting after the ballots become available. The publication of the application shall not be required if the election is held by mail pursuant to sections 32-952 to 32-959.

Source: Laws 1994, LB 76, § 229; Laws 1996, LB 964, § 4; Laws 1997, LB 764, § 74; Laws 1999, LB 571, § 3; Laws 2005, LB 98, § 8; Laws 2007, LB646, § 5; Laws 2010, LB951, § 3; Laws 2013, LB271, § 1.

Cross References

Absentee ballots for school bond elections, see section 10-703.01.

32-809 Statewide primary election; official ballot; form; contents.

(1) The form of the official ballot at the statewide primary election shall be prescribed by the Secretary of State. At the top of the ballot and over all else

shall be printed in boldface type the name of the political party, Official Ballot, Primary Election 20. . . . Each division containing the names of the office and a list of candidates for such office shall be separated from other groups by a bold line. The ballot shall list at-large candidates and subdistrict candidates under appropriate headings.

(2) All proposals for constitutional amendments, candidates for delegates to the national political party conventions, and candidates on the nonpartisan ballot shall be submitted on a ballot where bold lines separate one office or issue from another. Proposals for constitutional amendments proposed by the Legislature shall be placed on the ballot as provided in sections 49-201 to 49-211. Each candidate for delegate to the national political party convention shall have his or her preference for the candidacy for the office of President of the United States or the fact that he or she is uncommitted shown on the ballot in parenthesis and indented on the line immediately below the name of the candidate. All constitutional amendments shall be placed on a separate ballot when a paper ballot is used which requires the ballot after being voted to be folded before being deposited in a ballot box. When an optical-scan ballot is used which requires a ballot envelope or sleeve in which the ballot after being voted is placed before being deposited in a ballot box, constitutional amendments may be printed on either side of the ballot and shall be separated from other offices or issues by a bold line. Constitutional amendments so arranged shall constitute a separate ballot.

(3) Except as otherwise provided in section 32-811, the statewide primary election ballot shall contain the name of every candidate filing or recognized under subsection (1) of section 32-606 and sections 32-611, 32-613, and 32-614 and no other names. No name of a candidate for member of the Legislature or an elective office described in Article IV, section 1, of the Constitution of Nebraska shall appear on any ballot or any series of ballots at any primary election more than once except for the names of candidates for the office of delegate to a county, state, or national political party convention. When two or more of the last names of candidates for the same office at the primary election are the same in spelling or sound, the official ballots may, on the request of any such candidate, have his or her address printed immediately below his or her name in capital and lowercase letters in lightface type of the same size as the type in which the name of the candidate is printed.

Source: Laws 1994, LB 76, § 230; Laws 2003, LB 358, § 11; Laws 2012, LB878, § 4.

32-811 Political subdivisions; certain county officers; political party convention delegates; names not on ballot; when.

(1)(a) If the names of candidates properly filed for nomination at the primary election for directors of natural resources districts, directors of public power districts, members of airport authority boards elected pursuant to sections 32-547 to 32-549, members of the boards of governors of community college areas, members of the boards of Class III or Class V school districts which nominate candidates at a primary election, and officers of cities of the first or second class and cities having a city manager plan of government do not exceed two candidates for each position to be filled, any such candidates shall be declared nominated and their names shall not appear on any primary election ballots.

(b) If the number of candidates properly filed for the nomination of a political party at the primary election for any county officer elected pursuant to sections 32-517 to 32-529 does not exceed the number of candidates to be nominated by that party for that office, any such properly filed candidates shall be declared nominated and their names shall not appear on any primary election ballots.

(c) The official abstract of votes kept by the county or state shall show the names of such candidates with the statement Nominated Without Opposition. The election commissioner or county clerk shall place the names of such automatically nominated candidates on the general election ballot as provided in section 32-814 or 32-815.

(2) Candidates shall not appear on the ballot in the primary election for the offices listed in subsection (2) of section 32-606.

(3) If the number of candidates for delegates to a county or national political party convention are the same in number or less than the number of candidates to be elected, the names shall not appear on the primary election ballot and those so filed shall receive a certificate of election.

Source: Laws 1994, LB 76, § 232; Laws 1995, LB 194, § 8; Laws 1997, LB 764, § 76; Laws 2003, LB 15, § 1; Laws 2011, LB449, § 7; Laws 2012, LB878, § 5; Laws 2012, LB1035, § 2; Laws 2014, LB56, § 2.

Effective date February 19, 2014.

32-815 General election ballot; partisan candidates; placement and rotation of names.

(1) The names of candidates for each partisan elective office shall be arranged on the ballot of the general election so that the political party polling the highest number of votes at the last general election for Governor will have the name of its nominee immediately beneath the name of the office for which the candidate was nominated, the political party polling the second highest number of votes will have the second place, the political party having the third highest number of votes will have the third place, and continuing with the political parties in descending order of number of votes, leaving those candidates whose names appear upon the ballot by petition to appear beneath all other candidates placed there by nomination. For each office for which there are more candidates than vacancies and there are two or more nominees of the same political party, the election commissioner or county clerk shall rotate the names of such candidates on the official ballot. In printing the ballots for the various election districts, the positions of the names shall be changed in each office division for each election district. In making the change of position, the printer shall take the line of type at the head of each division and place it at the bottom of that division, shoving up the column so that the name that was second shall be first after the change.

(2) The name of the person receiving the highest number of votes at a primary election as the candidate of a political party for an office shall be placed on the official ballot except as otherwise provided in the Election Act. Except as provided in section 32-811 for automatically nominated candidates, no person shall be certified as a candidate of any political party for such office by the Secretary of State, election commissioner, or county clerk unless the person receives a number of votes at least equal to five percent of the total ballots cast at the primary election by registered voters affiliated with that

political party in the district which the office serves and meets the requirements for the office.

Source: Laws 1994, LB 76, § 236; Laws 1997, LB 764, § 78; Laws 1999, LB 571, § 6; Laws 2014, LB56, § 3.

Effective date February 19, 2014.

32-816 Official ballots; write-in space provided; exceptions; requirements.

(1) A blank space shall be provided at the end of each office division on the ballot for registered voters to fill in the name of any person for whom they wish to vote and whose name is not printed upon the ballot, except that at the primary election there shall be no write-in space for delegates to the county political party convention or delegates to the national political party convention. A square or oval shall be printed opposite each write-in space similar to the square or oval placed opposite other candidates and issues on the ballot. The square or oval shall be marked to vote for a write-in candidate whose name appears in the write-in space provided.

(2) The Secretary of State shall approve write-in space for optical-scan ballots and electronic voting systems. Adequate provision shall be made for write-in votes sufficient to allow one write-in space for each office to be elected at any election except offices for which write-in votes are specifically prohibited. The write-in ballot shall clearly identify the office for which such write-in vote is cast. The write-in space shall be a part of the official ballot, may be on the envelope or a separate piece of paper from the printed portion of the ballot, and shall allow the voter adequate space to fill in the name of the candidate for whom he or she desires to cast his or her ballot.

Source: Laws 1994, LB 76, § 237; Laws 1997, LB 764, § 79; Laws 2001, LB 252, § 2; Laws 2003, LB 358, § 14; Laws 2010, LB852, § 1.

ARTICLE 9

VOTING AND ELECTION PROCEDURES

Section	
32-902.	Voting instructions; voting information; posting.
32-903.	Precincts; creation; requirements; election commissioner or county clerk; powers and duties.
32-914.02.	Registered voter; change of residence; entitled to vote; when.
32-915.	Provisional ballot; conditions; certification.
32-930.	Person; challenge as to age; examination.
32-933.	New or former resident; vote for President and Vice President; when eligible; procedure.
32-939.	Nebraska resident residing outside the state or country; registration to vote; application for ballot; when; elector and citizen outside the country; register to vote or voting; form.
32-939.01.	Repealed. Laws 2010, LB 951, § 9.
32-939.02.	Person residing outside the country; ballot for early voting; request; use of Federal Post Card Application or personal letter; special ballot; use of Federal Write-In Absentee Ballot; Secretary of State; duties.
32-941.	Early voting; written request for ballot; procedure.
32-942.	Registered voter anticipating absence on election day; right to vote; method; voter present in county; voting place; person registering to vote and requesting a ballot at same time; treatment of ballot.
32-947.	Ballot to vote early; delivery; procedure; identification envelope; instructions.
32-948.	Ballots to vote early; election commissioner or county clerk; duties; public inspection; when.

Section

- 32-949.01. Ballot for early voting; destroyed, spoiled, lost, or not received; cast provisional ballot or obtain replacement ballot; procedure.
- 32-953. Special election by mail; mailing of ballots; procedure.
- 32-956. Special election by mail; replacement ballot; how obtained.
- 32-957. Special election by mail; verification of signatures.
- 32-960. County with less than ten thousand inhabitants; elections conducted by mail; application for approval; contents.

32-902 Voting instructions; voting information; posting.

(1) The election commissioner or county clerk shall cause instructions for the guidance of registered voters in preparing their ballots to be printed in large, clear type on cards in English. He or she shall furnish at least five such cards to each polling place in each precinct at the same time and in the same manner as the printed ballots. The judges or clerks of election shall post such cards in each voting booth on the day of election. The card shall contain full instructions on preparing and casting ballots, including how to cast a write-in vote. The form and contents of the cards shall be approved by the Secretary of State.

(2) The election commissioner or county clerk shall cause voting information to be posted in each polling place on the day of election. The voting information shall include the following information as approved by the Secretary of State:

(a) Information regarding the date of the election and the hours during which polling places will be open;

(b) Instructions for voters who registered to vote pursuant to section 32-304 or by mail and first-time voters;

(c) General information on voting rights under applicable federal and state laws, including information on the right of an individual to cast a provisional ballot and instructions on how to contact the appropriate officials if these rights are alleged to have been violated; and

(d) General information on federal and state laws regarding prohibitions on acts of fraud and misrepresentation.

Source: Laws 1994, LB 76, § 245; Laws 2003, LB 358, § 17; Laws 2014, LB661, § 13.

Effective date July 18, 2014.

32-903 Precincts; creation; requirements; election commissioner or county clerk; powers and duties.

(1) The election commissioner or county clerk shall create precincts composed of compact and contiguous territory within the boundary lines of legislative districts. The precincts shall contain not less than seventy-five nor more than one thousand seven hundred fifty registered voters based on the number of voters voting at the last statewide general election, except that a precinct may contain less than seventy-five registered voters if in the judgment of the election commissioner or county clerk it is necessary to avoid creating an undue hardship on the registered voters in the precinct. The election commissioner or county clerk shall create precincts based on the number of votes cast at the immediately preceding presidential election or the current list of registered voters for the precinct. The election commissioner or county clerk shall revise and rearrange the precincts and increase or decrease them at such times as may be necessary to make the precincts contain as nearly as practicable not less than seventy-five nor more than one thousand seven hundred fifty regis-

tered voters voting at the last statewide general election. The election commissioner or county clerk shall, when necessary and possible, readjust precinct boundaries to coincide with the boundaries of cities, villages, and school districts which are divided into districts or wards for election purposes. The election commissioner or county clerk shall not make any precinct changes in precinct boundaries or divide precincts into two or more parts between the statewide primary and general elections unless he or she has been authorized to do so by the Secretary of State. If changes are authorized, the election commissioner or county clerk shall notify each state and local candidate affected by the change.

(2) The election commissioner or county clerk may alter and divide the existing precincts, except that when any city of the first class by ordinance divides any ward of such city into two or more voting districts or polling places, the election commissioner or county clerk shall establish precincts or polling places in conformity with such ordinance. No such alteration or division shall take place between the statewide primary and general elections except as provided in subsection (1) of this section.

(3) All precincts and polling places may be consolidated for the use of electronic voting systems into fewer and larger precincts as deemed necessary and advisable by the election commissioner or county clerk. Such precincts, consolidated for electronic voting systems only, may have as many registered voters therein as deemed advisable in the interest of economy and efficiency. At least one electronic voting device shall be provided for every five hundred registered voters voting in the consolidated precinct or polling place at the immediately preceding general election.

Source: Laws 1994, LB 76, § 246; Laws 1997, LB 764, § 80; Laws 2003, LB 358, § 18; Laws 2005, LB 401, § 3; Laws 2011, LB449, § 8.

32-914.02 Registered voter; change of residence; entitled to vote; when.

If a person who is registered to vote moves to a new residence within the same county and precinct and has continuously resided in such county and precinct since registering to vote but the voter registration register has not been changed to reflect the move, the person shall be entitled to vote at the polling place for the new residence. The election commissioner or county clerk shall designate whether such a person is entitled to a regular ballot upon completing a registration application to update his or her voter registration record at the polling place or a provisional ballot as provided in section 32-915. The election commissioner or county clerk shall implement the policy regarding designation of ballots uniformly throughout the county. The election commissioner or county clerk shall update the voter registration register to reflect the change of address.

Source: Laws 1997, LB 764, § 86; Laws 1999, LB 234, § 11; Laws 2003, LB 358, § 23; Laws 2005, LB 566, § 36; Laws 2010, LB325, § 4.

32-915 Provisional ballot; conditions; certification.

(1) A person whose name does not appear on the precinct list of registered voters at the polling place for the precinct in which he or she resides, whose name appears on the precinct list of registered voters at the polling place for the precinct in which he or she resides at a different residence address as described in section 32-914.02, or whose name appears with a notation that he

or she received a ballot for early voting may vote a provisional ballot if he or she:

- (a) Claims that he or she is a registered voter who has continuously resided in the county in which the precinct is located since registering to vote;
- (b) Is not entitled to vote under section 32-914.01 or 32-914.02;
- (c) Has not registered to vote or voted in any other county since registering to vote in the county in which the precinct is located;
- (d) Has appeared to vote at the polling place for the precinct to which the person would be assigned based on his or her residence address; and
- (e) Completes and signs a registration application before voting.

(2) A voter whose name appears on the precinct list of registered voters for the polling place with a notation that the voter is required to present identification pursuant to section 32-318.01 but fails to present identification may vote a provisional ballot if he or she completes and signs a registration application before voting.

(3) Each person voting by provisional ballot shall enclose his or her ballot in an envelope marked Provisional Ballot and shall, by signing the certification on the front of the envelope or a separate form attached to the envelope, certify to the following facts:

- (a) I am a registered voter in County;
- (b) My name or address did not correctly appear on the precinct list of registered voters;
- (c) I registered to vote on or about this date;
- (d) I registered to vote
 - . . . in person at the election office or a voter registration site,
 - . . . by mail,
 - . . . by using the Secretary of State’s web site,
 - . . . through the Department of Motor Vehicles,
 - . . . on a form through another state agency,
 - . . . in some other way;
- (e) I have not resided outside of this county or voted outside of this county since registering to vote in this county;
- (f) My current address is shown on the registration application completed as a requirement for voting by provisional ballot; and
- (g) I am eligible to vote in this election and I have not voted and will not vote in this election except by this ballot.

(4) The voter shall sign the certification under penalty of election falsification. The following statements shall be on the front of the envelope or on the attached form: By signing the front of this envelope or the attached form you are certifying to the information contained on this envelope or the attached form under penalty of election falsification. Election falsification is a Class IV felony and may be punished by up to five years imprisonment, a fine of up to ten thousand dollars, or both.

(5) If the person’s name does not appear on the precinct list of registered voters for the polling place and the judge or clerk of election determines that the person’s residence address is located in another precinct within the same

county, the judge or clerk of election shall direct the person to his or her correct polling place to vote.

Source: Laws 1994, LB 76, § 258; Laws 1997, LB 764, § 87; Laws 1999, LB 234, § 12; Laws 2003, LB 358, § 24; Laws 2005, LB 401, § 5; Laws 2005, LB 566, § 37; Laws 2010, LB325, § 5; Laws 2010, LB951, § 4; Laws 2014, LB661, § 14.
Effective date July 18, 2014.

32-930 Person; challenge as to age; examination.

If a person is challenged on the ground that he or she is not eighteen years of age or, during the years in which a statewide general election is held, that he or she will not be eighteen years of age by the first Tuesday after the first Monday in November of such year, the person shall answer the following question on the form provided by the election commissioner or county clerk: Will you be at least eighteen years of age on or before the first Tuesday following the first Monday in November of this year?

Source: Laws 1994, LB 76, § 273; Laws 2010, LB325, § 6.

32-933 New or former resident; vote for President and Vice President; when eligible; procedure.

(1) Any person listed in this subsection shall be eligible as a new resident to vote for President and Vice President of the United States at the statewide general election but for no other offices:

(a) Any citizen of the United States who is at least the constitutionally prescribed age of a voter and who comes into Nebraska after the voter registration period is closed pursuant to section 32-302 for the purpose of making Nebraska his or her place of residence; and

(b) Any registered voter who moves from one county to another county within Nebraska after the close of the voter registration period.

(2) Any registered voter who moves from Nebraska to another state or to the District of Columbia for the purpose of making such new location his or her place of residence after the close of the voter registration period for such location shall be eligible as a former resident to vote for President and Vice President of the United States at the statewide general election but for no other offices.

(3) Any person described in subsection (1) of this section shall cast his or her ballot in the office of the election commissioner or county clerk at any time between the close of the voter registration period and the close of the polls on election day. Such ballots shall be available after the close of the voter registration period. Ballots for former residents under subsection (2) of this section shall be available thirty days prior to the election. The ballots may be voted in the office of the election commissioner or county clerk at any time between thirty days prior to the election and the close of the polls on election day, or the ballots may be mailed to the office and counted if they arrive before the close of the polls on election day.

Source: Laws 1994, LB 76, § 276; Laws 1997, LB 764, § 90; Laws 2002, LB 935, § 8; Laws 2013, LB271, § 2.

32-939 Nebraska resident residing outside the state or country; registration to vote; application for ballot; when; elector and citizen outside the country; register to vote or voting; form.

(1) As provided in section 32-939.02, the persons listed in this subsection who are residents of Nebraska but who reside outside of Nebraska or the United States shall be allowed to simultaneously register to vote and make application for ballots for all elections in a calendar year through the use of the Federal Post Card Application or a personal letter which includes the same information as appears on the Federal Post Card Application:

(a) Members of the armed forces of the United States or the United States Merchant Marine, and their spouses and dependents residing with them who are absent from the state;

(b) Citizens temporarily residing outside of the United States and the District of Columbia; and

(c) Overseas citizens.

(2)(a) As provided in section 32-939.02, a person who is the age of an elector and a citizen of the United States residing outside the United States, who has never resided in the United States, who has not registered to vote in any other state of the United States, and who has a parent registered to vote within this state shall be eligible to register to vote and vote in one county in which either one of his or her parents is a registered voter.

(b) A person registering to vote or voting pursuant to this subsection shall sign and enclose with the registration application and with the ballot being voted a form provided by the election commissioner or county clerk substantially as follows: I am the age of an elector and a citizen of the United States residing outside the United States, I have never resided in the United States, I have not registered to vote in any other state of the United States, and I have a parent registered to vote in County, Nebraska. I hereby declare, under penalty of election falsification, a Class IV felony, that the statements above are true to the best of my knowledge.

THE PENALTY FOR ELECTION FALSIFICATION IS IMPRISONMENT FOR UP TO FIVE YEARS OR A FINE NOT TO EXCEED TEN THOUSAND DOLLARS, OR BOTH.

(Signature of Voter)

Source: Laws 1994, LB 76, § 282; Laws 2004, LB 727, § 1; Laws 2005, LB 98, § 11; Laws 2005, LB 401, § 7; Laws 2005, LB 566, § 41; Laws 2010, LB951, § 5; Laws 2011, LB499, § 4.

32-939.01 Repealed. Laws 2010, LB 951, § 9.

32-939.02 Person residing outside the country; ballot for early voting; request; use of Federal Post Card Application or personal letter; special ballot; use of Federal Write-In Absentee Ballot; Secretary of State; duties.

(1) Upon request for a ballot, a ballot for early voting shall be forwarded to each voter meeting the criteria of section 32-939 at least forty-five days prior to any election.

(2) An omission of required information, except the political party affiliation of the applicant, may prevent the processing of an application for and mailing of ballots. The request for any ballots and a registration application shall be

sent to the election commissioner or county clerk of the county of the applicant's residence. The request may be sent at any time in the same calendar year as the election, except that the request shall be received by the election commissioner or county clerk not later than the third Friday preceding an election to vote in that election. If an applicant fails to indicate his or her political party affiliation on the application, the applicant shall be registered as nonpartisan.

(3) A person described in section 32-939 may register to vote through the use of the Federal Post Card Application or a personal letter which includes the same information as appears on the Federal Post Card Application and may simultaneously make application for ballots for all elections in a calendar year. The person may indicate a preference for ballots and other election materials to be delivered via facsimile transmission or electronic mail by indicating such preference on the Federal Post Card Application. If the person indicates such a preference, the election commissioner or county clerk shall accommodate the voter's preference.

(4) If the ballot for early voting has not been printed in sufficient time to meet the request and special requirements of a voter meeting the criteria of section 32-939, the election commissioner or county clerk may issue a special ballot at least sixty days prior to an election to such a voter upon a written request by such voter requesting the special ballot. For purposes of this subsection, a special ballot means a ballot prescribed by the Secretary of State which contains the titles of all offices being contested at such election and permits the voter to vote by writing in the names of the specific candidates or the decision on any issue. The election commissioner or county clerk shall include with the special ballot a complete list of the nominated candidates and issues to be voted upon by the voter which are known at the time of the voter's request.

(5) Any person meeting the criteria in section 32-939 may cast a ballot by the use of the Federal Write-In Absentee Ballot. The Federal Write-In Absentee Ballot may be used for all elections. If a person casting a ballot using the Federal Write-In Absentee Ballot is not a registered voter, the information submitted in the Federal Write-In Absentee Ballot transmission envelope shall be treated as a voter registration application.

(6) Any person requesting a ballot under this section may receive and return the ballot and the oath prescribed in subsection (2) of section 32-947 using any method of transmission authorized by the Secretary of State.

(7) The Secretary of State shall develop a process for a person casting a ballot under this section to check the status of his or her ballot via the Internet or a toll-free telephone call.

Source: Laws 2010, LB951, § 6.

32-941 Early voting; written request for ballot; procedure.

Any registered voter permitted to vote early pursuant to section 32-938 may, not more than one hundred twenty days before any election and not later than 4 p.m. on the Wednesday preceding the election, request a ballot for the election to be mailed to a specific address. A registered voter shall request a ballot in writing to the election commissioner or county clerk in the county where the registered voter has established his or her home and shall indicate his or her residence address, the address to which the ballot is to be mailed if different, and his or her political party, telephone number if available, and

precinct if known. The registered voter may use the form published by the election commissioner or county clerk pursuant to section 32-808. The registered voter shall sign the request. A registered voter may use a facsimile machine for the submission of a request for a ballot. The election commissioner or county clerk shall include a registration application with the ballots if the person is not registered. Registration applications shall not be mailed after the third Friday preceding the election. If the person is not registered to vote, the registration application shall be returned not later than the closing of the polls on the day of the election. No ballot issued under this section shall be counted unless such registration application is properly completed and processed.

Source: Laws 1994, LB 76, § 284; Laws 1997, LB 764, § 93; Laws 2002, LB 935, § 9; Laws 2005, LB 98, § 13; Laws 2005, LB 566, § 43; Laws 2011, LB499, § 5.

32-942 Registered voter anticipating absence on election day; right to vote; method; voter present in county; voting place; person registering to vote and requesting a ballot at same time; treatment of ballot.

(1) Except as otherwise provided in subsection (2) of this section, a registered voter of this state who anticipates being absent from the county of his or her residence on the day of any election may appear in person before the election commissioner or county clerk not more than thirty days prior to the day of election and obtain his or her ballot. The registered voter shall vote in the office of the election commissioner or county clerk or shall return the ballot to the office not later than the closing of the polls on the day of the election. A registered voter who is present in the county on the day of the election and who chooses to vote on the day of the election shall vote at the polling place assigned to the precinct in which he or she resides unless he or she is returning a ballot for early voting or voting pursuant to section 32-943.

(2) If a person registers to vote and requests a ballot at the same time, he or she shall vote a ballot which is placed in an envelope with the voter's name and address and other necessary identifying information and kept securely for counting as provided in this subsection. This subsection does not extend the deadline for voter registration specified in section 32-302. A ballot cast pursuant to this subsection shall be rejected and shall not be counted if the acknowledgment of registration sent to the registrant pursuant to section 32-322 is returned as undeliverable for a reason other than clerical error within ten days after it is mailed, otherwise after such ten-day period, the ballot shall be counted.

Source: Laws 1994, LB 76, § 285; Laws 2002, LB 935, § 10; Laws 2005, LB 98, § 14; Laws 2005, LB 566, § 44; Laws 2011, LB499, § 6; Laws 2013, LB271, § 3; Laws 2014, LB565, § 1.
Effective date July 18, 2014.

32-947 Ballot to vote early; delivery; procedure; identification envelope; instructions.

(1) Upon receipt of an application or other request for a ballot to vote early, the election commissioner or county clerk shall determine whether the applicant is a registered voter and is entitled to vote as requested. If the election commissioner or county clerk determines that the applicant is a registered voter entitled to vote early and the application was received at or before 4 p.m.

on the Wednesday preceding the election, the election commissioner or county clerk shall deliver a ballot to the applicant in person or by mail, postage paid. The election commissioner or county clerk or any employee of the election commissioner or county clerk shall write or cause to be affixed his or her customary signature or initials on the ballot.

(2) An unsealed identification envelope shall be delivered with the ballot, and upon the back of the envelope shall be printed a form substantially as follows:

VOTER'S OATH

I, the undersigned voter, declare that the enclosed ballot or ballots contained no voting marks of any kind when I received them, and I caused the ballot or ballots to be marked, enclosed in the identification envelope, and sealed in such envelope.

To the best of my knowledge and belief, I declare under penalty of election falsification that:

- (a) I,, am a registered voter in County;
- (b) I reside in the State of Nebraska at;
- (c) I have voted the enclosed ballot and am returning it in compliance with Nebraska law; and
- (d) I have not voted and will not vote in this election except by this ballot.

ANY PERSON WHO SIGNS THIS FORM KNOWING THAT ANY OF THE INFORMATION IN THE FORM IS FALSE SHALL BE GUILTY OF ELECTION FALSIFICATION, A CLASS IV FELONY UNDER SECTION 32-1502 OF THE STATUTES OF NEBRASKA. THE PENALTY FOR ELECTION FALSIFICATION IS IMPRISONMENT FOR UP TO FIVE YEARS OR A FINE NOT TO EXCEED TEN THOUSAND DOLLARS, OR BOTH.

I also understand that failure to sign below will invalidate my ballot.

Signature

The primary election ballot, if any, within this envelope is a primary election ballot of the party.

Ballots contained in this envelope are for the (primary, general, or special) election to be held on the day of 20

(3) If the ballot and identification envelope will be returned by mail or by someone other than the voter, the election commissioner or county clerk shall include with the ballot an identification envelope upon the face of which shall be printed the official title and post office address of the election commissioner or county clerk.

(4) The election commissioner or county clerk shall also enclose with the ballot materials:

(a) A registration application, if the election commissioner or county clerk has determined that the applicant is not a registered voter pursuant to section 32-945, with instructions that failure to return the completed and signed application indicating the residence address as it appears on the voter's request for a ballot to the election commissioner or county clerk by the close of the polls on election day will result in the ballot not being counted;

(b) A registration application and the oath pursuant to section 32-946, if the voter is without a residence address, with instructions that the residence address of the voter shall be deemed that of the office of the election commis-

sioner or county clerk of the county of the voter's prior residence and that failure to return the completed and signed application and oath to the election commissioner or county clerk by the close of the polls on election day will result in the ballot not being counted; or

(c) Written instructions directing the voter to submit a copy of an identification document pursuant to section 32-318.01 if the voter is required to present identification under such section and advising the voter that failure to submit identification to the election commissioner or county clerk by the close of the polls on election day will result in the ballot not being counted.

(5) The election commissioner or county clerk may enclose with the ballot materials a separate return envelope for the voter's use in returning his or her identification envelope containing the voted ballot, registration application, and other materials that may be required.

Source: Laws 1994, LB 76, § 290; Laws 1995, LB 514, § 5; Laws 1999, LB 571, § 8; Laws 1999, LB 802, § 16; Laws 2002, LB 1054, § 22; Laws 2003, LB 359, § 7; Laws 2005, LB 98, § 19; Laws 2005, LB 566, § 48; Laws 2008, LB838, § 2; Laws 2011, LB449, § 9.

Cross References

Forgery or false placement of initials or signatures on ballot pursuant to section, penalty, see section 32-1516.

32-948 Ballots to vote early; election commissioner or county clerk; duties; public inspection; when.

(1) Upon receipt of an application or request for a ballot to vote early, the election commissioner or county clerk shall enter in the record of early voters the applicant's name, residence address, precinct, and subdivision of the precinct, if any, the mailing address to which the ballots are to be sent if different from the residence address, and the date on which the application was received. The election commissioner or county clerk shall also record other information in the record of early voters as may be necessary to aid in the processing or verification of ballots, including such information as the date ballots and related materials were sent to the voter or picked up in person, the date on which the ballots were voted in person or returned or received by mail, or information as to the reason why a ballot could not be issued or sent.

(2) The record of early voters and applications for such ballots shall be open to public inspection prior to the election. The election commissioner or county clerk shall make an entry in the voter's registration record indicating that the voter has voted early in the election.

Source: Laws 1994, LB 76, § 291; Laws 2005, LB 98, § 20; Laws 2005, LB 566, § 49; Laws 2011, LB449, § 10.

32-949.01 Ballot for early voting; destroyed, spoiled, lost, or not received; cast provisional ballot or obtain replacement ballot; procedure.

If a ballot for early voting is destroyed, spoiled, lost, or not received by the registered voter, the voter may cast a provisional ballot pursuant to section 32-915 at the voter's polling place on election day or may obtain a replacement ballot from the election commissioner or county clerk by signing a statement verified on oath or affirmation on a form prescribed by the Secretary of State that the original ballot for early voting was destroyed, spoiled, lost, or not

received and delivering the statement to the election commissioner or county clerk. To receive a replacement ballot in person, the voter shall return the statement to the office of the election commissioner or county clerk by 8 p.m. on the day of the election. To receive a replacement ballot by mail, the voter shall return the statement to such office prior to the close of business on the fourth business day before the election. If the election commissioner or county clerk receives a statement meeting the requirements of this section, he or she shall deliver a replacement ballot to the voter if the voter is present in the office or shall mail a replacement ballot to the voter at the address shown on the statement. The election commissioner or county clerk shall keep a record of all replacement ballots issued under this section.

Source: Laws 2005, LB 401, § 8; Laws 2014, LB946, § 16.
Operative date January 1, 2015.

32-953 Special election by mail; mailing of ballots; procedure.

(1) Except as otherwise provided in subsection (2) of this section, the election commissioner or county clerk shall mail the official ballot to all registered voters of the political subdivision at the addresses appearing on the voter registration register on the same day. The ballots shall be mailed by nonforwardable first-class mail not sooner than the twentieth day before the date set for the election and not later than the tenth day before the date set for the election. The election commissioner or county clerk shall include with the ballot an unsealed identification envelope meeting the requirements of subsection (2) of section 32-947 and instructions sufficient to describe the voting process.

(2) The election commissioner or county clerk may choose not to mail a ballot to all registered voters who have been sent a notice pursuant to section 32-329 and failed to respond to the notice. If the election commissioner or county clerk chooses not to mail a ballot to such voters, he or she shall mail a notice to all such registered voters explaining how to obtain a ballot and stating the applicable deadlines.

Source: Laws 1996, LB 964, § 6; Laws 2008, LB838, § 3; Laws 2014, LB946, § 17.
Operative date January 1, 2015.

32-956 Special election by mail; replacement ballot; how obtained.

If a ballot is destroyed, spoiled, lost, or not received by the registered voter, the voter may obtain a replacement ballot from the election commissioner or county clerk by signing a statement verified on oath or affirmation on a form prescribed by the Secretary of State that the ballot was destroyed, spoiled, lost, or not received and delivering the statement to the election commissioner or county clerk by 5 p.m. on the date set for the election. If the voter mails the statement, the election commissioner or county clerk shall not deliver a replacement ballot to the voter unless the statement is received prior to the close of business on the fourth business day before the date set for the election. If the election commissioner or county clerk receives a statement meeting the requirements of this section, he or she shall deliver a replacement ballot to the voter if the voter is present in the office or shall mail a replacement ballot to the voter at the address shown on the statement. The election commissioner or

county clerk shall keep a record of all replacement ballots issued under this section.

Source: Laws 1996, LB 964, § 9; Laws 2002, LB 935, § 15; Laws 2014, LB946, § 18.

Operative date January 1, 2015.

32-957 Special election by mail; verification of signatures.

An official ballot under section 32-953 shall be counted only if it is returned in the identification envelope, the envelope is signed by the voter to whom it was issued, and the signature is verified by the election commissioner or county clerk. The election commissioner or county clerk shall verify the signature on each identification envelope received in his or her office with the signature appearing on the voter registration records. If the election commissioner or county clerk is unable to verify a signature, the election commissioner or county clerk shall contact the voter within two days after determining that he or she is unable to verify the signature to ascertain whether the voter cast a ballot. The election commissioner or county clerk may request that the registered voter sign and submit a current signature card pursuant to section 32-318. The election commissioner or county clerk may begin verifying the signatures as the envelopes are received in his or her office. If the election commissioner or county clerk determines that a voter has voted more than once, no ballot cast by that voter in that election shall be counted. The election commissioner or county clerk shall make public any record or list of registered voters who have returned their ballots.

Source: Laws 1996, LB 964, § 10; Laws 2008, LB838, § 5; Laws 2014, LB946, § 19.

Operative date January 1, 2015.

32-960 County with less than ten thousand inhabitants; elections conducted by mail; application for approval; contents.

In any county with less than ten thousand inhabitants, the county clerk may apply to the Secretary of State to mail ballots for all elections held after approval of the application to registered voters of any or all of the precincts in the county in lieu of establishing polling places for such precincts. The application shall include a written plan for the conduct of the election, including a timetable for the conduct of the election and provisions for the notice of election to be published and for the application for ballots for early voting notwithstanding other statutory provisions regarding the content and publication of a notice of election or the application for ballots for early voting. If the Secretary of State approves such application for one or more precincts in the county, the county clerk shall follow the applicable procedures in sections 32-953 to 32-959 for conducting elections by mail, except that the deadline for receipt of the ballots shall be 8 p.m. on the day of the election.

Source: Laws 2005, LB 401, § 9; Laws 2009, LB501, § 3.

ARTICLE 10

COUNTING AND CANVASSING BALLOTS

Section

32-1002. Provisional ballots; when counted.

32-1005. Write-in vote; when valid.

Section

- 32-1007. Ballots; write-in votes; improper name; rejected.
32-1008. Write-in votes; totals; how reported.
32-1031. County canvassing board; canvass of votes; procedure.
32-1044. Repealed. Laws 2012, LB 878, § 7.
32-1045. Repealed. Laws 2012, LB 878, § 7.

32-1002 Provisional ballots; when counted.

(1) As the ballots are removed from the ballot box pursuant to sections 32-1012 to 32-1018, the receiving board shall separate the envelopes containing the provisional ballots from the rest of the ballots and deliver them to the election commissioner or county clerk.

(2) Upon receipt of a provisional ballot, the election commissioner or county clerk shall verify that the certificate on the front of the envelope or the form attached to the envelope is in proper form and that the certification has been signed by the voter.

(3) The election commissioner or county clerk shall also (a) verify that such person has not voted anywhere else in the county or been issued a ballot for early voting, (b) investigate whether any credible evidence exists that the person was properly registered to vote in the county before the deadline for registration for the election, (c) investigate whether any information has been received pursuant to section 32-308, 32-309, 32-310, or 32-324 that the person has resided, registered, or voted in any other county or state since registering to vote in the county, and (d) upon determining that credible evidence exists that the person was properly registered to vote in the county, make the appropriate changes to the voter registration register by entering the information contained in the registration application completed by the voter at the time of voting a provisional ballot.

(4) A provisional ballot cast by a voter pursuant to section 32-915 shall be counted if:

(a) Credible evidence exists that the voter was properly registered in the county before the deadline for registration for the election;

(b) The voter has resided in the county continuously since registering to vote in the county;

(c) The voter has not voted anywhere else in the county or has not otherwise voted early using a ballot for early voting;

(d) The voter has completed a registration application prior to voting as prescribed in subsection (6) of this section and:

(i) The residence address provided on the registration application completed pursuant to subdivision (1)(e) of section 32-915 is located within the precinct in which the person voted; and

(ii) If the voter is voting in a primary election, the party affiliation provided on the registration application completed prior to voting the provisional ballot is the same party affiliation that appears on the voter's voter registration record based on his or her previous registration application; and

(e) The certification on the front of the envelope or form attached to the envelope is in the proper form and signed by the voter.

(5) A provisional ballot cast by a voter pursuant to section 32-915 shall not be counted if:

(a) The voter was not properly registered in the county before the deadline for registration for the election;

(b) Information has been received pursuant to section 32-308, 32-309, 32-310, or 32-324 that the voter has resided, registered, or voted in any other county or state since registering to vote in the county in which he or she cast the provisional ballot;

(c) Credible evidence exists that the voter has voted elsewhere or has otherwise voted early;

(d) The voter failed to complete and sign a registration application pursuant to subsection (6) of this section and subdivision (1)(e) of section 32-915;

(e) The residence address provided on the registration application completed pursuant to subdivision (1)(e) of section 32-915 is in a different county or in a different precinct than the county or precinct in which the voter voted;

(f) If the voter is voting in a primary election, the party affiliation on the registration application completed prior to voting the provisional ballot is different than the party affiliation that appears on the voter's voter registration record based on his or her previous registration application; or

(g) The voter failed to complete and sign the certification on the envelope or form attached to the envelope pursuant to subsection (3) of section 32-915.

(6) An error or omission of information on the registration application or the certification required under section 32-915 shall not result in the provisional ballot not being counted if:

(a)(i) The errant or omitted information is contained elsewhere on the registration application or certification; or

(ii) The information is not necessary to determine the eligibility of the voter to cast a ballot; and

(b) Both the registration application and the certification are signed by the voter.

(7) Upon determining that the voter's provisional ballot is eligible to be counted, the election commissioner or county clerk shall remove the ballot from the envelope without exposing the marks on the ballot and shall place the ballot with the ballots to be counted by the county canvassing board.

(8) The election commissioner or county clerk shall notify the system administrator of the system created pursuant to section 32-202 as to whether the ballot was counted and, if not, the reason the ballot was not counted.

(9) The verification and investigation shall be completed within seven days after the election.

Source: Laws 1994, LB 76, § 296; Laws 1999, LB 234, § 13; Laws 2002, LB 1054, § 23; Laws 2003, LB 358, § 30; Laws 2005, LB 566, § 53; Laws 2007, LB646, § 10; Laws 2010, LB325, § 7; Laws 2014, LB661, § 15.

Effective date July 18, 2014.

32-1005 Write-in vote; when valid.

If the last name or a reasonably close spelling of the last name of a person engaged in or pursuing a write-in campaign pursuant to section 32-615 or 32-633 is written or printed on a line provided for that purpose and the square or oval opposite such line has been marked with a cross or other clear,

intelligible mark, the vote shall be valid and the ballot shall be counted. Except as provided in section 32-1007, a write-in vote for a person who is not engaged in or pursuing a write-in campaign pursuant to section 32-615 or 32-633 shall not be counted.

Source: Laws 1994, LB 76, § 299; Laws 1999, LB 571, § 9; Laws 2003, LB 358, § 31; Laws 2013, LB349, § 4.

32-1007 Ballots; write-in votes; improper name; rejected.

For members of a village board of trustees, township officers, or members of the school board of Class I or II school districts, if a first or generally recognized name and last name of a person is filled in on a line provided for that purpose and the square or oval opposite such line has been marked with a cross or other clear, intelligible mark, the vote shall be valid and the ballot shall be counted. If only the last name of a person is in the write-in space on the ballot and there is more than one person in the county having the same last name, the counting board shall reject the ballot for that office unless the last name is reasonably close to the proper spelling of the last name of a candidate engaged in or pursuing a write-in campaign pursuant to section 32-615. The counting board shall make the following notation on the rejected ballot: Rejected for the office of, no first or generally recognized name.

Source: Laws 1994, LB 76, § 301; Laws 1999, LB 571, § 10; Laws 2001, LB 252, § 3; Laws 2003, LB 358, § 33; Laws 2013, LB349, § 5.

32-1008 Write-in votes; totals; how reported.

If the write-in vote in the county for any particular office referred to in section 32-1007 or for a person pursuing a write-in campaign pursuant to section 32-615 or 32-633 totals less than five percent of the vote for such office in the county and the election commissioner or county clerk believes that such vote will not impact the outcome of the election, the number of write-in votes for that office may be counted and listed together as one total.

Source: Laws 1994, LB 76, § 302; Laws 1999, LB 571, § 11; Laws 2013, LB349, § 6.

32-1031 County canvassing board; canvass of votes; procedure.

(1) After counting the ballots under section 32-1027, the county canvassing board shall proceed with the official canvass of votes cast on election day. If in the process of canvassing the votes for any candidate or measure in any precinct the election commissioner or county clerk or the canvassing board determines that there is an obvious error in the certification of the votes, the error shall be corrected. The county canvassing board may open the ballots-cast container and recount the ballots for any candidate or any measure which appears to be in error. If the county canvassing board finds and corrects any such error, it shall make the correction entry in the precinct sign-in register, the precinct list of registered voters, and the official summary or summaries of votes cast and shall attach a letter of explanation to each book where the correction was made. The letter shall be signed by all members of the county canvassing board.

(2) When it has been determined that the returns in all precincts are correct, the county canvassing board shall provide a record of the results to the election commissioner or county clerk either in a ledger or by using a computer

printout. The election commissioner or county clerk shall preserve the record of the results for the period of time specified by the State Records Administrator pursuant to the Records Management Act, and then it may be transferred to the State Archives of the Nebraska State Historical Society for permanent preservation.

(3) Any recesses or adjournments of the county canvassing board shall be to a fixed time and publicly announced. When a recess is called, all ballots that have not been counted and all other supplies shall be placed in a fireproof safe or other suitable location which is locked until such board reconvenes.

Source: Laws 1994, LB 76, § 325; Laws 2005, LB 98, § 28; Laws 2012, LB1035, § 3.

Cross References

Records Management Act, see section 84-1220.

32-1044 Repealed. Laws 2012, LB 878, § 7.

32-1045 Repealed. Laws 2012, LB 878, § 7.

ARTICLE 12 ELECTION COSTS

Section

32-1202. Expenses chargeable to political subdivisions.

32-1203. Political subdivisions; election expenses; duties; determination of charge.

32-1202 Expenses chargeable to political subdivisions.

The cost of publication and posting of notices and ballots, the cost of precinct registration lists, the compensation of temporary employees, inspectors, judges and clerks of election, and members of counting boards, the overtime costs of all permanent employees of the election commissioner or county clerk relating to elections, the cost of renting, heating, lighting, and equipping polling places including placing and removing ballot boxes and other fixtures and equipment, the cost of printing and delivering ballots and sample ballots, the cost of postage, cards of instructions for voters, maps, voter books for the polling place, other election supplies, and electronic media, the expense of programming and operation of voting systems, and all other expenses of conducting statewide primary and general elections not listed in section 32-1201 shall be chargeable to the political subdivisions in and for which such elections are held.

Source: Laws 1994, LB 76, § 367; Laws 2003, LB 358, § 42; Laws 2014, LB946, § 20.

Operative date January 1, 2015.

32-1203 Political subdivisions; election expenses; duties; determination of charge.

(1) Each city, village, school district, public power district, sanitary and improvement district, metropolitan utilities district, fire district, natural resources district, community college area, learning community coordinating council, educational service unit, hospital district, reclamation district, and library board shall pay for the costs of nominating and electing its officers as provided in subsection (2), (3), or (4) of this section. If a special issue is placed

on the ballot at the time of the statewide primary or general election by any political subdivision, the political subdivision shall pay for the costs of the election as provided in subsection (2), (3), or (4) of this section. The districts listed in this subsection shall furnish to the Secretary of State and election commissioner or county clerk any maps and additional information which the election commissioner or county clerk may require in the proper performance of their duties in the conduct of elections and certification of results.

(2) The charge for each primary and general election shall be determined by (a) ascertaining the total cost of all chargeable costs as described in section 32-1202, (b) dividing the total cost by the number of precincts participating in the election to fix the cost per precinct, (c) prorating the cost per precinct by the inked ballot inch in each precinct for each political subdivision, and (d) totaling the cost for each precinct for each political subdivision, except that the minimum charge for each primary and general election for each political subdivision shall be fifty dollars.

(3) In lieu of the charge determined pursuant to subsection (2) of this section, the election commissioner or county clerk may charge public power districts the fee for election costs set by section 70-610.

(4) In lieu of the charge determined pursuant to subsection (2) of this section, the election commissioner or county clerk may bill school districts directly for the costs of an election held under section 10-703.01.

Source: Laws 1994, LB 76, § 368; Laws 1997, LB 764, § 104; Laws 2008, LB1067, § 1; Laws 2011, LB449, § 11.

ARTICLE 13

RECALL

Section

32-1303. Recall petition; signers and circulators; requirements; notification.

32-1306. Filing clerk; notification required; recall election; when held; failure to order; effect.

32-1303 Recall petition; signers and circulators; requirements; notification.

(1) A petition demanding that the question of removing an elected official or member of a governing body listed in section 32-1302 be submitted to the registered voters shall be signed by registered voters equal in number to at least thirty-five percent of the total vote cast for that office in the last general election, except that (a) for an office for which more than one candidate is chosen, the petition shall be signed by registered voters equal in number to at least thirty-five percent of the number of votes cast for the person receiving the most votes for such office in the last general election, (b) for a member of a board of a Class I school district, the petition shall be signed by registered voters of the school district equal in number to at least twenty-five percent of the total number of registered voters residing in the district on the date that the recall petitions are first checked out from the filing clerk by the principal circulator, and (c) for a member of a governing body of a village, the petition shall be signed by registered voters equal in number to at least forty-five percent of the total vote cast for the person receiving the most votes for that office in the last general election. The signatures shall be affixed to petition papers and shall be considered part of the petition.

(2) Petition circulators shall conform to the requirements of sections 32-629 and 32-630.

(3) The petition papers shall be procured from the filing clerk. Prior to the issuance of such petition papers, an affidavit shall be signed and filed with the filing clerk by at least one registered voter. Such voter or voters shall be deemed to be the principal circulator or circulators of the recall petition. The affidavit shall state the name and office of the official sought to be removed, shall include in typewritten form in concise language of sixty words or less the reason or reasons for which recall is sought, and shall request that the filing clerk issue initial petition papers to the principal circulator for circulation. The filing clerk shall notify the official sought to be removed by any method specified in section 25-505.01 or, if notification cannot be made with reasonable diligence by any of the methods specified in section 25-505.01, by leaving a copy of the affidavit at the official's usual place of residence and mailing a copy by first-class mail to the official's last-known address. If the official chooses, he or she may submit a defense statement in typewritten form in concise language of sixty words or less for inclusion on the petition. Any such defense statement shall be submitted to the filing clerk within twenty days after the official receives the copy of the affidavit. The principal circulator or circulators shall gather the petition papers within twenty days after the receipt of the official's defense statement. The filing clerk shall notify the principal circulator or circulators that the necessary signatures must be gathered within thirty days from the date of issuing the petitions.

(4) The filing clerk, upon issuing the initial petition papers or any subsequent petition papers, shall enter in a record, to be kept in his or her office, the name of the principal circulator or circulators to whom the papers were issued, the date of issuance, and the number of papers issued. The filing clerk shall certify on the papers the name of the principal circulator or circulators to whom the papers were issued and the date they were issued. No petition paper shall be accepted as part of the petition unless it bears such certificate. The principal circulator or circulators who check out petitions from the filing clerk may distribute such petitions to persons who may act as circulators of such petitions.

(5) Petition signers shall conform to the requirements of sections 32-629 and 32-630. Each signer of a recall petition shall be a registered voter and qualified by his or her place of residence to vote for the office in question.

Source: Laws 1994, LB 76, § 376; Laws 1997, LB 764, § 106; Laws 2002, LB 1054, § 25; Laws 2003, LB 444, § 10; Laws 2004, LB 820, § 1; Laws 2008, LB39, § 4; Laws 2011, LB449, § 12.

32-1306 Filing clerk; notification required; recall election; when held; failure to order; effect.

(1) If the recall petition is found to be sufficient, the filing clerk shall notify the official whose removal is sought and the governing body of the affected political subdivision that sufficient signatures have been gathered. Notification of the official sought to be removed may be by any method specified in section 25-505.01 or, if notification cannot be made with reasonable diligence by any of the methods specified in section 25-505.01, by leaving such notice at the official's usual place of residence and mailing a copy by first-class mail to the official's last-known address.

(2) The governing body of the political subdivision shall order an election to be held not less than thirty nor more than seventy-five days after the notification of the official whose removal is sought under subsection (1) of this section, except that if any other election is to be held in that political subdivision within ninety days after such notification, the governing body of the political subdivision shall provide for the holding of the recall election on the same day. All resignations shall be tendered as provided in section 32-562. If the official whose removal is sought resigns before the recall election is held, the governing body may cancel the recall election if the governing body notifies the election commissioner or county clerk of the cancellation at least sixteen days prior to the election, otherwise the recall election shall be held as scheduled.

(3) If the governing body of the political subdivision fails or refuses to order a recall election within the time required, the election may be ordered by the district court having jurisdiction over a county in which the elected official serves. If a filing clerk is subject to a recall election, the Secretary of State shall conduct the recall election.

Source: Laws 1994, LB 76, § 379; Laws 2004, LB 820, § 2; Laws 2008, LB312, § 4; Laws 2011, LB449, § 13.

ARTICLE 16

CAMPAIGN FINANCE LIMITATIONS

Section

- 32-1601. Repealed. Laws 2013, LB 79, § 41.
- 32-1602. Repealed. Laws 2013, LB 79, § 41.
- 32-1603. Repealed. Laws 2013, LB 79, § 41.
- 32-1604. Repealed. Laws 2013, LB 79, § 41.
- 32-1604.01. Repealed. Laws 2013, LB 79, § 41.
- 32-1605. Repealed. Laws 2013, LB 79, § 41.
- 32-1606. Repealed. Laws 2013, LB 79, § 41.
- 32-1606.01. Repealed. Laws 2013, LB 79, § 41.
- 32-1607. Repealed. Laws 2013, LB 79, § 41.
- 32-1608. Repealed. Laws 2013, LB 79, § 41.
- 32-1608.01. Repealed. Laws 2013, LB 79, § 41.
- 32-1608.02. Repealed. Laws 2013, LB 79, § 41.
- 32-1608.03. Repealed. Laws 2013, LB 79, § 41.
- 32-1609. Repealed. Laws 2013, LB 79, § 41.
- 32-1610. Repealed. Laws 2013, LB 79, § 41.
- 32-1611. Repealed. Laws 2013, LB 79, § 41.
- 32-1612. Repealed. Laws 2013, LB 79, § 41.
- 32-1613. Repealed. Laws 2013, LB 79, § 41.

32-1601 Repealed. Laws 2013, LB 79, § 41.

32-1602 Repealed. Laws 2013, LB 79, § 41.

32-1603 Repealed. Laws 2013, LB 79, § 41.

32-1604 Repealed. Laws 2013, LB 79, § 41.

32-1604.01 Repealed. Laws 2013, LB 79, § 41.

32-1605 Repealed. Laws 2013, LB 79, § 41.

32-1606 Repealed. Laws 2013, LB 79, § 41.

32-1606.01 Repealed. Laws 2013, LB 79, § 41.

32-1607 Repealed. Laws 2013, LB 79, § 41.

32-1608 Repealed. Laws 2013, LB 79, § 41.

32-1608.01 Repealed. Laws 2013, LB 79, § 41.

32-1608.02 Repealed. Laws 2013, LB 79, § 41.

32-1608.03 Repealed. Laws 2013, LB 79, § 41.

32-1609 Repealed. Laws 2013, LB 79, § 41.

32-1610 Repealed. Laws 2013, LB 79, § 41.

32-1611 Repealed. Laws 2013, LB 79, § 41.

32-1612 Repealed. Laws 2013, LB 79, § 41.

32-1613 Repealed. Laws 2013, LB 79, § 41.

ARTICLE 17

VOTE NEBRASKA INITIATIVE

Section

32-1701. Repealed. Laws 2009, LB 154, § 27.

32-1701 Repealed. Laws 2009, LB 154, § 27.

CHAPTER 33

FEES AND SALARIES

Section

- 33-101. Secretary of State; fees.
- 33-102. Notary public; fees; Administration Cash Fund; created; investment.
- 33-106. Clerk of the district court; fees; enumerated.
- 33-107.03. Court automation fee.
- 33-109. Register of deeds; county clerk; fees.
- 33-112. Repealed. Laws 2012, LB 14, § 10.
- 33-113. Repealed. Laws 2012, LB 897, § 3.
- 33-117. Sheriffs; fees; disposition; mileage; report to county board.
- 33-138. Juror; compensation; mileage.
- 33-157. Conviction for misdemeanor or felony; affirmation on appeal; additional assessment of cost; use; Nebraska Crime Victim Fund; created; use.

33-101 Secretary of State; fees.

There shall be paid to the Secretary of State the following fees:

- (1) For certificate or exemplification with seal, ten dollars;
- (2) For copies of records, for each page, a fee of one dollar;
- (3) For accessing records by electronic means:
 - (a) For batch requests of business entity information, fifteen dollars for up to one thousand business entities accessed and an additional fifteen dollars for each additional one thousand business entities accessed over one thousand;
 - (b) For information in the Secretary of State's Uniform Commercial Code Division data base, including records filed pursuant to the Uniform Commercial Code, Chapter 52, article 2, 5, 7, 9, 10, 11, 12, or 14, Chapter 54, article 2, or the Uniform State Tax Lien Registration and Enforcement Act, for batch requests searched by debtor location, fifteen dollars for up to one thousand records accessed and an additional fifteen dollars for each additional one thousand records accessed over one thousand;
 - (c) For an electronically transmitted certificate indicating whether a business is properly registered with the Secretary of State and authorized to do business in the state, six dollars and fifty cents;
 - (d) For the entire contents of the data base regarding corporations and the Uniform Commercial Code, but excluding electronic images, three hundred dollars weekly subscription rate, one thousand dollars monthly subscription rate for a twice-monthly service, and eight hundred dollars monthly subscription rate;
 - (e) For images of records accessed over the Internet or by other electronic means other than facsimile machine, forty-five cents for each page or image of a page, not to exceed two thousand dollars per request for batch requests; and
 - (f) For the entire contents of the image data base regarding corporations and the Uniform Commercial Code, eight hundred dollars monthly subscription rate;
- (4) For recording articles of association or incorporation, amendments, revised or restated articles, changes of registered office or registered agent,

increase or decrease of capital stock, merger or consolidation, statement of intent to dissolve, and consent to dissolution, revocation of dissolution, articles of dissolution, domestic or foreign, profit or nonprofit, five dollars per page;

(5) For taking acknowledgment, ten dollars;

(6) For administering oath, ten dollars;

(7) For filings by for-profit corporations and associations required or permitted by law to file articles of incorporation or organization with the Secretary of State, the fees provided in section 21-205 unless otherwise specifically provided by law; and

(8) For filings by nonprofit corporations and associations required or permitted by law to file articles of incorporation or organization with the Secretary of State, the fees provided in section 21-1905 unless otherwise specifically provided by law.

All fees collected pursuant to subdivision (3) of this section 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 Secretary of State.

Source: Laws 1877, § 5, p. 196; Laws 1897, c. 72, § 1, p. 331; Laws 1907, c. 139, § 1, p. 445; Laws 1911, c. 128, § 1, p. 435; R.S.1913, § 2423; Laws 1921, c. 104, § 1, p. 374; C.S.1922, § 2364; C.S. 1929, § 33-103; R.S.1943, § 33-101; Laws 1947, c. 118, § 1, p. 349; Laws 1955, c. 63, § 12, p. 207; Laws 1961, c. 156, § 1, p. 477; Laws 1965, c. 183, § 1, p. 569; Laws 1969, c. 268, § 1, p. 1030; Laws 1975, LB 95, § 6; Laws 1982, LB 928, § 27; Laws 1994, LB 1004, § 2; Laws 1995, LB 109, § 214; Laws 1996, LB 681, § 194; Laws 1998, LB 924, § 18; Laws 2000, LB 929, § 23; Laws 2003, LB 524, § 20; Laws 2014, LB278, § 1; Laws 2014, LB749, § 279.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB278, section 1, with LB749, section 279, to reflect all amendments.

Note: Changes made by LB278 became effective July 18, 2014. Changes made by LB749 became operative January 1, 2016.

Cross References

Uniform State Tax Lien Registration and Enforcement Act, see section 77-3901.

33-102 Notary public; fees; Administration Cash Fund; created; investment.

The Secretary of State shall be entitled to, for receiving, affixing the great seal to, and forwarding the commission of a notary public, the sum of fifteen dollars and the additional sum of fifteen dollars for filing and approving the bond of a notary public. The Secretary of State shall be entitled to the sum of fifteen dollars for receiving a renewal application pursuant to section 64-104.

The fees received by the Secretary of State pursuant to this section shall be remitted to the State Treasurer for credit seventy-five percent to the General Fund and twenty-five percent to the Administration Cash Fund which is hereby created. Transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Administration 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 1869, § 13, p. 25; R.S.1913, § 2424; Laws 1921, c. 99, § 1, p. 364; C.S.1922, § 2365; C.S.1929, § 33-104; R.S.1943, § 33-102; Laws 1945, c. 145, § 11, p. 494; Laws 1949, c. 93, § 4,

p. 246; Laws 1963, c. 184, § 1, p. 625; Laws 1967, c. 396, § 1, p. 1241; Laws 1982, LB 928, § 28; Laws 1994, LB 1004, § 3; Laws 1995, LB 7, § 30; Laws 2009, First Spec. Sess., LB3, § 17.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

33-106 Clerk of the district court; fees; enumerated.

(1) In addition to the judges retirement fund fee provided in section 24-703 and the fee provided in section 33-106.03 and except as otherwise provided by law, the fees of the clerk of the district court shall be as follows: There shall be a docket fee of forty-two dollars for each civil and criminal case except (a) a case commenced by filing a transcript of judgment as hereinafter provided, (b) proceedings under the Nebraska Workers' Compensation Act and the Employment Security Law, when provision is made for the fees that may be charged, and (c) a criminal case appealed to the district court from any court inferior thereto as hereinafter provided. There shall be a docket fee of twenty-five dollars for each case commenced by filing a transcript of judgment from another court in this state for the purpose of obtaining a lien. There shall be a docket fee of twenty-seven dollars for each criminal case appealed to the district court from any court inferior thereto.

(2) In all cases, other than those appealed from an inferior court or original filings which are within jurisdictional limits of an inferior court and when a jury is demanded in district court, the docket fee shall cover all fees of the clerk, except that the clerk shall be paid for each copy or transcript ordered of any pleading, record, or other paper and that the clerk shall be entitled to a fee of fifteen dollars for making a complete record of a case.

(3) The fee for making a complete record of a case shall be taxed as a part of the costs of the case. In all civil cases, except habeas corpus cases in which a poverty affidavit is filed and approved by the court, and for all other services, the docket fee or other fee shall be paid by the party filing the case or requesting the service at the time the case is filed or the service requested.

(4) For any other service which may be rendered or performed by the clerk but which is not required in the discharge of his or her official duties, the fee shall be the same as that of a notary public but in no case less than one dollar.

Source: R.S.1866, c. 19, § 3, p. 157; Laws 1877, § 5, p. 217; Laws 1899, c. 31, § 1, p. 164; Laws 1905, c. 68, § 1, p. 363; Laws 1909, c. 55, § 1, p. 280; R.S.1913, §§ 2421, 2429; Laws 1917, c. 40, § 1, p. 119; Laws 1919, c. 82, § 1, p. 204; C.S.1922, §§ 2362, 2369; Laws 1925, c. 81, § 1, p. 255; Laws 1927, c. 118, § 1, p. 328; C.S.1929, §§ 33-101, 33-108; R.S.1943, § 33-106; Laws 1947, c. 120, § 1, p. 353; Laws 1949, c. 94, § 1(1), p. 252; Laws 1951, c. 106, § 2, p. 512; Laws 1959, c. 140, § 4, p. 546; Laws 1961, c. 157, § 1, p. 480; Laws 1965, c. 125, § 3, p. 463; Laws 1977, LB 126, § 2; Laws 1981, LB 84, § 1; Laws 1983, LB 617, § 4; Laws 1986, LB 811, § 14; Laws 1986, LB 333, § 8; Laws 2003, LB 760, § 13; Laws 2005, LB 348, § 7; Laws 2011, LB17, § 5.

Cross References

Employment Security Law, see section 48-601.

Nebraska Workers' Compensation Act, see section 48-1,110.

33-107.03 Court automation fee.

In addition to all other court costs assessed according to law, a court automation fee of eight dollars shall be taxed as costs for each case filed in each county court, separate juvenile court, and district court, including appeals to such courts, and for each appeal and original action filed in the Court of Appeals and the Supreme Court. The fees shall be remitted to the State Treasurer on forms prescribed by the State Treasurer within ten days after the end of each month. The State Treasurer shall credit the fees to the Supreme Court Automation Cash Fund.

Source: Laws 2002, Second Spec. Sess., LB 13, § 2; Laws 2009, LB35, § 24.

33-109 Register of deeds; county clerk; fees.

(1)(a) This subdivision applies until January 1, 2018. The register of deeds and the county clerk shall receive for recording a deed, mortgage, or release, recording and indexing of a will, recording and indexing of a decree in a testate estate, recording proof of publication, or recording any other instrument, a fee of ten dollars for the first page and six dollars for each additional page. Two dollars and fifty cents of the ten-dollar fee for recording the first page and fifty cents of the six-dollar fee for recording each additional page shall be used exclusively for the purposes of preserving and maintaining public records of the office of the register of deeds and for modernization and technology needs relating to such records. The funds allocated under this subdivision shall not be substituted for other allocations of county general funds to the register of deeds for the purposes enumerated in this subdivision.

(b) This subdivision applies on and after January 1, 2018. The register of deeds and the county clerk shall receive for recording a deed, mortgage, or release, recording and indexing of a will, recording and indexing of a decree in a testate estate, recording proof of publication, or recording any other instrument, a fee of five dollars per page. For entering each instrument presented for record in the numerical index, the clerk or register of deeds shall receive the sum of fifty cents for each lot and each single block without lots in platted areas and fifty cents for each section in unplatted areas to be paid in advance by the person offering the instrument for record.

(2) The cost for a certified copy of any instrument filed or recorded in the office of county clerk or register of deeds shall be one dollar and fifty cents per page.

Source: Laws 1879, § 1, p. 107; Laws 1887, c. 42, § 1, p. 461; R.S.1913, § 2435; C.S.1922, § 2375; C.S.1929, § 33-114; Laws 1931, c. 66, § 1, p. 185; Laws 1935, c. 80, § 1, p. 269; Laws 1941, c. 67, § 1, p. 292; C.S.Supp.,1941, § 33-114; R.S.1943, § 33-109; Laws 1949, c. 93, § 5, p. 247; Laws 1961, c. 159, § 1, p. 484; Laws 1963, c. 185, § 1, p. 626; Laws 1965, c. 185, § 1, p. 574; Laws 1967, c. 204, § 1, p. 560; Laws 1969, c. 270, § 1, p. 1034; Laws 1971, LB 381, § 1; Laws 1972, LB 1264, § 1; Laws 1983, LB 463, § 1; Laws 2012, LB14, § 4.

33-112 Repealed. Laws 2012, LB 14, § 10.

33-113 Repealed. Laws 2012, LB 897, § 3.**33-117 Sheriffs; fees; disposition; mileage; report to county board.**

(1) The several sheriffs shall charge and collect fees at the rates specified in this section. The rates shall be as follows: (a) Serving a capias with commitment or bail bond and return, two dollars; (b) serving a search warrant, two dollars; (c) arresting under a search warrant, two dollars for each person so arrested; (d) unless otherwise specifically listed in subdivisions (f) to (s) of this subsection, serving a summons, subpoena, order of attachment, order of replevin, other order of the court, notice of motion, other notice, other writ or document, or any combination thereof, including any accompanying or attached documents, twelve dollars for each person served, except that when more than one person is served at the same time and location in the same case, the service fee shall be twelve dollars for the first person served at that time and location and three dollars for each other person served at that time and location; (e) making a return of each summons, subpoena, order of attachment, order of replevin, other order of the court, notice of motion, other notice, or other writ or document, whether served or not, six dollars; (f) taking and filing a replevin bond or other indemnification to be furnished and approved by the sheriff, one dollar; (g) making a copy of any process, bond, or other paper not otherwise provided for in this section, twenty-five cents per page; (h) traveling each mile actually and necessarily traveled within or without their several counties in their official duties, three cents more per mile than the rate provided in section 81-1176, except that the minimum fee shall be fifty cents when the service is made within one mile of the courthouse, and, as far as is expedient, all papers in the hands of the sheriff at any one time shall be served in one or more trips by the most direct route or routes and only one mileage fee shall be charged for a single trip, the total mileage cost to be computed as a unit for each trip and the combined mileage cost of each trip to be prorated among the persons or parties liable for the payment of same; (i) levying a writ or a court order and return thereof, eighteen dollars; (j) summoning a grand jury, not including mileage to be paid by the county, ten dollars; (k) summoning a petit jury, not including mileage to be paid by the county, twelve dollars; (l) summoning a special jury, for each person impaneled, fifty cents; (m) calling a jury for a trial of a case or cause, fifty cents; (n) executing a writ of restitution or a writ of assistance and return, eighteen dollars; (o) calling an inquest to appraise lands and tenements levied on by execution, one dollar; (p) calling an inquest to appraise goods and chattels taken by an order of attachment or replevin, one dollar; (q) advertising a sale in a newspaper in addition to the price of printing, one dollar; (r) advertising in writing for a sale of real or personal property, five dollars; and (s) making deeds for land sold on execution or order of sale, five dollars.

(2)(a) Except as provided in subdivision (b) of this subsection, the commission due a sheriff on an execution or order of sale, an order of attachment decree, or a sale of real or personal property shall be: For each dollar not exceeding four hundred dollars, six cents; for every dollar above four hundred dollars and not exceeding one thousand dollars, four cents; and for every dollar above one thousand dollars, two cents.

(b) In real estate foreclosure, when any party to the original action purchases the property or when no money is received or disbursed by the sheriff, the

commission shall be computed pursuant to subdivision (a) of this subsection but shall not exceed two hundred dollars.

(3) The sheriff shall, on the first Tuesday in January, April, July, and October of each year, make a report to the county board showing (a) the different items of fees, except mileage, collected or earned, from whom, at what time, and for what service, (b) the total amount of the fees collected or earned by the officer since the last report, and (c) the amount collected or earned for the current year. He or she shall pay all fees earned to the county treasurer who shall credit the fees to the general fund of the county.

(4) Any future adjustment made to the reimbursement rate provided in subsection (1) of this section shall be deemed to apply to all provisions of law which refer to this section for the computation of mileage.

(5) Commencing on and after January 1, 1988, all fees earned pursuant to this section, except fees for mileage, by any constable who is a salaried employee of the State of Nebraska shall be remitted to the clerk of the county court. The clerk of the county court shall pay the same to the General Fund.

Source: R.S.1866, c. 19, § 5, p. 161; Laws 1877, § 1, p. 40; Laws 1877, § 5, p. 217; Laws 1907, c. 53, § 1, p. 225; R.S.1913, §§ 2421, 2441; Laws 1915, c. 37, § 1, p. 106; Laws 1921, c. 102, § 1, p. 371; C.S.1922, §§ 2362, 2381; C.S.1929, §§ 33-101, 33-120; Laws 1933, c. 96, § 7, p. 386; Laws 1935, c. 79, § 1, p. 266; C.S.Supp.,1941, § 33-120; Laws 1943, c. 86, § 1(1), p. 286; R.S. 1943, § 33-117; Laws 1947, c. 123, § 1, p. 358; Laws 1951, c. 266, § 1, p. 895; Laws 1953, c. 118, § 1, p. 373; Laws 1957, c. 70, § 5, p. 297; Laws 1959, c. 84, § 3, p. 385; Laws 1961, c. 161, § 1, p. 487; Laws 1961, c. 162, § 1, p. 489; Laws 1965, c. 186, § 1, p. 575; Laws 1967, c. 125, § 4, p. 401; Laws 1969, c. 273, § 1, p. 1037; Laws 1974, LB 625, § 3; Laws 1978, LB 691, § 3; Laws 1980, LB 615, § 3; Laws 1980, LB 628, § 2; Laws 1981, LB 204, § 51; Laws 1982, LB 662, § 1; Laws 1984, LB 394, § 9; Laws 1987, LB 223, § 1; Laws 1988, LB 1030, § 34; Laws 1996, LB 1011, § 22; Laws 2009, LB35, § 25.

Cross References

For other provisions for fees of sheriff:

Certificate of title, inspection fees, see section 60-158.
 Distraint and sale of taxpayer's property, see section 77-3906.
 Distress warrant, issuance, levy, and return, fee, see section 77-1720.
 Handgun, application, filing fee, see section 69-2404.
 Summons in error, see section 25-1904.
 Summons of county board of equalization, see section 77-1509.
 Summons out of county, see section 25-1713.
 Transporting mental health patients, see section 71-929.
 Transporting prisoners, see section 83-424.

33-138 Juror; compensation; mileage.

(1) Each member of a grand or petit jury in a district court or county court shall receive for his or her services thirty dollars for each day employed in the discharge of his or her duties prior to January 1, 1994, and thirty-five dollars for each such day on or after such date and mileage at the rate provided in section 81-1176 for each mile necessarily traveled. No juror shall be entitled to pay for the days he or she is voluntarily absent or excused from service by order of the court. No juror shall be entitled to pay for nonjudicial days unless actually employed in the discharge of his or her duties as a juror on such days.

(2) In the event that any temporary release from service, other than that obtained by the request of a juror, shall occasion an extra trip or trips to and from the residence of any juror or jurors the court may, by special order, allow mileage for such extra trip or trips.

(3) Payment of jurors for service in the district and county courts shall be made by the county.

(4) A juror may voluntarily waive payment under this section for his or her service as a juror.

Source: Laws 1867, § 2, p. 90; Laws 1911, c. 51, § 1, p. 234; R.S.1913, § 2463; Laws 1919, c. 115, § 1, p. 280; C.S.1922, § 2404; Laws 1929, c. 105, § 1, p. 395; C.S.1929, § 33-143; Laws 1933, c. 62, § 1, p. 296; C.S.Supp.,1941, § 33-143; R.S.1943, § 33-138; Laws 1947, c. 125, § 1, p. 364; Laws 1957, c. 134, § 1, p. 450; Laws 1965, c. 187, § 1, p. 578; Laws 1969, c. 278, § 1, p. 1045; Laws 1974, LB 736, § 1; Laws 1981, LB 204, § 54; Laws 1984, LB 13, § 75; Laws 1991, LB 147, § 1; Laws 2003, LB 760, § 14; Laws 2012, LB865, § 3.

33-157 Conviction for misdemeanor or felony; affirmation on appeal; additional assessment of cost; use; Nebraska Crime Victim Fund; created; use.

(1) In addition to all other costs assessed according to law, an assessment of one dollar shall be assessed for each conviction of a person for any misdemeanor or felony in county court or district court and each affirmation on appeal. No such assessment shall be collected in any juvenile court proceeding. No county shall be liable for the assessment imposed pursuant to this section. The assessments shall be remitted to the State Treasurer on forms prescribed by the State Treasurer within ten days after the end of the month.

(2) The Nebraska Crime Victim Fund is created. The fund shall contain the amounts remitted pursuant to subsection (1) of this section and section 83-184. The fund shall be administered by the Nebraska Commission on Law Enforcement and Criminal Justice. As soon as funds become available, the commission shall direct the State Treasurer to transfer money from the Nebraska Crime Victim Fund to the Department of Correctional Services Facility Cash Fund and the Supreme Court Automation Cash Fund to pay for the initial costs in implementing Laws 2010, LB510, in amounts to be determined by the Department of Correctional Services and the Supreme Court and certified to the commission. When such costs are fully reimbursed, the Nebraska Crime Victim Fund shall terminate and the State Treasurer shall distribute seventy-five percent of the funds remitted pursuant to subsection (1) of this section and section 83-184 to the Victim's Compensation Fund to be awarded as compensation for losses and expenses allowable under the Nebraska Crime Victim's Reparations Act and shall distribute twenty-five percent of such funds to the Reentry Cash Fund.

Source: Laws 2010, LB510, § 1.

Cross References

Nebraska Crime Victim's Reparations Act, see section 81-1841.



CHAPTER 34

FENCES, BOUNDARIES, AND LANDMARKS

Article.

1. Division Fences. 34-101 to 34-103.
3. Court Action for Settling Disputed Corners. 34-301.

ARTICLE 1

DIVISION FENCES

Section

- 34-101. Legislative findings.
- 34-102. Division fence; adjoining landowners; construct and maintain just proportion of fence.
- 34-103. Maintenance; private nuisance.

34-101 Legislative findings.

The Legislature finds the duty of adjoining landowners for the construction and maintenance of division fences to be beneficial to the public interest and welfare. Such benefits are not confined to historical and traditional societal benefits that accrue from the proper constraint of livestock, but also include suppression of civil disputes and public and private nuisances and the protection of public safety. Division fences promote the peace and security of society by the demarcation of rural boundaries, physical separation of conflicting land uses, enhancement of privacy, diminishment of frequency of public burden imposed by incidences of trespass and adverse possession, and the mitigation of impacts of conflicting land use intrusion into those areas of the state devoted to agricultural and horticultural use.

Source: Laws 2010, LB667, § 1.

34-102 Division fence; adjoining landowners; construct and maintain just proportion of fence.

(1) When there are two or more adjoining landowners, each of them shall construct and maintain a just proportion of the division fence between them. Just proportion means an equitable allocation of the portion of the fenceline to be physically constructed and maintained by each landowner or, in lieu thereof, an equitable contribution to the costs to construct and maintain the division fence to be made by either landowner. Unless otherwise specified in statute or by agreement of the parties, such equitable allocation shall be one which results in an equal burden of construction and maintenance of the division fence. This section shall not be construed to compel the erection and maintenance of a division fence if neither of the adjoining landowners desires such division fence.

(2) Unless the adjoining landowners have agreed otherwise, such fence shall be a wire fence as defined in subdivision (5) of section 34-115.

Source: R.S.1866, c. 1, § 13, p. 8; R.S.1913, § 476; Laws 1919, c. 94, § 2, p. 237; C.S.1922, § 2418; C.S.1929, § 34-102; R.S.1943, § 34-102; Laws 2007, LB108, § 3; Laws 2010, LB667, § 2.

Cross References

Game and Parks Commission, division fence responsibilities, see section 37-1012.

34-103 Maintenance; private nuisance.

Every person liable to contribute to the construction and maintenance of a division fence or any portion thereof shall maintain his or her portion in good repair, including the necessary removal or trimming of trees and woody growth within or encroaching upon the fenceline to repair or avoid damage to, or dislocation of, the division fence. The occurrence of trees and woody growth within or encroaching upon a division fence that causes damage to, or dislocation of, the fence shall constitute a private nuisance to the adjacent landowner's possessory interests in his or her land.

Source: Laws 2011, LB108, § 1.

ARTICLE 3**COURT ACTION FOR SETTLING DISPUTED CORNERS**

Section

34-301. Disputed corners and boundaries; court action to settle; procedure.

34-301 Disputed corners and boundaries; court action to settle; procedure.

When one or more owners of land, the corners and boundaries of which are lost, destroyed, or in dispute, desire to have the same established, they may bring an action in the district court of the county where such lost, destroyed, or disputed corners or boundaries, or part thereof, are situated, against the owners of the other tracts which will be affected by the determination or establishment thereof, to have such corners or boundaries ascertained and permanently established. If any public road is likely to be affected thereby, the proper county shall be made defendant. Notice of such action shall be given as in other cases, and if the defendants or any of them are nonresidents of the state, or unknown, they may be served by publication as is provided by law. The action shall be a special one, and the only necessary pleading therein shall be the complaint of the plaintiff describing the land involved, and, so far as may be, the interest of the respective parties and asking that certain corners and boundaries therein described, as accurately as may be, shall be established. Either the plaintiff or defendant may, by proper plea, put in issue the fact that certain alleged boundaries or corners are the true ones, or that such have been recognized and acquiesced in by the parties or their grantors for a period of ten consecutive years, which issue shall be tried before the district court under its equity jurisdiction without the intervention of a jury, and appeals from such proceedings shall be had and taken in conformity with the equity rules.

Source: Laws 1923, c. 103, § 1, p. 258; C.S.1929, § 34-301; R.S.1943, § 34-301; Laws 2009, LB35, § 26.

CHAPTER 35

FIRE COMPANIES AND FIREFIGHTERS

Article.

2. Compact for Prevention and Control of Forest Fires. 35-201, 35-202.
3. Hours of Duty of Firefighters. 35-302.
9. Volunteer Fire and Rescue Departments. 35-901.
10. Death or Disability. 35-1001.
12. Mutual Finance Assistance Act. 35-1207.
13. Volunteer Emergency Responders Recruitment and Retention Act. 35-1309 to 35-1321.
14. Volunteer Emergency Responders Job Protection Act. 35-1402 to 35-1407.

ARTICLE 2

COMPACT FOR PREVENTION AND CONTROL OF FOREST FIRES

Section

- 35-201. Compact authorized.
35-202. Volunteer firefighter; file certificate of insurance.

35-201 Compact authorized.

The Governor of Nebraska may execute a compact on behalf of the state with any one or more states who may, by their legislative bodies, authorize a compact, in form substantially as follows:

ARTICLE I

The purpose of this compact is to promote effective prevention and control of forest fires in the great plains region of the United States by the maintenance of adequate forest fire fighting services by the member states, and by providing for reciprocal aid in fighting forest fires among the compacting states of the region, including South Dakota, North Dakota, Wyoming, Colorado, and any adjoining state of a current member state.

ARTICLE II

This compact is operative immediately as to those states ratifying it if any two or more of the member states have ratified it.

ARTICLE III

In each state, the state forester or officer holding the equivalent position who is responsible for forest fire control may act as compact administrator for that state and may consult with like officials of the other member states and may implement cooperation between the states in forest fire prevention and control. The compact administrators of the member states may organize to coordinate the services of the member states and provide administrative integration in carrying out the purposes of this compact. Each member state may formulate and put in effect a forest fire plan for that state.

ARTICLE IV

If the state forest fire control agency of a member state requests aid from the state forest fire control agency of any other member state in combating,

controlling, or preventing forest fires, the state forest fire control agency of that state may render all possible aid to the requesting agency, consonant with the maintenance of protection at home.

ARTICLE V

If the forces of any member state are rendering outside aid pursuant to the request of another member state under this compact, the employees of the state shall, under the direction of the officers of the state to which they are rendering aid, have the same powers (except the power of arrest), duties, rights, privileges, and immunities as comparable employees of the state to which they are rendering aid.

No member state which provides outside aid pursuant to this compact shall be liable in any civil action to respond in damages as a result of acts or omissions arising out of and in the course of rendering outside aid, but such immunity from liability shall not extend to the operation of any motor vehicle in connection with such services. Nothing in this paragraph shall be deemed to grant any such immunity to any person causing damage by his or her gross negligence or willful or wanton conduct.

All liability, except as otherwise provided in this compact, that may arise either under the laws of the requesting state or under the laws of the aiding state or under the laws of a third state on account of or in connection with a request for aid, shall be assumed and borne by the requesting state.

Any member state rendering outside aid pursuant to this compact shall be reimbursed by the member state receiving the aid for any loss or damage to, or expense incurred in the operation of any equipment answering a request for aid, and for the cost of all materials, transportation, wages, salaries, and maintenance of employees and equipment incurred in connection with such request. However, nothing in this compact prevents any assisting member state from assuming such loss, damage, expense, or other cost or from loaning such equipment or from donating such services to the receiving member state without charge or cost.

Each member state shall assure that workers' compensation benefits in conformity with the minimum legal requirements of the state are available to all employees and contract firefighters sent to a requesting state pursuant to this compact.

For the purposes of this compact, the term employee includes any volunteer or auxiliary legally included within the forest fire fighting forces of the aiding state under the laws of the aiding state.

The compact administrators may formulate procedures for claims and reimbursement under the provisions of this article, in accordance with the laws of the member states.

ARTICLE VI

Ratification of this compact does not affect any existing statute so as to authorize or permit curtailment or diminution of the forest fire fighting forces, equipment, services, or facilities of any member state.

Nothing in the compact authorizes or permits any member state to curtail or diminish its forest fire fighting forces, equipment, services, or facilities. Each member state shall maintain adequate forest fire fighting forces and equipment

to meet demands for forest fire protection within its borders in the same manner and to the same extent as if this compact were not operative.

Nothing in this compact limits or restricts the powers of any state ratifying the compact to provide for the prevention, control, and extinguishment of forest fires, or to prohibit the enactment or enforcement of state laws, rules, or regulations intended to aid in the prevention, control, and extinguishment in the state.

Nothing in this compact affects any existing or future cooperative relationship or arrangement between the United States Forest Service and a member state or states.

ARTICLE VII

Representatives of the United States Forest Service may attend meetings of the compact administrators.

ARTICLE VIII

The provisions of articles IV and V of this compact that relate to reciprocal aid in combating, controlling, or preventing forest fires are operative as between any state party to this compact and any other state which is party to this compact and any other state that is party to a regional forest fire protection compact in another region if the Legislature of the other state has given its assent to the mutual aid provisions of this compact.

ARTICLE IX

This compact shall continue in force and remain binding on each state ratifying it until the Legislature or the Governor of the state takes action to withdraw from the compact. Such action is not effective until six months after notice of the withdrawal has been sent by the chief executive of the state desiring to withdraw to the chief executives of all states then parties to the compact.

Source: Laws 2014, LB961, § 1.
Operative date July 18, 2014.

35-202 Volunteer firefighter; file certificate of insurance.

No Nebraska volunteer firefighter shall be dispatched on behalf of this state pursuant to the compact set forth in section 35-201 outside the boundaries of Nebraska unless such volunteer firefighter files with the Nebraska compact administrator a valid certificate of insurance covering him or her for workers' compensation benefits pursuant to the Nebraska Workers' Compensation Act outside the boundaries of Nebraska.

Source: Laws 2014, LB961, § 2.
Operative date July 18, 2014.

Cross References

Nebraska Workers' Compensation Act, see section 48-1,110.

ARTICLE 3

HOURS OF DUTY OF FIREFIGHTERS

Section
35-302. Paid fire departments; firefighters; hours of duty; alternating day schedule; agreement; restrictions.

35-302 Paid fire departments; firefighters; hours of duty; alternating day schedule; agreement; restrictions.

Firefighters employed in the fire departments of cities having paid fire departments shall not be required to remain on duty for periods of time which will aggregate in each month more than an average of sixty hours per week. Each single-duty shift shall consist of twenty-four consecutive hours and shall be followed by an off-duty period as necessary to assure compliance with the requirements of this section unless by voluntary agreement between the city and the authorized collective-bargaining agent or, if there is no collective-bargaining unit, the firefighter, any firefighter may be permitted to work an additional period of consecutive time and may return to work after less than a twenty-four-hour off-duty period. Any firefighter may be assigned to work less than a twenty-four-hour shift, but in such event the firefighter shall not work in excess of forty hours per week unless otherwise provided by voluntary agreement between the city and the authorized collective-bargaining agent or, if there is no collective-bargaining unit, the firefighter. No agreement under this section shall allow a firefighter who is scheduled to work less than a twenty-four-hour shift and who holds the rank of fire chief or works as an immediate subordinate to a fire chief to fill temporary vacancies created by the absence of a firefighter who is assigned to work a twenty-four-hour shift and who holds a rank lower than fire chief. No firefighter shall be required to perform any work or service as such firefighter during any period in which he or she is off duty except in cases of extraordinary conflagration or emergencies or job-related court appearances.

Source: Laws 1953, c. 119, § 1(2), p. 377; Laws 1963, c. 196, § 1, p. 642; Laws 1971, LB 773, § 1; Laws 1979, LB 80, § 101; Laws 2009, LB537, § 1.

ARTICLE 9

VOLUNTEER FIRE AND RESCUE DEPARTMENTS

Section

35-901. Volunteer departments; trust fund; established; use; public funds; restrictions; express authorization required; when; section, how construed; expenditures of public funds; procedure; gambling money; restrictions.

35-901 Volunteer departments; trust fund; established; use; public funds; restrictions; express authorization required; when; section, how construed; expenditures of public funds; procedure; gambling money; restrictions.

(1) For purposes of this section, volunteer department shall mean volunteer fire department or volunteer first-aid, rescue, or emergency squad or volunteer fire company serving any city, village, county, township, or rural or suburban fire protection district.

(2) Except as provided in subsection (4) of this section, each volunteer department may establish a volunteer department trust fund. All general donations or contributions, bequests, or annuities made to the volunteer department and all money raised by or for the volunteer department shall be deposited in the trust fund. The trust fund shall be under the control of the volunteer department, and the volunteer department may make expenditures from the trust fund as it deems necessary. The treasurer of the volunteer department shall be the custodian of the trust fund.

(3) The trust fund shall not be considered public funds or funds of any city, village, county, township, or rural or suburban fire protection district for any purpose, including the Nebraska Budget Act, nor shall any city, village, county, township, or rural or suburban fire protection district incur any liability solely by reason of any expenditure from such fund except liability for property when any city, village, county, township, or rural or suburban fire protection district receives title to property acquired with money from such fund.

(4)(a) If the total amount of expenditures and receipts in the trust fund exceeds one hundred thousand dollars in any twelve-month period, the volunteer department shall inform any city, village, county, township, or rural or suburban fire protection district receiving service from the department and such entity may examine or cause to be examined all books, accounts, vouchers, records, and expenditures with regard to the trust fund.

(b) Funds, fees, or charges solicited, collected, or received by a volunteer department that are (i) in consequence of the performance of fire or rescue services by the volunteer department at a given place and time, (ii) accomplished through the use by the volunteer department of equipment owned by the taxing authority supporting such department and provided to the volunteer department for that purpose, and (iii) paid by or on behalf of the recipient of those services shall not be deposited in a trust fund authorized by this section. Such funds are public funds of the taxing authority supporting the volunteer department and are deemed to have been collected by the volunteer department as the agent of the taxing authority and are held by the department on its behalf. If such funds are in the possession of a volunteer department, the taxing authority shall cause all the books, accounts, records, vouchers, expenditures, and statements regarding such funds to be examined and independently audited at the expense of the taxing authority by a qualified professional auditor or the Auditor of Public Accounts for the immediately preceding five years.

(5) Nothing in this section shall be construed or deemed to permit a violation of the Nebraska Liquor Control Act.

(6) All expenditures of public funds as defined in the Nebraska Budget Act for support of a volunteer department or its purposes shall be submitted as claims, approved by the taxing authority supporting such department or its purposes, and published as required by law. All such claims shall be properly itemized for proposed expenditure or reimbursement for costs already incurred and paid except as may be otherwise permitted pursuant to section 35-106.

(7) All money raised pursuant to the Nebraska Bingo Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, and the Nebraska Small Lottery and Raffle Act shall be subject to such acts with respect to the deposit and expenditure of such money.

(8) No volunteer department shall solicit, charge, or collect any funds, fees, or charges as described in subdivision (4)(b) of this section without the express authorization of the taxing authority supporting the department by vote of a majority of the members of the governing body of such taxing authority. Such authorization shall not extend beyond a twelve-month period but may be renewed at the discretion of the taxing authority in the same manner in which it was initially granted. Upon collection or receipt, such funds, fees, or charges shall be remitted to the designated officer of the taxing authority for deposit to the account of the taxing authority.

(9) Funds, fees, or charges as described in subdivision (4)(b) of this section which are in the possession of the taxing authority shall be expended by such taxing authority solely (a) for the support of the emergency response activities of the volunteer department which gave rise to those funds, fees, or charges, (b) for charges directly related to the collection of those funds, fees, or charges, or (c) for the support of a service award benefit program adopted and conducted pursuant to the Volunteer Emergency Responders Recruitment and Retention Act.

Source: Laws 1993, LB 516, § 1; Laws 2008, LB1096, § 4; Laws 2010, LB522, § 1.

Cross References

Nebraska Bingo Act, see section 9-201.

Nebraska Budget Act, see section 13-501.

Nebraska Liquor Control Act, see section 53-101.

Nebraska Lottery and Raffle Act, see section 9-401.

Nebraska Pickle Card Lottery Act, see section 9-301.

Nebraska Small Lottery and Raffle Act, see section 9-501.

Volunteer Emergency Responders Recruitment and Retention Act, see section 35-1301.

ARTICLE 10

DEATH OR DISABILITY

Section

35-1001. Death or disability as a result of cancer; death or disability as a result of certain diseases; prima facie evidence.

35-1001 Death or disability as a result of cancer; death or disability as a result of certain diseases; prima facie evidence.

(1) For a firefighter or firefighter-paramedic who is a member of a paid fire department of a municipality or a rural or suburban fire protection district in this state, including a municipality having a home rule charter or a municipal authority created pursuant to a home rule charter that has its own paid fire department, and who suffers death or disability as a result of cancer, including, but not limited to, cancer affecting the skin or the central nervous, lymphatic, digestive, hematological, urinary, skeletal, oral, or prostate systems, evidence which demonstrates that (a) such firefighter or firefighter-paramedic successfully passed a physical examination upon entry into such service or subsequent to such entry, which examination failed to reveal any evidence of cancer, (b) such firefighter or firefighter-paramedic was exposed to a known carcinogen, as defined on July 19, 1996, by the International Agency for Research on Cancer, while in the service of the fire department, and (c) such carcinogen is reported by the agency to be a suspected or known cause of the type of cancer the firefighter or firefighter-paramedic has, shall be prima facie evidence that such death or disability resulted from injuries, accident, or other cause while in the line of duty for the purposes of sections 16-1020 to 16-1042, a firefighter's pension plan established pursuant to a home rule charter, and a firefighter's pension or disability plan established by a rural or suburban fire protection district.

(2) For a firefighter or firefighter-paramedic who is a member of a paid fire department of a municipality or a rural or suburban fire protection district in this state, including a municipality having a home rule charter or a municipal authority created pursuant to a home rule charter that has its own paid fire

department, and who suffers death or disability as a result of a blood-borne infectious disease, tuberculosis, meningococcal meningitis, or methicillin-resistant *Staphylococcus aureus*, evidence which demonstrates that (a) such firefighter or firefighter-paramedic successfully passed a physical examination upon entry into such service or subsequent to such entry, which examination failed to reveal any evidence of such blood-borne infectious disease, tuberculosis, meningococcal meningitis, or methicillin-resistant *Staphylococcus aureus*, and (b) such firefighter or firefighter-paramedic has engaged in the service of the fire department within ten years before the onset of the disease, shall be prima facie evidence that such death or disability resulted from injuries, accident, or other cause while in the line of duty for the purposes of sections 16-1020 to 16-1042, a firefighter's pension plan established pursuant to a home rule charter, and a firefighter's pension or disability plan established by a rural or suburban fire protection district.

(3) The prima facie evidence presumed under this section shall extend to death or disability as a result of cancer as described in this section, a blood-borne infectious disease, tuberculosis, meningococcal meningitis, or methicillin-resistant *Staphylococcus aureus* after the firefighter or firefighter-paramedic separates from his or her service to the fire department if the death or disability occurs within three months after such separation.

(4) For purposes of this section, blood-borne infectious disease means human immunodeficiency virus, acquired immunodeficiency syndrome, and all strains of hepatitis.

Source: Laws 1996, LB 1076, § 45; Laws 2010, LB373, § 2.

ARTICLE 12

MUTUAL FINANCE ASSISTANCE ACT

Section

35-1207. Application for distribution; financial information required; State Treasurer; duties.

35-1207 Application for distribution; financial information required; State Treasurer; duties.

(1) Any rural or suburban fire protection district or mutual finance organization seeking funds pursuant to the Mutual Finance Assistance Act shall submit an application for funding to the State Treasurer by July 1. The State Treasurer shall develop the application which requires calculations showing assumed population eligibility under section 35-1205 and the distribution amount under section 35-1206. If the applicant is a mutual finance organization, it shall attach to its first application a copy of the agreement pursuant to section 35-1204 and attach to any subsequent application a copy of an amended agreement or an affidavit stating that the previously submitted agreement is still accurate and effective. Any mutual finance organization making application pursuant to this section shall include with the application additional financial information regarding the manner in which any funds received by the mutual finance organization based upon the prior year's application pursuant to the act have been expended or distributed by that mutual finance organization. The State Treasurer shall provide electronic copies of such reports on mutual finance organization expenditures and distributions to the Clerk of the Legislature by December 1 of each year in which any reports are filed.

(2) The State Treasurer shall review all applications for eligibility for funds under the act and approve any application which is accurate and demonstrates that the applicant is eligible for funds. On or before August 15, the State Treasurer shall notify the applicant of approval or denial of the application and certify the amount of funds for which an approved applicant is eligible. The decision of the State Treasurer may be appealed as provided in the Administrative Procedure Act.

(3) Except as provided in subsection (4) of this section, funds shall be disbursed by the State Treasurer in two payments which are as nearly equal as possible, to be paid on or before November 1 and May 1. If the Mutual Finance Assistance Fund is insufficient to make all payments to all applicants in the amounts provided in section 35-1206, the State Treasurer shall prorate payments to approved applicants. Funds remaining in the Mutual Finance Assistance Fund on June 1 shall be transferred to the General Fund before July 1.

(4) No funds shall be disbursed to an eligible mutual finance organization until it has provided to the State Treasurer the financial information regarding the manner in which it has expended or distributed prior disbursements made pursuant to the Mutual Finance Assistance Act as provided in subsection (2) of this section.

Source: Laws 1998, LB 1120, § 7; Laws 2006, LB 1175, § 6; Laws 2012, LB782, § 34.

Cross References

Administrative Procedure Act, see section 84-920.

ARTICLE 13

**VOLUNTEER EMERGENCY RESPONDERS RECRUITMENT
AND RETENTION ACT**

Section

- 35-1309. Service award benefit program; authorized.
35-1311.01. Repealed. Laws 2011, LB 121, § 3.
35-1321. Repealed. Laws 2011, LB 121, § 3.

35-1309 Service award benefit program; authorized.

(1) After March 1, 2000, any city of the first class, city of the second class, village, rural fire protection district, or suburban fire protection district which relies in whole or in part upon a volunteer department for emergency response services may adopt a service award benefit program as provided in the Volunteer Emergency Responders Recruitment and Retention Act.

(2) No city, village, or fire protection district shall be required to adopt a service award benefit program. Nothing in the act shall be construed to mandate the creation of a service award benefit program in any city, village, or fire protection district. The act shall not be construed to prohibit any city, village, or fire protection district from ending or eliminating any service award benefit program after its adoption, except that a city, village, or fire protection district may not end its program or its responsibility under its program with regard to any year of service completed prior to such elimination.

(3) Each service award benefit program shall include provisions governing the procedures to be followed in the tallying, recording, verifying, and auditing of points earned by volunteers and provisions which provide for the collection

of such other information regarding participants as may be needed to facilitate administration of the program.

Source: Laws 1999, LB 849, § 9; Laws 2001, LB 808, § 7; Laws 2002, LB 1110, § 2; Laws 2011, LB121, § 1.

35-1311.01 Repealed. Laws 2011, LB 121, § 3.

35-1321 Repealed. Laws 2011, LB 121, § 3.

ARTICLE 14

VOLUNTEER EMERGENCY RESPONDERS JOB PROTECTION ACT

Section

35-1402. Terms, defined.

35-1403. Employer; prohibited acts.

35-1406. Employee; provide written statement; contents.

35-1407. Employee; provide employer notice of status as volunteer emergency responder.

35-1402 Terms, defined.

For purposes of the Volunteer Emergency Responders Job Protection Act:

(1) Employee does not include a career firefighter or law enforcement officer who is acting as a volunteer emergency responder;

(2) Employer means any person employing ten or more employees; and

(3) Volunteer emergency responder means:

(a) An individual who has been approved by a governing body in Nebraska to serve any volunteer fire department or volunteer first-aid, rescue, ambulance, or emergency squad, or volunteer fire company, association, or organization serving any city, village, or rural or suburban fire protection district by providing fire protection or emergency response services for the purpose of protecting life, health, or property;

(b) An individual who is in good standing as a volunteer member of the Nebraska Wing of the Civil Air Patrol, the civilian auxiliary of the United States Air Force; or

(c) An individual who is a member of a state emergency response team pursuant to the Emergency Management Act.

Source: Laws 2008, LB1096, § 12; Laws 2010, LB934, § 1; Laws 2012, LB1005, § 1.

Cross References

Emergency Management Act, see section 81-829.36.

35-1403 Employer; prohibited acts.

No employer shall terminate or take any other disciplinary action against any employee who is a volunteer emergency responder if such employee, when acting or actively deployed as a volunteer emergency responder, is absent from or reports late to his or her place of employment in order to respond to an emergency prior to the time such employee is to report to his or her place of employment.

Source: Laws 2008, LB1096, § 6; Laws 2012, LB1005, § 2.

35-1406 Employee; provide written statement; contents.

At an employer's request, an employee, acting as a volunteer emergency responder, who is absent from or reports late to his or her place of employment in order to respond to an emergency shall provide his or her employer, within seven days of such request, a written statement signed by the individual in charge of the department or another individual authorized to act for such individual that includes the following: The fact that the employee responded to an emergency; the date and time of the emergency; and the date and time such employee completed his or her volunteer emergency activities.

Source: Laws 2008, LB1096, § 9; Laws 2012, LB1005, § 3.

35-1407 Employee; provide employer notice of status as volunteer emergency responder.

Prior to seeking protection pursuant to the Volunteer Emergency Responders Job Protection Act, an employee acting as a volunteer emergency responder shall provide his or her employer with a written statement signed by the individual in charge of the department or another individual authorized to act for such individual notifying such employer that the employee serves as a volunteer emergency responder. An employee who is or who has served as a volunteer emergency responder shall notify his or her employer when such employee's status as a volunteer emergency responder changes, including termination of such status.

Source: Laws 2008, LB1096, § 10; Laws 2012, LB1005, § 4.