

TABLE OF CHAPTERS

REISSUE REVISED STATUTES

Chapter Number	No. of Articles	Chapter Number	No. of Articles
1.	Accountants	45.	Interest, Loans, and Debt
2.	Agriculture	46.	Irrigation and Regulation of Water
3.	Aeronautics	47.	Jails and Correctional Facilities
4.	Aliens	48.	Labor
5.	Apportionment	49.	Law
6.	Assignment for Creditors	50.	Legislature
7.	Attorneys at Law	51.	Libraries and Museums
8.	Banks and Banking	52.	Liens
9.	Bingo and Other Gambling	53.	Liquors
10.	Bonds	54.	Livestock
11.	Bonds and Oaths, Official	55.	Militia
12.	Cemeteries	56.	Milldams
13.	Cities, Counties, and Other Political Subdivisions	57.	Minerals, Oil, and Gas
14.	Cities of the Metropolitan Class	58.	Money and Financing
15.	Cities of the Primary Class	59.	Monopolies and Unlawful Combinations
16.	Cities of the First Class	60.	Motor Vehicles
17.	Cities of the Second Class and Villages	61.	Natural Resources
18.	Cities and Villages; Laws Applicable to All	62.	Negotiable Instruments
19.	Cities and Villages; Particular Classes	63.	Newspapers and Periodicals
20.	Civil Rights	64.	Notaries Public
21.	Corporations and Other Companies	65.	Oaths and Affirmations
22.	Counties	66.	Oils, Fuels, and Energy
23.	County Government and Officers	67.	Partnerships
24.	Courts	68.	Public Assistance
25.	Courts; Civil Procedure	69.	Personal Property
26.	Courts, Municipal; Civil Procedure	70.	Power Districts and Corporations
27.	Courts; Rules of Evidence	71.	Public Health and Welfare
28.	Crimes and Punishments	72.	Public Lands, Buildings, and Funds
29.	Criminal Procedure	73.	Public Lettings and Contracts
30.	Decedents' Estates; Protection of Persons and Property	74.	Railroads
31.	Drainage	75.	Public Service Commission
32.	Elections	76.	Real Property
33.	Fees and Salaries	77.	Revenue and Taxation
34.	Fences, Boundaries, and Landmarks	78.	Salvages
35.	Fire Companies and Firefighters	79.	Schools
36.	Fraud	80.	Servicemembers and Veterans
37.	Game and Parks	81.	State Administrative Departments
38.	Health Occupations and Professions	82.	State Culture and History
39.	Highways and Bridges	83.	State Institutions
40.	Homesteads	84.	State Officers
41.	Hotels and Inns	85.	State University, State Colleges, and Postsecondary Education
42.	Households and Families	86.	Telecommunications and Technology
43.	Infants and Juveniles	87.	Trade Practices
44.	Insurance	88.	Warehouses
		89.	Weights and Measures
		90.	Special Acts
		91.	Uniform Commercial Code

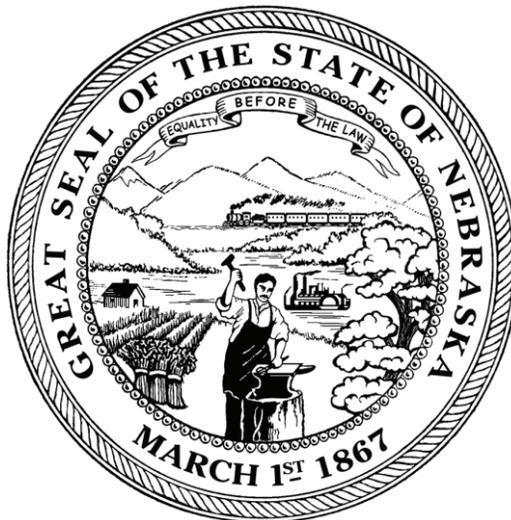


REVISED STATUTES OF NEBRASKA

2016 CUMULATIVE SUPPLEMENT

EDITED, ANNOTATED, AND PUBLISHED
BY THE
REVISOR OF STATUTES

VOLUME 1
CHAPTERS 1 TO 23 and 44 TO 47, INCLUSIVE



CITE AS FOLLOWS

R.S.SUPP.,2016

COPYRIGHT, 2016

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	2016
Volume 3	2016
Volumes 3A and 3B.....	2010
Volumes 4 and 4A	2009
Volumes 5 and 5A	2014
Volume 6	2001
Cross Reference Tables	2000

Joanne M. Pepperl
Revisor of Statutes
(402) 471-2225
jpepperl@leg.ne.gov

CERTIFICATE OF AUTHENTICATION

I, Joanne M. Pepperl, Revisor of Statutes, do hereby certify that the laws included in the 2016 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 Fourth Legislature, Second Session, 2016, 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.

Joanne M. Pepperl
Revisor of Statutes

Lincoln, Nebraska
August 1, 2016

EDITORIAL STAFF

Joanne M. Pepperl	Revisor of Statutes
Marcia M. McClurg	Assistant Revisor of Statutes
Mary H. Fischer	Associate Revisor of Statutes
Neal P. Nelson	Associate Revisor of Statutes
Micah L. Uher	Associate Revisor of Statutes
Christine Abraham	Senior Legal Counsel
Mark A. Ludwig	Legal Counsel
Andrew Conroy	Legal Counsel
Jane Plettner-Nielson	Statute Technician
Brandi Thorn	Assistant Statute Technician
Marilee McPherson	Assistant Statute Technician
Megan Rothluebber	Assistant Statute Technician
Catlin Bates	Assistant Statute Technician
Gaylena Gibson	Assistant Statute Technician
Rhiannon Routsong	Assistant Statute Technician



ANNOTATIONS

ANNOTATIONS

STATUTES OF THE STATE OF NEBRASKA

7-101.

A licensed member of the Nebraska bar must represent a limited liability company in the courts of this state. *Steinhausen v. HomeServices of Neb.*, 289 Neb. 927, 857 N.W.2d 816 (2015).

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).

7-104.

A lawyer who was convicted of public indecency had violated his oath of office as an attorney under this section. *State ex rel. Counsel for Dis. v. Cording*, 285 Neb. 146, 825 N.W.2d 792 (2013).

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.

Where the secretary of a county hospital's board of trustees was the person whose duty it was to maintain the official records of the political subdivision, a claim filed with the county clerk and the county hospital's chief executive officer did not comply with the notice requirements of the Political Subdivisions Tort Claims Act. *Brothers v. Kimball Cty. Hosp.*, 289 Neb. 879, 857 N.W.2d 789 (2015).

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).

13-907.

In 1875, there was no right to a jury trial on any issue in a suit against the State or its political subdivisions because the common-law doctrine of sovereign immunity, and the related common-law doctrine of governmental immunity, operated to bar such suits at that time. *Jacobson v. Shresta*, 288 Neb. 615, 849 N.W.2d 515 (2014).

The Legislature has the right to decide the terms under which it will waive its sovereign and governmental immunity for tort actions against the State or its political subdivisions. Because a jury trial is not one of the terms of the State's waiver of governmental immunity under the Political Subdivisions Tort Claims Act, a party is not

ANNOTATIONS

entitled to a jury trial on its claim that a defendant is not a political subdivision employee. *Jacobson v. Shresta*, 288 Neb. 615, 849 N.W.2d 515 (2014).

13-910.

“[O]ther public place” under subdivision (10) of this section included a sidewalk leading from a community center to a parking lot. *Stick v. City of Omaha*, 289 Neb. 752, 857 N.W.2d 561 (2015).

As used in subdivision (9) of this section, the term “malfunction” does not mean lack of efficacy. *Blaser v. County of Madison*, 288 Neb. 306, 847 N.W.2d 293 (2014).

A county waived its claim that it was entitled to sovereign immunity by failing to identify immunity under the discretionary function exception as an issue for trial in the pretrial order. *Hall v. County of Lancaster*, 287 Neb. 969, 846 N.W.2d 107 (2014).

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).

13-911.

Under subsection (1) of this section, a political subdivision is strictly liable for injuries to an “innocent third party” during a vehicular pursuit, regardless of whether the law enforcement officer’s actions were otherwise proper or even necessary. An “innocent third party” is one who has not promoted, provoked, or persuaded the driver to engage in flight from law enforcement personnel and one who is not sought to be apprehended in the fleeing vehicle. *Werner v. County of Platte*, 284 Neb. 899, 824 N.W.2d 38 (2012).

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).

ANNOTATIONS

13-919.

An amended tort claim was time barred where the initial tort claim was timely filed but was not filed with the individual statutorily designated to receive tort claims and the amended tort claim was filed with the proper individual but was not filed within 1 year after the claim accrued. *Brothers v. Kimball Cty. Hosp.*, 289 Neb. 879, 857 N.W.2d 789 (2015).

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 pre-filing 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).

13-926.

When the damages suffered by an "innocent third party" are not fully recoverable because of the damages cap in this section, a political subdivision's right to reimbursement must be reduced "to the extent necessary to fully compensate" the party. *Werner v. County of Platte*, 284 Neb. 899, 824 N.W.2d 38 (2012).

Parents of an injured minor have one damage cap, and the minor has a separate damage cap. *Connelly v. City of Omaha*, 284 Neb. 131, 816 N.W.2d 742 (2012).

The damage cap applies to each person having a claim arising from a single occurrence. *Connelly v. City of Omaha*, 284 Neb. 131, 816 N.W.2d 742 (2012).

The Legislature had a rational basis for enacting the damage cap in this section, and the cap does not violate an injured party's right to substantive due process. *Connelly v. City of Omaha*, 284 Neb. 131, 816 N.W.2d 742 (2012).

13-1614.

A county is not required to establish benefit plans for its employees which will provide medical coverage. *Christiansen v. County of Douglas*, 288 Neb. 564, 849 N.W.2d 493 (2014).

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).

ANNOTATIONS

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).

14-2125.

Based on the plain language of this section, there is no legal requirement to seek competitive bids before entering into a contract for interstate transmission of natural gas. *Bruno v. Metropolitan Utilities Dist.*, 287 Neb. 551, 844 N.W.2d 50 (2014).

18-2001.

The plain language of this section authorized the city to extend paving on one block of a street and assess the paving costs against abutting property owners where, at one end, the new paving adjoined a paved intersection of two paved streets. *Johnson v. City of Fremont*, 287 Neb. 960, 845 N.W.2d 279 (2014).

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).

ANNOTATIONS

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).

18-2527.

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).

ANNOTATIONS

19-904.01.

Where a zoning law provides for the termination of a legal, nonconforming use after it has been “discontinued” for a reasonable period, there is no requirement to show intent to abandon the nonconforming use. *Rodehorst Bros. v. City of Norfolk Bd. of Adjustment*, 287 Neb. 779, 844 N.W.2d 755 (2014).

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).

19-4626.

Under the plain language of subsection (2) of this section, the requirements of the Municipal Natural Gas System Condemnation Act did not apply to a city’s condemnation proceeding against property consisting of gas facilities where the property was located in an area which had been annexed by the city, and the city owned and operated its own gas system. *SourceGas Distrib. v. City of Hastings*, 287 Neb. 595, 844 N.W.2d 256 (2014).

20-148.

This section, providing persons with a private cause of action for deprivation of constitutional and statutory rights, is a procedural statute designed to allow plaintiffs to bypass administrative procedures in discrimination actions against private employers; it does not operate to waive sovereign immunity. *Potter v. Board of Regents*, 287 Neb. 732, 844 N.W.2d 741 (2014).

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).

21-20,162.

The director of a corporation, who was not a shareholder of record and for whom there was no nominee certificate on file with the corporation, and his wife were not “shareholders” under subdivision (2)(a) of this section and, thus, lacked standing to bring an action for the judicial dissolution of the corporation. *In re Invol. Dissolution of Wiles Bros.*, 285 Neb. 920, 830 N.W.2d 474 (2013).

23-103.

Ratification of a contractual obligation of a county could only occur by the act of a majority of the board of county commissioners. *Christiansen v. County of Douglas*, 288 Neb. 564, 849 N.W.2d 493 (2014).

Because Nebraska statutes vest the powers of a county in a “county board,” which term is defined to encompass both boards of supervisors existing under township organization and boards of commissioners in counties not under township organization, the adoption of township organization does not alter the basic powers of a county. *Butler County Dairy v. Butler County*, 285 Neb. 408, 827 N.W.2d 267 (2013).

23-104.

The board of county commissioners could not create a contractual obligation of the county through ratification when a majority of the commissioners did not know of the representations being made. *Christiansen v. County of Douglas*, 288 Neb. 564, 849 N.W.2d 493 (2014).

23-135.

Compliance with this section was not required where the purported contract at issue concerned health insurance. *Christiansen v. County of Douglas*, 288 Neb. 564, 849 N.W.2d 493 (2014).

ANNOTATIONS

23-208.

The powers and duties of a county board are not altered by the adoption of township organization. *Butler County Dairy v. Butler County*, 285 Neb. 408, 827 N.W.2d 267 (2013).

23-209.

Because a township is created by a county from the territory of the county, a county is higher than a township in the hierarchy of political subdivisions in Nebraska. *Butler County Dairy v. Butler County*, 285 Neb. 408, 827 N.W.2d 267 (2013).

23-215.

Although each township has a township board and township officers, each of which has statutorily prescribed powers and duties, the powers of the township are exercised through direct local self-government. *Butler County Dairy v. Butler County*, 285 Neb. 408, 827 N.W.2d 267 (2013).

23-222.

Although each township has a township board and township officers, each of which has statutorily prescribed powers and duties, the powers of the township are exercised through direct local self-government. *Butler County Dairy v. Butler County*, 285 Neb. 408, 827 N.W.2d 267 (2013).

23-223.

A township does not have the authority to exercise any powers outside those explicitly given to it by statute. *Butler County Dairy v. Butler County*, 285 Neb. 408, 827 N.W.2d 267 (2013).

23-224.

Liquid livestock waste falls within the category of “offensive or injurious substances” contemplated by subdivision (6) of this section. *Butler County Dairy v. Butler County*, 285 Neb. 408, 827 N.W.2d 267 (2013).

The power of the electors of a township to “prevent the exposure or deposit of offensive or injurious substances within the limits of the town,” as granted under subdivision (6) of this section, gives the electors authority to prohibit liquid livestock waste pipelines on township property. *Butler County Dairy v. Butler County*, 285 Neb. 408, 827 N.W.2d 267 (2013).

The power of the electors of a township to “prevent the exposure or deposit of offensive or injurious substances within the limits of the town,” as granted under subdivision (6) of this section, gives the electors sufficient authority to enact regulations governing large livestock confinement facilities that prevent livestock waste from reaching township property. *Butler County Dairy v. Butler County*, 285 Neb. 408, 827 N.W.2d 267 (2013).

23-228.

Although each township has a township board and township officers, each of which has statutorily prescribed powers and duties, the powers of the township are exercised through direct local self-government. *Butler County Dairy v. Butler County*, 285 Neb. 408, 827 N.W.2d 267 (2013).

23-249.

Although each township has a township board and township officers, each of which has statutorily prescribed powers and duties, the powers of the township are exercised through direct local self-government. *Butler County Dairy v. Butler County*, 285 Neb. 408, 827 N.W.2d 267 (2013).

23-250.

Although each township has a township board and township officers, each of which has statutorily prescribed powers and duties, the powers of the township are exercised through direct local self-government. *Butler County Dairy v. Butler County*, 285 Neb. 408, 827 N.W.2d 267 (2013).

ANNOTATIONS

23-251.

Although each township has a township board and township officers, each of which has statutorily prescribed powers and duties, the powers of the township are exercised through direct local self-government. *Butler County Dairy v. Butler County*, 285 Neb. 408, 827 N.W.2d 267 (2013).

23-252.

Although each township has a township board and township officers, each of which has statutorily prescribed powers and duties, the powers of the township are exercised through direct local self-government. *Butler County Dairy v. Butler County*, 285 Neb. 408, 827 N.W.2d 267 (2013).

23-270.

The powers and duties of a county board are not altered by the adoption of township organization. *Butler County Dairy v. Butler County*, 285 Neb. 408, 827 N.W.2d 267 (2013).

23-2306.

A county's retirement system shall be composed of all persons who are or were employed by member counties. *Christiansen v. County of Douglas*, 288 Neb. 564, 849 N.W.2d 493 (2014).

23-2517.

A county board has no power or authority to bargain or agree that any appointment or promotion shall be based upon anything other than merit and fitness except as provided in the County Civil Service Act. *Blakely v. Lancaster County*, 284 Neb. 659, 825 N.W.2d 149 (2012).

A county cannot implement any provision of the county employees' collective bargaining agreement that would violate a provision of the County Civil Service Act. *Blakely v. Lancaster County*, 284 Neb. 659, 825 N.W.2d 149 (2012).

An "appointment" under the County Civil Service Act refers to an appointing authority's designation of a person to fill a vacant classified service position. *Blakely v. Lancaster County*, 284 Neb. 659, 825 N.W.2d 149 (2012).

Civil service acts promote effective public service by establishing a personnel administration system that provides equal opportunity for public employment and advancement based on merit and fitness principles. By requiring a county to incorporate these principles, the Legislature intended to prohibit the county, as much as practical, from making these decisions based on political control, partisanship, and personal favoritism. *Blakely v. Lancaster County*, 284 Neb. 659, 825 N.W.2d 149 (2012).

Properly conducted examinations provide the cornerstone of a merit-based civil service system. *Blakely v. Lancaster County*, 284 Neb. 659, 825 N.W.2d 149 (2012).

23-2522.

A personnel policy board is an administrative agency performing quasi-judicial functions when it reviews a grievance of, or disciplinary action against, a classified service employee. *Blakely v. Lancaster County*, 284 Neb. 659, 825 N.W.2d 149 (2012).

23-2525.

A county board has no power or authority to bargain or agree that any appointment or promotion shall be based upon anything other than merit and fitness except as provided in the County Civil Service Act. *Blakely v. Lancaster County*, 284 Neb. 659, 825 N.W.2d 149 (2012).

A county cannot implement any provision of the county employees' collective bargaining agreement that would violate a provision of the County Civil Service Act. *Blakely v. Lancaster County*, 284 Neb. 659, 825 N.W.2d 149 (2012).

A county department head's preference for a junior employee in his own department created an arbitrary and capricious appointing procedure when the county was conducting open competitive examinations and not

ANNOTATIONS

promotional examinations. Preference for a department head's own employee is an invalid basis for a hiring decision in open competitive examinations. *Blakely v. Lancaster County*, 284 Neb. 659, 825 N.W.2d 149 (2012).

Statutory requirements for appointments and promotions under a civil service act are mandatory, and appointing authorities must comply with them for an appointment or promotion to be valid. *Blakely v. Lancaster County*, 284 Neb. 659, 825 N.W.2d 149 (2012).

Subdivision (3) of this section does not prohibit examiners from evaluating subjective traits if those traits are relevant to an applicant's fitness for a position. But when oral examinations are used to test an applicant's subjective traits, the scoring must be guided by measurable standards. That is, the examinations must provide some reasonable means of judicial review. *Blakely v. Lancaster County*, 284 Neb. 659, 825 N.W.2d 149 (2012).

Subdivision (3) of this section requires a county to conduct open competitive examinations for vacancies in the classified service. *Blakely v. Lancaster County*, 284 Neb. 659, 825 N.W.2d 149 (2012).

Subdivision (13) of this section does not preclude a county from defining a transfer to include transfers within the same department. *Blakely v. Lancaster County*, 284 Neb. 659, 825 N.W.2d 149 (2012).

Under subdivision (3) of this section, the Legislature intended to limit an appointing authority's selection of an applicant to one of the applicants who scored highest on the final score of the examination process. When oral interviews are part of the examination process for an appointment to the civil service, an applicant's score on an oral interview must be included in the final score. *Blakely v. Lancaster County*, 284 Neb. 659, 825 N.W.2d 149 (2012).

Under subdivision (4) of this section, a county is not conducting promotional examinations when it posts a position as available to all county employees and fails to consider seniority. *Blakely v. Lancaster County*, 284 Neb. 659, 825 N.W.2d 149 (2012).

Under subdivision (4) of this section, the Legislature intended a county to conduct promotional examinations, and appointing authorities must consider records of performance, seniority, and conduct when making promotions. *Blakely v. Lancaster County*, 284 Neb. 659, 825 N.W.2d 149 (2012).

Under this section, a county department head cannot "reassign" a current department employee to fill a new position outside of applicable transfer rules or the competitive examination process. *Blakely v. Lancaster County*, 284 Neb. 659, 825 N.W.2d 149 (2012).

When a civil service statute requires an appointing authority to consider seniority in making a promotion, that requirement must be respected. *Blakely v. Lancaster County*, 284 Neb. 659, 825 N.W.2d 149 (2012).

When a vacancy in the classified service is not filled by a transfer or under a statutory exception, subdivisions (3) and (4) of this section require a county to fill it through one of two types of examinations: open competitive examinations or promotional examinations. *Blakely v. Lancaster County*, 284 Neb. 659, 825 N.W.2d 149 (2012).

23-3501.

Where a county board has appointed a board of trustees for a county hospital as provided in section 23-3502(1), the county hospital is not merely an agency of the county, but, rather, is a separate and independent political subdivision. *Brothers v. Kimball Cty. Hosp.*, 289 Neb. 879, 857 N.W.2d 789 (2015).

23-3502.

Where a county board has appointed a board of trustees for a county hospital as provided in subsection (1) of this section, the county hospital is not merely an agency of the county, but, rather, is a separate and independent political subdivision. *Brothers v. Kimball Cty. Hosp.*, 289 Neb. 879, 857 N.W.2d 789 (2015).

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).

ANNOTATIONS

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).

44-2810.

Hospital policies and rules do not conclusively determine the standard of care owed. *Green v. Box Butte General Hosp.*, 284 Neb. 243, 818 N.W.2d 589 (2012).

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 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).

ANNOTATIONS

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.

As used in this section, "money received to the use of another" indicates that the money is received on behalf of another person, such as an agent receiving money on behalf of his principal. *Brook Valley Ltd. Part. v. Mutual of Omaha Bank*, 285 Neb. 157, 825 N.W.2d 779 (2013).

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).

45-104.01.

Under the former law, if an obligation to pay interest arises under section 67-405 and the rate is not specified, the rate is that specified in this section. *Robertson v. Jacobs Cattle Co.*, 285 Neb. 859, 830 N.W.2d 191 (2013).

46-263.

This section does not apply to persons who neglect or refuse to deliver water to those who have no right to the water. *Weber v. North Loup River Pub. Power*, 288 Neb. 959, 854 N.W.2d 263 (2014).

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 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).

ANNOTATIONS

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.

This section and section 83-1,106(1) use similar language, so the reasoning of cases involving one of these provisions is applicable to cases involving the other. *State v. Wills*, 285 Neb. 260, 826 N.W.2d 581 (2013).

This section provides that a defendant is entitled to “[c]redit against” his jail term. In context, that means that a judge cannot credit a defendant with more time served than the length of his or her sentence. *State v. Wills*, 285 Neb. 260, 826 N.W.2d 581 (2013).

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).

48-101.

Absent an amendment to the Nebraska Workers’ Compensation Act, an appellate court will not judicially create a “substantially certain” exception from the act’s intended exclusive jurisdiction over workplace injuries, so as to

ANNOTATIONS

allow an employer to be sued in tort if the employer knew its tortious conduct was substantially certain to result in an employee's injury. *Estate of Teague v. Crossroads Co-op Assn.*, 286 Neb. 1, 834 N.W.2d 236 (2013).

By barring an employee's estate from bringing a tort action against the employer for the employee's accidental death in the workplace, the Nebraska Workers' Compensation Act did not violate the estate's Seventh Amendment right to a jury trial. *Estate of Teague v. Crossroads Co-op Assn.*, 286 Neb. 1, 834 N.W.2d 236 (2013).

Delay, cost, and uncertainty are contrary to the underlying purposes of the Nebraska Workers' Compensation Act; the act was intended by the Legislature to simplify legal proceedings and to bring about a speedy settlement of disputes between the injured employee and the employer by taking the place of expensive court actions with tedious delays and technicalities. *Estate of Teague v. Crossroads Co-op Assn.*, 286 Neb. 1, 834 N.W.2d 236 (2013).

The distinction made by the Nebraska Workers' Compensation Act between employees who are intentional tort victims and nonemployees who are intentional tort victims, barring only employees who are injured by intentional torts of their employers from bringing a tort action, does not violate the equal protection, due process, or special legislation provisions of the U.S. and Nebraska Constitutions; the act was not designed to govern the rights of nonemployees, and thus employees and nonemployees are not similarly situated, the Legislature made a rational distinction between the two groups, and workers' compensation law reflected policy choice that employers bear the costs of employees' work-related injuries. *Estate of Teague v. Crossroads Co-op Assn.*, 286 Neb. 1, 834 N.W.2d 236 (2013).

The Nebraska Workers' Compensation Act's different standards of exclusivity for employees versus employers, providing compensation under the act for employees injured by an employer's willful negligence but not providing compensation under the act for employees injured by their own willful negligence, does not violate the equal protection, due process, or special legislation provisions of the U.S. and Nebraska Constitutions; employers and employees stand in different relations to the common undertaking and are not similarly situated, it was rational for the Legislature to recognize this fact when determining employers' and employees' rights and liabilities under the act, and it was not arbitrary for the Legislature to determine coverage under the act based on whose willful negligence caused the injury. *Estate of Teague v. Crossroads Co-op Assn.*, 286 Neb. 1, 834 N.W.2d 236 (2013).

The primary object of the Nebraska Workers' Compensation Act is to do away with the inadequacies and defects of the common-law remedies; to destroy the common-law defenses; and, in the employments affected, to give compensation, regardless of the fault of the employer. *Estate of Teague v. Crossroads Co-op Assn.*, 286 Neb. 1, 834 N.W.2d 236 (2013).

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).

ANNOTATIONS

48-106.

An employee's illegal residence or work status does not bar an award of indemnity for permanent total loss of earning capacity. *Moyera v. Quality Pork Internat.*, 284 Neb. 963, 825 N.W.2d 409 (2013).

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).

48-115.

An employee's illegal residence or work status does not bar an award of indemnity for permanent total loss of earning capacity. *Moyera v. Quality Pork Internat.*, 284 Neb. 963, 825 N.W.2d 409 (2013).

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).

48-118.

An employer's right to a future credit against an employee's recovery in an action related to a workers' compensation claim does not depend upon who brought the action which led to the employee's recovery or who happens to "recover" first. *Bacon v. DBI/SALA*, 284 Neb. 579, 822 N.W.2d 14 (2012).

The beneficent purposes of the Nebraska Workers' Compensation Act do not require narrow interpretation of an employer's statutory subrogation rights; the act's beneficent purposes are to provide an injured worker with

ANNOTATIONS

prompt relief from the adverse economic effects caused by a work-related injury or occupational disease, and concern the employee's ability to promptly obtain workers' compensation benefits, not the employee's ability to additionally retain recovery against negligent third parties in tort actions. *Bacon v. DBI/SALA*, 284 Neb. 579, 822 N.W.2d 14 (2012).

The policies behind the Nebraska Workers' Compensation Act favor a liberal construction in favor of the employer's statutory right to subrogate against culpable third parties; workers' compensation acts generally seek to balance the rights of injured workers against the costs to the businesses that provide employment, and in order to reach this balance, most acts liberally allow employers to shift liability onto third parties whenever possible. *Bacon v. DBI/SALA*, 284 Neb. 579, 822 N.W.2d 14 (2012).

The workers' compensation subrogation statute was not intended to draw a distinction which would grant the right to a future credit in recovery from actions brought by the employer, but deny that right in actions brought by the employee; such a distinction would be arbitrary insofar as it would depend on who first brought suit, and insofar as the timing of the suit would change the amount of recovery. *Bacon v. DBI/SALA*, 284 Neb. 579, 822 N.W.2d 14 (2012).

There is a strong presumption that a parent company is not the employer of its subsidiary's employees. *Bacon v. DBI/SALA*, 284 Neb. 579, 822 N.W.2d 14 (2012).

"Third person" under the Nebraska Workers' Compensation Act includes any person other than the employer or those whom the Nebraska Workers' Compensation Act makes an employer. *Bacon v. DBI/SALA*, 284 Neb. 579, 822 N.W.2d 14 (2012).

"Third person" under the Nebraska Workers' Compensation Act is an entity with which there is no employer-employee relationship. *Bacon v. DBI/SALA*, 284 Neb. 579, 822 N.W.2d 14 (2012).

48-120.

Where there was sufficient evidence to support a factual finding that knee surgery was not required by the prior work-related injury, the Workers' Compensation Court did not err in denying compensation for the surgery under an award of future medical treatment. *Pearson v. Archer-Daniels-Midland Milling Co.*, 285 Neb. 568, 828 N.W.2d 154 (2013).

The term "payor" as used in subsection (8) of this section is limited to third-party payors, such as health insurance carriers. *VanKirk v. Central Community College*, 285 Neb. 231, 826 N.W.2d 277 (2013).

Upon receipt of payment from an employer, a supplier or provider of services becomes obligated to reimburse an employee any amounts he or she has previously paid. *VanKirk v. Central Community College*, 285 Neb. 231, 826 N.W.2d 277 (2013).

An employer is not responsible for medical services furnished or ordered by any physician or other person selected by an injured employee in disregard of subdivision (2)(a) of this section. *Clark v. Alegent Health Neb.*, 285 Neb. 60, 825 N.W.2d 195 (2013).

If an employer has sufficient knowledge of an injury to an employee to be aware that medical treatment is necessary, it has the affirmative and continuing duty to supply medical treatment that is prompt, in compliance with the statutory prescription on choice of doctors, and adequate; if the employer fails to do so, the employee may make suitable independent arrangements at the employer's expense. *Clark v. Alegent Health Neb.*, 285 Neb. 60, 825 N.W.2d 195 (2013).

If compensability is denied by the employer, the employee has the right to select a physician and the employer is liable for medical services subsequently found to be compensable. *Clark v. Alegent Health Neb.*, 285 Neb. 60, 825 N.W.2d 195 (2013).

Under subdivision (2)(a) of this section, an employee has the right to select a physician who has maintained the employee's medical records prior to an injury and has a documented history of treatment with the employee prior to the injury. The employer shall notify the employee following an injury of such right of selection in a form and manner within the timeframe established by the compensation court. *Clark v. Alegent Health Neb.*, 285 Neb. 60, 825 N.W.2d 195 (2013).

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).

ANNOTATIONS

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.

Disability as a basis for compensation under subdivision (3) of this section is determined by the loss of use of a body member, not loss of earning power. *Lenz v. Central Parking System of Neb.*, 288 Neb. 453, 848 N.W.2d 623 (2014).

The extent of disability to a scheduled member under subdivision (3) of this section can be expressed in terms of percent. *Lenz v. Central Parking System of Neb.*, 288 Neb. 453, 848 N.W.2d 623 (2014).

The third paragraph of subdivision (3) of this section does not require expert proof of permanent physical restrictions assigned to each injured member in order to perform the loss of earning capacity assessment thereunder. *Rodgers v. Nebraska State Fair*, 288 Neb. 92, 846 N.W.2d 195 (2014).

The amendment by 2007 Neb. Laws, L.B. 588, to subdivision (3) of this section, which permits an employee to recover benefits for loss of earning capacity from a loss or loss of use of more than one member resulting in at least a 30-percent loss of earning capacity, was substantive, rather than procedural, and, therefore, did not apply retroactively to a claimant injured in an accident before the effective date of the amendment. *Smith v. Mark Chrisman Trucking*, 285 Neb. 826, 829 N.W.2d 717 (2013).

A return to work at wages equal to those received before the injury may be considered, but it does not preclude a finding that the workers' compensation claimant is either partially or totally disabled. *Zwiener v. Becton Dickinson-East*, 285 Neb. 735, 829 N.W.2d 113 (2013).

A workers' compensation claimant who leaves a job with an employer responsible for an injury in order to pursue more desirable employment does not waive temporary total disability benefits simply because the employer responsible for the injury would have accommodated light-duty restrictions during postsurgical recovery periods necessitated by the injury. *Zwiener v. Becton Dickinson-East*, 285 Neb. 735, 829 N.W.2d 113 (2013).

Earning capacity determinations, for workers' compensation purposes, should not be distorted by factors such as business booms, sympathy of a particular employer or friends, temporary good luck, or the superhuman efforts of the claimant to rise above his crippling handicaps. *Zwiener v. Becton Dickinson-East*, 285 Neb. 735, 829 N.W.2d 113 (2013).

An employee's illegal residence or work status does not bar an award of indemnity for permanent total loss of earning capacity. *Moyera v. Quality Pork Internat.*, 284 Neb. 963, 825 N.W.2d 409 (2013).

Whether a claimant's scheduled member loss has caused a whole body impairment is properly resolved under a proximate cause inquiry at the point of the claimant's maximum medical improvement, when the claimant's permanent impairment is assessed. *Moyera v. Quality Pork Internat.*, 284 Neb. 963, 825 N.W.2d 409 (2013).

ANNOTATIONS

If, by the point of maximum medical improvement, a claimant has developed a whole body impairment in addition to a scheduled member injury, the question is whether the work-related injury proximately caused the whole body impairment. If both injuries arose from the same work-related injury, because the scheduled member injury resulted in the whole body impairment in a natural and continuous sequence of events and the whole body impairment would not have occurred but for the work-related injury, then the claimant is entitled to disability benefits for the whole body impairment. *Moyera v. Quality Pork Internat.*, 284 Neb. 963, 825 N.W.2d 409 (2013).

Whether a claimant's compensable scheduled member injury has resulted in a whole body impairment and loss of earning power is a question of fact. *Moyera v. Quality Pork Internat.*, 284 Neb. 963, 825 N.W.2d 409 (2013).

A vocational rehabilitation plan seeking to place a part-time hourly employee who suffered a permanent impairment in employment where the employee would earn wages similar to those based upon a calculation of average weekly wage under subdivision (4) of this section would best achieve the goal of restoring the employee to suitable employment. *Becerra v. United Parcel Service*, 284 Neb. 414, 822 N.W.2d 327 (2012).

In calculating the average weekly wage, a part-time hourly employee with a permanent disability is treated as though he or she had worked a 40-hour workweek. *Becerra v. United Parcel Service*, 284 Neb. 414, 822 N.W.2d 327 (2012).

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).

48-125.

By filing a release pursuant to section 48-139(3), a worker waives his or her right to ask for penalties and attorney fees under this section. *Holdsworth v. Greenwood Farmers Co-op*, 286 Neb. 49, 835 N.W.2d 30 (2013).

The waiting-time penalty and attorney fees for waiting-time proceedings provided under this section are rights under the Nebraska Workers' Compensation Act. *Holdsworth v. Greenwood Farmers Co-op*, 286 Neb. 49, 835 N.W.2d 30 (2013).

Interest may be assessed only when attorney fees are allowed. *VanKirk v. Central Community College*, 285 Neb. 231, 826 N.W.2d 277 (2013).

No waiting-time penalty is required for an employer's delinquent payment of medical expenses, because such expenses do not constitute compensation within the meaning of this section. *VanKirk v. Central Community College*, 285 Neb. 231, 826 N.W.2d 277 (2013).

The prohibition against assessing attorney fees against medical providers set forth in the last sentence of subdivision (2)(a) of this section cannot be avoided by instead filing an action in the district court seeking fees under the common fund doctrine. *Walentine, O'Toole v. Midwest Neurosurgery*, 285 Neb. 80, 825 N.W.2d 425 (2013).

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).

ANNOTATIONS

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).

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.

When an employee paid by the hour suffers a work-related injury that results in permanent injury or death, the employee's average weekly wage is calculated by multiplying the rate of wages by a 40-hour workweek rather than by averaging that employee's actual wages over the 6 months before the accident. *Becerra v. United Parcel Service*, 284 Neb. 414, 822 N.W.2d 327 (2012).

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

ANNOTATIONS

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).

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).

48-137.

An employee seeking application of the exception for a material change in condition and substantial increase in disability is not required to demonstrate that he or she could not have filed a petition earlier than he or she did. *Lenz v. Central Parking System of Neb.*, 288 Neb. 453, 848 N.W.2d 623 (2014).

The exception for a material change in condition and substantial increase in disability was not rendered unenforceable by *Bassinger v. Nebraska Heart Hosp.*, 282 Neb. 835, 806 N.W.2d 395 (2011). *Lenz v. Central Parking System of Neb.*, 288 Neb. 453, 848 N.W.2d 623 (2014).

ANNOTATIONS

The Legislature has acquiesced to the exception for a material change in condition and substantial increase in disability. *Lenz v. Central Parking System of Neb.*, 288 Neb. 453, 848 N.W.2d 623 (2014).

48-139.

By filing a release pursuant to the settlement procedures in subsection (3) of this section, a worker waives all rights under the Nebraska Workers' Compensation Act, including both the right to penalties and attorney fees under section 48-125 and the right to ask a judge of the compensation court to decide the parties' rights and obligations. *Holdsworth v. Greenwood Farmers Co-op*, 286 Neb. 49, 835 N.W.2d 30 (2013).

The filing of a release pursuant to subsection (3) of this section does not deprive the Workers' Compensation Court of jurisdiction to hear further issues in a case. *Holdsworth v. Greenwood Farmers Co-op*, 286 Neb. 49, 835 N.W.2d 30 (2013).

The filing of a release pursuant to subsection (3) of this section, not actual payment of the lump-sum settlement, effects a discharge from liability for the employer. *Holdsworth v. Greenwood Farmers Co-op*, 286 Neb. 49, 835 N.W.2d 30 (2013).

There is no ambiguity in the statutorily required language for a release pursuant to subsection (3) of this section. *Holdsworth v. Greenwood Farmers Co-op*, 286 Neb. 49, 835 N.W.2d 30 (2013).

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.

To establish a change in incapacity under this section, an applicant must show a change in impairment and a change in disability. In a workers' compensation context, impairment refers to a medical assessment, whereas disability relates to employability. *Rader v. Speer Auto*, 287 Neb. 116, 841 N.W.2d 383 (2013).

The party seeking modification has the burden to prove the allegations in its petition to modify the running award of temporary total disability benefits. *Visoso v. Cargill Meat Solutions*, 285 Neb. 272, 826 N.W.2d 845 (2013).

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).

ANNOTATIONS

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.

An employee's death from asphyxiation, after entering a grain bin at his workplace in violation of safety regulations and then becoming engulfed in grain, was the result of an "accident" covered by the exclusive jurisdiction of the Nebraska Workers' Compensation Act, even though the employer willfully violated the Occupational Safety and Health Administration regulations. *Estate of Teague v. Crossroads Co-op Assn.*, 286 Neb. 1, 834 N.W.2d 236 (2013).

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).

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.

A vocational rehabilitation plan seeking to place a part-time hourly employee who suffered a permanent impairment in employment where the employee would earn wages similar to those based upon a calculation of average weekly wage under section 48-121(4) would best achieve the goal of restoring the employee to suitable employment. *Becerra v. United Parcel Service*, 284 Neb. 414, 822 N.W.2d 327 (2012).

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).

ANNOTATIONS

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.

Where there was sufficient evidence to support a factual finding that knee surgery was not required by the prior work-related injury, a three-judge panel of the Workers' Compensation Court did not have grounds under this section to reverse the decision of a single judge of the Workers' Compensation Court denying compensability for the surgery. *Pearson v. Archer-Daniels-Midland Milling Co.*, 285 Neb. 568, 828 N.W.2d 154 (2013).

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 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

ANNOTATIONS

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).

48-1,112.

The hearing on a motion to enforce an award of compensation is the hearing on the merits referenced in this section. The hearing prior to the entry of the award is not the hearing on the merits referenced in this section. *DeLeon v. Reinke Mfg. Co.*, 287 Neb. 419, 843 N.W.2d 601 (2014).

48-604.

Services performed in the position of county attorney are excepted from the definition of employment, and thus, wages earned in that capacity are not for covered “employment” for purposes of unemployment insurance benefits. *Lang v. Howard County*, 287 Neb. 66, 840 N.W.2d 876 (2013).

The position of county attorney is one that has been designated “a major nontenured policymaking or advisory position” under or pursuant to Nebraska law. *Lang v. Howard County*, 287 Neb. 66, 840 N.W.2d 876 (2013).

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).

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).

ANNOTATIONS

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.

Pursuant to subsection (1), a public employer is required to negotiate in good faith regarding a new vacation accrual policy, because such a policy relates to a mandatory subject of bargaining. *Service Empl. Internat. v. Douglas Cty. Sch. Dist.*, 286 Neb. 755, 839 N.W.2d 290 (2013).

Where the organization representing public employees received notice of the public employer's intent to change the vacation accrual policy, the organization's failure to make a timely request to bargain over the changes constituted a waiver of the right to bargain over what would otherwise have been a mandatory subject of bargaining. *Service Empl. Internat. v. Douglas Cty. Sch. Dist.*, 286 Neb. 755, 839 N.W.2d 290 (2013).

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).

48-1228.

The Nebraska Wage Payment and Collection Act does not prohibit employers from discharging employees, and it does not provide employees with any substantive rights. *Coffey v. Planet Group*, 287 Neb. 834, 845 N.W.2d 255 (2014).

48-1229.

Under the 2007 amendments to this section, unused "paid time off" hours constitute unused vacation leave when the only stipulated condition for earning the hours is the rendering of services and an employee has an absolute right to take this time off for any purpose that he or she wishes. In that circumstance, an employee's unused paid time off hours are wages that an employer must pay upon separation of employment. *Fisher v. PayFlex Systems USA*, 285 Neb. 808, 829 N.W.2d 703 (2013).

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).

ANNOTATIONS

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).

48-1231.

A court has discretion to award attorney fees higher than the statutory minimum required under this section, and an award of fees above the statutory minimum does not depend upon the presence of employer’s unreasonable defenses or vexatious counterclaims. *Fisher v. PayFlex Systems USA*, 285 Neb. 808, 829 N.W.2d 703 (2013).

An appellate court reviews a lower court’s award of attorney fees under this section for an abuse of discretion. *Fisher v. PayFlex Systems USA*, 285 Neb. 808, 829 N.W.2d 703 (2013).

49-1201.

This section relates to tax matters and is inapplicable in postconviction actions. *State v. Smith*, 286 Neb. 77, 834 N.W.2d 799 (2013).

49-14,101.02.

In order to determine whether there has been a violation of subsection (2) of this section, a court must consider the intent behind the expenditure of public resources. *Nebraska Account. & Disclosure Comm. v. Skinner*, 288 Neb. 804, 853 N.W.2d 1 (2014).

Public resources are used “for the purpose of campaigning” when their use is intended to influence public support for or against a particular political candidate, ticket, or measure. *Nebraska Account. & Disclosure Comm. v. Skinner*, 288 Neb. 804, 853 N.W.2d 1 (2014).

The language of subsection (2) of this section does not make a distinction between express advocacy and issue advocacy. *Nebraska Account. & Disclosure Comm. v. Skinner*, 288 Neb. 804, 853 N.W.2d 1 (2014).

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.

In addition to an owner’s liability under this section and common-law liability for known vicious propensities, the keeper of a dog can be liable to injured third parties on a negligence theory. *Van Kleek v. Farmers Ins. Exch.*, 289 Neb. 730, 857 N.W.2d 297 (2014).

ANNOTATIONS

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).

54-2417.

By enacting legislation that made it unlawful to operate an animal feeding operation without having an approved livestock waste control facility, the Legislature acknowledged that livestock waste is a potentially harmful substance that must be handled properly. *Butler County Dairy v. Butler County*, 285 Neb. 408, 827 N.W.2d 267 (2013).

54-2420.

Because this section indicates that the Legislature did not intend to occupy the entire field of livestock waste management regulation and that the state requirements in the Livestock Waste Management Act were meant to coexist with local requirements, there is no field preemption of local laws by the Livestock Waste Management Act. *Butler County Dairy v. Butler County*, 285 Neb. 408, 827 N.W.2d 267 (2013).

54-2432.

By enacting legislation that made it unlawful to discharge livestock waste without obtaining the appropriate permits or an exemption, the Legislature acknowledged that livestock waste is a potentially harmful substance that must be handled properly. *Butler County Dairy v. Butler County*, 285 Neb. 408, 827 N.W.2d 267 (2013).

By enacting legislation that made it unlawful to operate an animal feeding operation without having an approved livestock waste control facility, the Legislature acknowledged that livestock waste is a potentially harmful substance that must be handled properly. *Butler County Dairy v. Butler County*, 285 Neb. 408, 827 N.W.2d 267 (2013).

57-229.

In order for owners of severed mineral interests to publicly exercise their rights of ownership, they must strictly comply with the statutory requirements of this section prior to the date an action is filed by the surface owner. *Rice v. Bixler*, 289 Neb. 194, 854 N.W.2d 565 (2014).

Reference to an unrecorded deed that may or may not exist does not establish the proper chain of ownership necessary to comply with the requirements for filing a verified claim. *Rice v. Bixler*, 289 Neb. 194, 854 N.W.2d 565 (2014).

Severed mineral owners must strictly comply with the statutory requirements of this section. *Rice v. Bixler*, 289 Neb. 194, 854 N.W.2d 565 (2014).

The “record owner” of mineral interests, as used in this section, includes an individual identified by probate records in the county where the interests are located. *Gibbs Cattle Co. v. Bixler*, 285 Neb. 952, 831 N.W.2d 696 (2013).

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).

ANNOTATIONS

57-1503.

Absent a supermajority concurrence, the Nebraska Supreme Court could not invalidate a statute giving the Governor authority to approve an interstate oil pipeline carrier's proposed route through the State and bestow upon the carrier the power to exercise eminent domain, despite the majority's conclusion that the legislation is facially unconstitutional because it transfers the Public Service Commission's constitutional powers over common carriers to the Governor. *Thompson v. Heineman*, 289 Neb. 798, 857 N.W.2d 731 (2015).

Under the citizen taxpayer exception for matters of "great public concern," an exception to the injury-in-fact standing requirement, landowners had standing to challenge the constitutionality of legislation giving the Governor the authority to approve a major oil pipeline route and thereby bestow upon the carrier the power to exercise eminent domain. *Thompson v. Heineman*, 289 Neb. 798, 857 N.W.2d 731 (2015).

59-805.

In order for a plaintiff to successfully bring a claim that a defendant drove it out of business under this section, the plaintiff must show that the defendant is a person, corporation, joint-stock company, limited liability company, or other association which is engaged in business within Nebraska and that the defendant gave any direction or authority to do any act with the intent and for the purpose of driving the plaintiff out of business. *Credit Bureau Servs. v. Experian Info. Solutions*, 285 Neb. 526, 828 N.W.2d 147 (2013).

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).

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.

A sworn report does not need to state or support an inference that the individual arrested drove or controlled a motor vehicle on property open to public access. *Hoppens v. Nebraska Dept. of Motor Vehicles*, 288 Neb. 857, 852 N.W.2d 331 (2014).

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).

ANNOTATIONS

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).

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 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 (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 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

ANNOTATIONS

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).

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).

ANNOTATIONS

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. *Shiple 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).

60-6,139.

By including the language “as nearly as practicable,” subdivision (1) of this section expressly requires that surrounding circumstances be considered. *State v. Au*, 285 Neb. 797, 829 N.W.2d 695 (2013).

The language “as nearly as practicable” conveys that subdivision (1) of this section does not require absolute adherence to a feasibility requirement, but, rather, something less rigorous. *State v. Au*, 285 Neb. 797, 829 N.W.2d 695 (2013).

The mere touching or crossing of a lane divider line, without more, does not constitute a traffic violation under this section. *State v. Au*, 285 Neb. 797, 829 N.W.2d 695 (2013).

60-6,142.

Any crossing of the fog line onto the shoulder constitutes driving on the shoulder and is a violation of this section. *State v. Magallanes*, 284 Neb. 871, 824 N.W.2d 696 (2012).

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).

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).

ANNOTATIONS

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.

The plain and ordinary meaning of this section does not require the State to prove the exact date of the prior offense. *State v. Taylor*, 286 Neb. 966, 840 N.W.2d 526 (2013).

A defendant's conviction in Colorado for driving while ability impaired could not be used to enhance his conviction in Nebraska for driving under the influence. *State v. Mitchell*, 285 Neb. 88, 825 N.W.2d 429 (2013).

"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).

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.

This section does not constrain the trial court's discretion to order when the mandatory 15-year license revocation shall begin. *State v. Policky*, 285 Neb. 612, 828 N.W.2d 163 (2013).

ANNOTATIONS

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.

Under the language of subsection (2) of this section, if the sentencing court orders the use of a continuous alcohol monitoring device, the convicted person using the continuous alcohol monitoring device must abstain from alcohol use at all times. *State v. Sikes*, 286 Neb. 38, 834 N.W.2d 609 (2013).

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).

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).

ANNOTATIONS

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).

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).

60-6,273.

A court should apply this section before applying a statutory cap on damages. *Werner v. County of Platte*, 284 Neb. 899, 824 N.W.2d 38 (2012).

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).

ANNOTATIONS

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).

60-1401.26.

The definition of a motor vehicle dealer under this section entails three requirements. To be a motor vehicle dealer, a person must (1) not be a bona fide consumer; (2) be actively and regularly engaged in selling, leasing for a period of 30 or more days, or exchanging new or used motor vehicles; and (3) buy, sell, exchange, cause the sale of, or offer or attempt to sell new or used motor vehicles. *State v. Merchant*, 288 Neb. 439, 848 N.W.2d 630 (2014).

60-1416.

Mens rea is not required to convict a person for acting without a license under this section because the offense is a public welfare offense. *State v. Merchant*, 285 Neb. 456, 827 N.W.2d 473 (2013).

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

ANNOTATIONS

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).

67-405.

Under the former law, if an obligation to pay interest arises and the rate is not specified, the rate is that specified in section 45-104.01. *Robertson v. Jacobs Cattle Co.*, 285 Neb. 859, 830 N.W.2d 191 (2013).

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.

Grounds for dissociation of a partnership exist when partners execute leases to rent farmland but do not pay rent to the partnership. *Robertson v. Jacobs Cattle Co.*, 285 Neb. 859, 830 N.W.2d 191 (2013).

When grounds for both dissociation and dissolution of a partnership exist, a court may exercise its discretion to determine the appropriate remedy. *Robertson v. Jacobs Cattle Co.*, 285 Neb. 859, 830 N.W.2d 191 (2013).

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).

ANNOTATIONS

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).

67-434.

Interest on the buyout price of a dissociated partner's interest "must be paid from the date of dissociation to the date of payment." *Robertson v. Jacobs Cattle Co.*, 285 Neb. 859, 830 N.W.2d 191 (2013).

The date of dissociation when dissociation is by judicial expulsion is the date of the judicial order. *Robertson v. Jacobs Cattle Co.*, 285 Neb. 859, 830 N.W.2d 191 (2013).

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.

When grounds for both dissociation and dissolution of a partnership exist, a court may exercise its discretion to determine the appropriate remedy. *Robertson v. Jacobs Cattle Co.*, 285 Neb. 859, 830 N.W.2d 191 (2013).

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).

67-445.

The capital gain which would be realized upon a hypothetical liquidation of the partnership's land on the date of dissociation would constitute "profits" within the meaning of the phrase in subsection (2) of this section. *Robertson v. Jacobs Cattle Co.*, 285 Neb. 859, 830 N.W.2d 191 (2013).

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).

ANNOTATIONS

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).

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).

69-2433.

The obvious purpose of this section is to prevent people with a demonstrated propensity to commit crimes, including crimes involving acts of violence, from carrying concealed weapons so as to minimize the risk of future gun violence. An attempt to commit a crime is indicative of future behavior, and in the context of subdivision (5) of this section, the attempt itself is an act of violence. Underwood v. Nebraska State Patrol, 287 Neb. 204, 842 N.W.2d 57 (2014).

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).

ANNOTATIONS

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 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).

ANNOTATIONS

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).

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).

71-1919.

The Legislature has authorized the Department of Health and Human Services to make various rules and regulations necessary for the care and protection of children. That authorization extends to making rules for childcare providers and facilities. Failure to abide by those rules may be cause for discipline against a licensee or

ANNOTATIONS

the revocation of a license to operate. *Marion's v. Nebraska Dept. of Health & Human Servs.*, 289 Neb. 982, 858 N.W.2d 178 (2015).

71-5730.

The statutory exemptions for tobacco retail outlets and cigar bars are unconstitutional special legislation. *Big John's Billiards v. State*, 288 Neb. 938, 852 N.W.2d 727 (2014).

71-6903.

A petition for waiver of parental consent—which seeks authorization from the court to have an abortion without the notarized written consent of a parent or guardian of the petitioner—is limited in scope. Because of the limited scope of such an action, the district court acts as a special statutory tribunal to summarily decide the issues authorized by this section. *In re Petition of Anonymous 5*, 286 Neb. 640, 838 N.W.2d 226 (2013).

The obvious intent of subsection (3) of this section is to avoid requiring a pregnant woman to obtain the consent of a parent or guardian who has abused or neglected her, acts which evidence an obvious disregard of her best interests or well-being. *In re Petition of Anonymous 5*, 286 Neb. 640, 838 N.W.2d 226 (2013).

Under the “evidence of abuse . . . or child abuse or neglect” provision of subsection (3) of this section, the pregnant woman must establish that a parent or guardian, who occupies that role in relation to her at the time she files her petition for waiver of parental consent, has either abused her as defined in section 28-351 or subjected her to child abuse or neglect as defined in section 28-710. *In re Petition of Anonymous 5*, 286 Neb. 640, 838 N.W.2d 226 (2013).

When the Legislature has expressly chosen a judicial forum for the resolution of issues under this section, it is not the Nebraska Supreme Court's province to rewrite this section or suggest alternate or additional procedures to be utilized in this context, unless the judicial bypass statute violates the state or federal Constitution or a federal treaty. *In re Petition of Anonymous 5*, 286 Neb. 640, 838 N.W.2d 226 (2013).

71-6904.

A petition for waiver of parental consent—which seeks authorization from the court to have an abortion without the notarized written consent of a parent or guardian of the petitioner—is limited in scope. *In re Petition of Anonymous 5*, 286 Neb. 640, 838 N.W.2d 226 (2013).

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).

75-101.

Subsections (1) and (2) of this section set out the eligibility requirements to hold the office of commissioner. Subsection (3) sets out restrictions upon those who hold that office: They may not hold another office or engage in another occupation while holding the office of commissioner. *Rosberg v. Vap*, 284 Neb. 104, 815 N.W.2d 867 (2012).

Under subsection (1), a person is eligible to be a commissioner if he or she is in good standing in any profession of which he or she is a member or practitioner—outside of the duties imposed upon a commissioner while holding office. *Rosberg v. Vap*, 284 Neb. 104, 815 N.W.2d 867 (2012).

75-136.

Under this section, an appellate court must reappraise the evidence on the record as it relates to the penalty issued by the Public Service Commission and reach an independent conclusion. *Telrite Corp. v. Nebraska Pub. Serv. Comm.*, 288 Neb. 866, 852 N.W.2d 910 (2014).

ANNOTATIONS

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).

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).

ANNOTATIONS

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).

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.

If an appeal is taken to the district court in an inverse condemnation action, the relevant time period for any good faith negotiations for purposes of this section is after the filing of the appeal. *Village of Memphis v. Frahm*, 287 Neb. 427, 843 N.W.2d 608 (2014).

The purpose of this section is to protect property owners against harassment by the institution of groundless appeals on the part of public entities, and its use should be limited to the purposes for which it was intended. *Village of Memphis v. Frahm*, 287 Neb. 427, 843 N.W.2d 608 (2014).

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.

This section recognizes the existence of two different methods of foreclosing a trust deed: (1) by nonjudicial foreclosure or (2) by judicial foreclosure in the manner of mortgages. *First Nat. Bank of Omaha v. Davey*, 285 Neb. 835, 830 N.W.2d 63 (2013).

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.

As used in this section, the language “as hereinabove provided” refers to the statutory procedures for trustee’s sale as set forth in the Nebraska Trust Deeds Act. *First Nat. Bank of Omaha v. Davey*, 285 Neb. 835, 830 N.W.2d 63 (2013).

The judicial foreclosure of a trust deed does not result in the “sale of property under a trust deed” as that language is used in this section. *First Nat. Bank of Omaha v. Davey*, 285 Neb. 835, 830 N.W.2d 63 (2013).

The 3-month statute of limitations set forth in this section does not apply to deficiency actions brought following the judicial foreclosure of a trust deed, but only to deficiency actions filed after the sale of property pursuant to the trustee’s power of sale. *First Nat. Bank of Omaha v. Davey*, 285 Neb. 835, 830 N.W.2d 63 (2013).

When a promissory note was secured by both a trust deed and a guaranty, this section applied to the promissory note, but did not apply to the guaranty. The guaranty was an independent contract, and the guaranty was not secured by a trust deed. *Mutual of Omaha Bank v. Murante*, 285 Neb. 747, 829 N.W.2d 676 (2013).

ANNOTATIONS

An order deciding fair market value of real estate for purposes of this section, which order determined that the fair market value was greater than the trustee's sale price, was not a final, appealable order when the trial court did not resolve all affirmative defenses raised by the defendants or whether this section applied to guarantors of the underlying debt. *Selma Development v. Great Western Bank*, 285 Neb. 37, 825 N.W.2d 215 (2013).

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).

76-1018.

A guaranty that was not secured by a trust deed was not subject to the provisions of the Nebraska Trust Deeds Act. *Mutual of Omaha Bank v. Murante*, 285 Neb. 747, 829 N.W.2d 676 (2013).

76-1416.

The mandatory attorney fees provisions of the Uniform Residential Landlord and Tenant Act include fees for pro bono work. *Black v. Brooks*, 285 Neb. 440, 827 N.W.2d 256 (2013).

Where there is no written agreement obligating the client to pay an attorney fee award to the pro bono organization, the proper remedy to avoid a windfall to the prevailing party is to award the fee directly to the pro bono organization. *Black v. Brooks*, 285 Neb. 440, 827 N.W.2d 256 (2013).

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).

76-1429.

The Uniform Residential Landlord and Tenant Act expressly upholds tenants' liability for negligent fire damage. *SFI Ltd. Partnership 8 v. Carroll*, 288 Neb. 698, 851 N.W.2d 82 (2014).

Where a specific statute holds a tenant responsible for fire damages caused by his or her negligence, a court cannot hold a lease provision doing so as void against public policy or unconscionable. *SFI Ltd. Partnership 8 v. Carroll*, 288 Neb. 698, 851 N.W.2d 82 (2014).

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).

76-2405.

Unless otherwise specified in a written agency agreement pursuant to section 76-2422(6), the fiduciary duties owed by a real estate broker derive only from the performance of limited activities defined in section 81-885.01(2). *Professional Mgmt. Midwest v. Lund Co.*, 284 Neb. 777, 826 N.W.2d 225 (2012).

When a client engages a real estate broker to perform any of the activities defined in section 81-885.01(2), the resulting agency relationship is called a brokerage relationship. *Professional Mgmt. Midwest v. Lund Co.*, 284 Neb. 777, 826 N.W.2d 225 (2012).

76-2416.

A brokerage relationship is a limited agency relationship. *Professional Mgmt. Midwest v. Lund Co.*, 284 Neb. 777, 826 N.W.2d 225 (2012).

ANNOTATIONS

76-2417.

A brokerage relationship is a limited agency relationship. *Professional Mgmt. Midwest v. Lund Co.*, 284 Neb. 777, 826 N.W.2d 225 (2012).

76-2418.

A brokerage relationship is a limited agency relationship. *Professional Mgmt. Midwest v. Lund Co.*, 284 Neb. 777, 826 N.W.2d 225 (2012).

76-2422.

Case law defining common-law fiduciary duties is irrelevant to the determination whether a real estate broker breached the duties owed by statute, unless otherwise specified in a written agency agreement pursuant to subsection (6) of this section. *Professional Mgmt. Midwest v. Lund Co.*, 284 Neb. 777, 826 N.W.2d 225 (2012).

Unless otherwise specified in a written agency agreement pursuant to subsection (6) of this section, the fiduciary duties owed by a real estate broker derive only from the performance of limited activities defined in section 81-885.01(2). *Professional Mgmt. Midwest v. Lund Co.*, 284 Neb. 777, 826 N.W.2d 225 (2012).

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).

76-2423.

A brokerage relationship is a limited agency relationship. *Professional Mgmt. Midwest v. Lund Co.*, 284 Neb. 777, 826 N.W.2d 225 (2012).

A real estate broker retained to represent a client in a leasing transaction does not owe a continuing duty to that client for the duration of the lease. *Professional Mgmt. Midwest v. Lund Co.*, 284 Neb. 777, 826 N.W.2d 225 (2012).

Once a brokerage relationship is terminated, the real estate broker ceases to owe duties to the client except for limited duties of confidentiality and accounting for money and property received during the relationship. *Professional Mgmt. Midwest v. Lund Co.*, 284 Neb. 777, 826 N.W.2d 225 (2012).

Under the circumstances of this case, it was not necessary to determine the exact point at which a leasing transaction terminated, but it was completed no later than the date of payment of the real estate broker's commission. *Professional Mgmt. Midwest v. Lund Co.*, 284 Neb. 777, 826 N.W.2d 225 (2012).

76-2429.

Case law defining common-law fiduciary duties is irrelevant to the determination whether a real estate broker breached the duties owed by statute, unless otherwise specified in a written agency agreement pursuant to section 76-2422(6). *Professional Mgmt. Midwest v. Lund Co.*, 284 Neb. 777, 826 N.W.2d 225 (2012).

Unless otherwise specified in a written agency agreement pursuant to section 76-2422(6), the fiduciary duties owed by a real estate broker derive only from the performance of limited activities defined in section 81-885.01(2). *Professional Mgmt. Midwest v. Lund Co.*, 284 Neb. 777, 826 N.W.2d 225 (2012).

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).

ANNOTATIONS

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 operation of a motel and campground by an organization that also operated a museum was reasonably necessary to accomplish the educational mission of the museum, and thus, the motel and campground were exempt from property taxation. *Harold Warp Pioneer Village Found. v. Ewald*, 287 Neb. 19, 844 N.W.2d 245 (2013).

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).

77-202.11.

In relation to public property owned by a political subdivision governed by article VIII, section 11 of the Constitution of Nebraska, property taxes (assessed against the lessee) and a payment in lieu of tax may both be collected. *Conroy v. Keith Cty. Bd. of Equal.*, 288 Neb. 196, 846 N.W.2d 634 (2014).

Lessees of the property of a political subdivision organized primarily to provide electricity or irrigation and electricity may be subject to taxation under this section. *Conroy v. Keith Cty. Bd. of Equal.*, 288 Neb. 196, 846 N.W.2d 634 (2014).

Where the lessees of public property were not sent notice pursuant to this section or section 77-202.12 and were not parties to the proceedings before the board of equalization or the Tax Equalization and Review Commission,

ANNOTATIONS

the Tax Equalization and Review Commission lacked jurisdiction to decide whether property taxes could be assessed against the lessees. *Conroy v. Keith Cty. Bd. of Equal.*, 288 Neb. 196, 846 N.W.2d 634 (2014).

77-202.12.

Where the lessees of public property were not sent notice pursuant to this section or section 77-202.11 and were not parties to the proceedings before the board of equalization or the Tax Equalization and Review Commission, the Tax Equalization and Review Commission lacked jurisdiction to decide whether property taxes could be assessed against the lessees. *Conroy v. Keith Cty. Bd. of Equal.*, 288 Neb. 196, 846 N.W.2d 634 (2014).

Where the parties availed themselves of the procedure in this section and the issue to be decided by the board of equalization was whether the relevant parcels were used for a public purpose, the appeal to the Tax Equalization and Review Commission was governed by the June 1 deadline in this section. *Conroy v. Keith Cty. Bd. of Equal.*, 288 Neb. 196, 846 N.W.2d 634 (2014).

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).

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).

ANNOTATIONS

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 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).

77-1734.01.

This section does not alter the common-law rule that taxes paid pursuant to an error of law are not recoverable. *Kaapa Ethanol v. Board of Supervisors*, 285 Neb. 112, 825 N.W.2d 761 (2013).

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).

77-1832.

Notice to a sanitary improvement district, as titleholder to five parcels of real estate, of pending issuance of tax deeds to a holder of tax certificates on those parcels was sufficient under this section where a real estate transfer form designated the address of the district's attorney as the address where tax statements should be sent; the certificate holder sent redemption notices by certified mail, receipt requested, to that address; and the certificate holder provided affidavits of service and proof of publication to the county treasurer when applying for the tax deeds. *SID No. 424 v. Tristar Mgmt.*, 288 Neb. 425, 850 N.W.2d 745 (2014).

77-1837.

Treasurer tax deeds issued to a holder of tax certificates on five parcels of real estate passed title to the certificate holder free and clear of all previous liens and encumbrances, including the special assessment liens of a sanitary improvement district. *SID No. 424 v. Tristar Mgmt.*, 288 Neb. 425, 850 N.W.2d 745 (2014).

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).

ANNOTATIONS

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).

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).

ANNOTATIONS

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.

Any amount of use in manufacturing is sufficient to bring machinery or equipment purchased by a "person" engaged in the business of manufacturing within the definition of manufacturing machinery and equipment. Kerford Limestone Co. v. Nebraska Dept. of Rev., 287 Neb. 653, 844 N.W.2d 276 (2014).

Motor grader's use by limestone manufacturing company to maintain stockpiles of limestone separated according to gradation was an exempt use under this section, because such use maintained the integrity of the company's product. Kerford Limestone Co. v. Nebraska Dept. of Rev., 287 Neb. 653, 844 N.W.2d 276 (2014).

No time-based qualifications are imposed upon the uses that bring machinery or equipment within the meaning of the definition of manufacturing machinery and equipment. Kerford Limestone Co. v. Nebraska Dept. of Rev., 287 Neb. 653, 844 N.W.2d 276 (2014).

The regulation that requires machinery and equipment to be used in manufacturing more than 50 percent of the time in order to qualify as manufacturing machinery and equipment is contrary to the plain language of this section. Kerford Limestone Co. v. Nebraska Dept. of Rev., 287 Neb. 653, 844 N.W.2d 276 (2014).

Whether the statutory language "to maintain the integrity of the product" encompassed the specific act of maintaining inventory stockpile areas was a question of law. Kerford Limestone Co. v. Nebraska Dept. of Rev., 287 Neb. 653, 844 N.W.2d 276 (2014).

A manufacturer was not entitled to obtain a refund of sales tax on building materials used in the construction of an ethanol production plant where the materials were purchased by an Option 3 contractor rather than by the manufacturer. Bridgeport Ethanol v. Nebraska Dept. of Rev., 284 Neb. 291, 818 N.W.2d 600 (2012).

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).

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

ANNOTATIONS

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.

Because the definition of manufacturing machinery and equipment limits an exemption from sales tax for the purchase of such machinery and equipment to items purchased by a person engaged in the business of manufacturing for use in manufacturing, a manufacturer was not entitled to obtain a refund of sales tax on building materials used in the construction of an ethanol production plant where the materials were purchased by a contractor rather than by the manufacturer. *Bridgeport Ethanol v. Nebraska Dept. of Rev.*, 284 Neb. 291, 818 N.W.2d 600 (2012).

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).

77-4309.

Where no evidence was adduced to show the absence of the official stamp or label, an essential element of the crime of no drug tax stamp, an appellate court may note plain error and reverse the conviction. *State v. Howell*, 284 Neb. 559, 822 N.W.2d 391 (2012).

77-5013.

A party properly placed an envelope in the mail "for delivery to [the Tax Equalization and Review Commission]" where the record showed that the party intended to appeal certain tax valuations, that the envelope had an accurate address for the commission, and that when the envelope was mailed, with no significant changes made from the first mailing, it arrived at the commission. *Lozier Corp. v. Douglas Cty. Bd. of Equal.*, 285 Neb. 705, 829 N.W.2d 652 (2013).

A postage meter stamp qualifies as a "postmark" under subsection (2) of this section. *Lozier Corp. v. Douglas Cty. Bd. of Equal.*, 285 Neb. 705, 829 N.W.2d 652 (2013).

Subsection (2) of this section does not provide that a mailing which arrived controls over a prior mailing which did not. Instead, this subsection focuses on, among other things, whether the appeal was properly placed in the mail, rather than on whether the Tax Equalization and Review Commission received it. *Lozier Corp. v. Douglas Cty. Bd. of Equal.*, 285 Neb. 705, 829 N.W.2d 652 (2013).

ANNOTATIONS

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).

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).

77-6203.

The nameplate capacity tax is an excise tax, not a property tax. *Banks v. Heineman*, 286 Neb. 390, 837 N.W.2d 70 (2013).

79-201.

Subsection (2) of this section does not make the start of the public school calendar year the default start date for other schools and does not provide that a child must attend a legally recognized school each day of the public school year. Nor does it require parents to enroll their child in a legally recognized school until they obtain the State's recognition of an exempt homeschool. *State v. Thacker*, 286 Neb. 16, 834 N.W.2d 597 (2013).

Under subsection (2) of this section, an exempt school's ability to complete the minimum instruction hours is the only timing requirement imposed upon an exempt school's calendar year. *State v. Thacker*, 286 Neb. 16, 834 N.W.2d 597 (2013).

Where a juvenile is adjudicated solely on the basis of habitual truancy from school under subsection (3)(b) of section 43-247 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 this section, 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).

79-209.

Under the former law, subsection (3) of this section permitted a school attendance officer to make a report to the county attorney if a child is absent more than 20 days per year or the hourly equivalent, even if all of the absences are excused due to illness or otherwise. It mandated such a report if the child exceeds the 20-day absence limitation and any of such absences are not excused. *In re Interest of Samantha C.*, 287 Neb. 644, 843 N.W.2d 665 (2014).

ANNOTATIONS

Under the former law, this section had no effect upon the juvenile court's exclusive and original jurisdiction over juveniles found to be within the meaning of section 43-247(3)(b). *In re Interest of Samantha C.*, 287 Neb. 644, 843 N.W.2d 665 (2014).

79-254.

School officials' statutory authority to conduct searches of students is implied by the Student Discipline Act. *J.P. v. Millard Public Schools*, 285 Neb. 890, 830 N.W.2d 453 (2013).

79-262.

School officials have authority to regulate and control student conduct on school grounds, but are not given authority to search off school grounds, including a vehicle parked off school grounds that is not associated with a school-sponsored event or activity. *J.P. v. Millard Public Schools*, 285 Neb. 890, 830 N.W.2d 453 (2013).

79-267.

This section limits a school district's jurisdiction to discipline students for possession of a controlled substance to conduct occurring on school property, at a school-sponsored activity or athletic event, or in a vehicle owned or used by the school for a school purpose. Driving to school was not a school-sponsored event and was not associated with a school-sponsored event, and a high school did not have implied authority to search a student's vehicle parked off campus. *J.P. v. Millard Public Schools*, 285 Neb. 890, 830 N.W.2d 453 (2013).

This section makes a clear distinction between conduct that occurs on school grounds and conduct that occurs off school grounds. *J.P. v. Millard Public Schools*, 285 Neb. 890, 830 N.W.2d 453 (2013).

This section sets the limits of a school's authority to discipline students for unlawfully possessing a controlled substance. *J.P. v. Millard Public Schools*, 285 Neb. 890, 830 N.W.2d 453 (2013).

79-291.

The Student Discipline Act specifically grants the district court the power to reverse the decision of a board of education if a student's constitutional rights were violated. *J.P. v. Millard Public Schools*, 285 Neb. 890, 830 N.W.2d 453 (2013).

79-413.

A state committee's approval of a petition for reorganization, including a school district's reallocation of bonding authority, is a "change" within the committee's jurisdiction under subsection (4) of this section, subject to appeal, and it may not be collaterally attacked. *Cumming v. Red Willow Sch. Dist. No. 179*, 273 Neb. 483, 730 N.W.2d 794 (2007).

79-419.

Under the precursor to subsection (2) of this section, merging school boards were not authorized to include in their merger petition a requirement that the surviving school board obtain a majority vote from voters in a former school district or a unanimous vote from school board members before moving grades four through six from an elementary school in a former district. *Citizens for Eq. Ed. v. Lyons-Decatur Sch. Dist.*, 274 Neb. 278, 739 N.W.2d 742 (2007).

79-458.

Under subsection (5) of this section, appeals from a freeholder board must be filed by August 10 when the board either acted or failed to act on a petition by August 1. *Butler Cty. Sch. Dist. v. Freeholder Petitioners*, 283 Neb. 903, 814 N.W.2d 724 (2012).

A party filing a petition under this section has a direct and legal interest in an appeal filed with the district court objecting to the granting of that petition. *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 759 N.W.2d 464 (2009).

Deficiencies in a petition filed under this section do not necessarily defeat the jurisdiction of a freeholder board. *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 759 N.W.2d 464 (2009).

ANNOTATIONS

In determining whether land is contiguous under this section, a freeholder board shall consider all petitions together in order to find that otherwise noncontiguous land is nevertheless contiguous. *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 759 N.W.2d 464 (2009).

79-515.

A contract continuation clause does not create a contract of indefinite duration in violation of this section. *Central City Ed. Assn. v. Merrick Cty. Sch. Dist.*, 280 Neb. 27, 783 N.W.2d 600 (2010).

79-827.

A contract of a certificated employee may be canceled at any time during the school year pursuant to the provisions of this section. *Schiefelbein v. School Dist. No. 0013*, 17 Neb. App. 80, 758 N.W.2d 645 (2008).

A contractual provision purporting to alter the deadline for notice of nonrenewal does not affect a school board's ability to cancel a contract pursuant to this section. *Schiefelbein v. School Dist. No. 0013*, 17 Neb. App. 80, 758 N.W.2d 645 (2008).

The notice of cancellation required by this section is fulfilled, even where the notice incorrectly states that any hearing will be an informal due process hearing pursuant to section 79-834, if the notice states that all the formal due process hearing protections contained in section 79-832 will be provided. *Schiefelbein v. School Dist. No. 0013*, 17 Neb. App. 80, 758 N.W.2d 645 (2008).

79-829.

Although this section does not specifically define the phrase "reduction in force" as used in the teacher tenure statutes, it involves terminating a teacher's contract due to a surplus of staff. *Miller v. School Dist. No. 18-0011 of Clay Cty.*, 278 Neb. 1018, 775 N.W.2d 413 (2009).

The intent of the tenured teacher statutes is to guarantee a tenured, or permanent certificated, teacher continued employment except where specific statutory grounds for termination of the teacher's contract are demonstrated. *Miller v. School Dist. No. 18-0011 of Clay Cty.*, 278 Neb. 1018, 775 N.W.2d 413 (2009).

79-831.

If an employee who is given notice of possible cancellation of his or her contract does not request a hearing within 7 calendar days, a school board has no duty to provide a hearing. *Schiefelbein v. School Dist. No. 0013*, 17 Neb. App. 80, 758 N.W.2d 645 (2008).

79-832.

The notice of cancellation required by section 79-827 is fulfilled, even where the notice incorrectly states that any hearing will be an informal due process hearing pursuant to section 79-834, if the notice states that all the formal due process hearing protections contained in this section will be provided. *Schiefelbein v. School Dist. No. 0013*, 17 Neb. App. 80, 758 N.W.2d 645 (2008).

79-834.

The notice of cancellation required by section 79-827 is fulfilled, even where the notice incorrectly states that any hearing will be an informal due process hearing pursuant to this section, if the notice states that all the formal due process hearing protections contained in section 79-832 will be provided. *Schiefelbein v. School Dist. No. 0013*, 17 Neb. App. 80, 758 N.W.2d 645 (2008).

79-846.

A school district is legally prohibited by Nebraska's teacher tenure statutes from terminating a permanent certificated teacher's contract and then hiring a probationary teacher to replace him or her. *Miller v. School Dist. No. 18-0011 of Clay Cty.*, 278 Neb. 1018, 775 N.W.2d 413 (2009).

79-902.

Disability as defined in subsection (37) of this section has two components: (1) The individual must have a physical or mental impairment of the nature described, and (2) by reason of the impairment, the individual must

ANNOTATIONS

be unable to engage in a substantially gainful activity. *Shepherd v. Chambers*, 281 Neb. 57, 794 N.W.2d 678 (2011).

79-951.

If the Public Employees Retirement Board's medical examiner opines that the member is not disabled, the member may offer other medical evidence. *Shepherd v. Chambers*, 281 Neb. 57, 794 N.W.2d 678 (2011).

Subsection (1) of this section ordinarily requires expert medical evidence to establish a disability. *Shepherd v. Chambers*, 281 Neb. 57, 794 N.W.2d 678 (2011).

79-1073.

Because the levy authorized under this section benefits all taxpayers in a learning community, which is the relevant taxing district, this section 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 distributed under this section is uniform throughout the entire learning community, which is the relevant taxing district, this section 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).

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).

79-1094.

The school board of any district maintaining more than one school may close any school or schools within the district. *Haskell v. Madison Cty. Sch. Dist. No. 0001*, 17 Neb. App. 669, 771 N.W.2d 156 (2009).

79-1601.

This section does not set out a deadline for an exempt school to begin operations. *State v. Thacker*, 286 Neb. 16, 834 N.W.2d 597 (2013).

81-885.01.

Unless otherwise specified in a written agency agreement pursuant to section 76-2422(6), the fiduciary duties owed by a real estate broker derive only from the performance of limited activities defined in subdivision (2) of this section. *Professional Mgmt. Midwest v. Lund Co.*, 284 Neb. 777, 826 N.W.2d 225 (2012).

When a client engages a real estate broker to perform any of the activities defined in subdivision (2) of this section, the resulting agency relationship is called a brokerage relationship. *Professional Mgmt. Midwest v. Lund Co.*, 284 Neb. 777, 826 N.W.2d 225 (2012).

One of the enumerated activities covered by section 76-2422(6) is the exchange of property, based on the plain language of subdivision (2) of this section. *McCully, Inc. v. Baccaro Ranch*, 279 Neb. 443, 778 N.W.2d 115 (2010).

Pursuant to the Nebraska Real Estate License Act, any person collecting a fee or commission on the sale of real estate must be a licensed real estate broker or salesperson unless they meet one of the exceptions provided in the act. In re Estate of Ronan, 277 Neb. 516, 763 N.W.2d 704 (2009).

81-885.04.

The exception provided by subsection (2) of this section is limited to those instances where an attorney is acting within the scope of his duties as an attorney. In re Estate of Ronan, 277 Neb. 516, 763 N.W.2d 704 (2009).

81-885.24.

Whether subdivision (13) of this section creates a private right of action against a real estate broker for inducement to breach a contract of sale or lease depends on its purpose and whether the Legislature intended to

ANNOTATIONS

create such a private right of action. *Professional Mgmt. Midwest v. Lund Co.*, 284 Neb. 777, 826 N.W.2d 225 (2012).

Whether subdivision (13) of this section includes an implied right of action against a real estate broker for inducement to breach a contract of sale or lease is distinct and separate from the issue whether this section creates a duty in tort which can be enforced via a negligence action. *Professional Mgmt. Midwest v. Lund Co.*, 284 Neb. 777, 826 N.W.2d 225 (2012).

A real estate broker's actions clearly demonstrated unworthiness under this section. *Clark v. Tyrrell*, 16 Neb. App. 692, 750 N.W.2d 364 (2008).

Double jeopardy was not applicable to a real estate broker's discipline under this section. *Clark v. Tyrrell*, 16 Neb. App. 692, 750 N.W.2d 364 (2008).

81-8,219.

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 a 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).

Under subsection (4) of this section, the State has not waived its sovereign immunity for claims of fraudulent concealment. *Doe v. Board of Regents*, 280 Neb. 492, 788 N.W.2d 264 (2010).

Under subsection (9) of this section, the State is immune from liability against allegations of a malfunctioning traffic signal unless the malfunction was not corrected by the State within a reasonable time after it received actual or constructive notice of the problem. *Fickle v. State*, 273 Neb. 990, 735 N.W.2d 754 (2007).

A defendant may affirmatively plead that the plaintiff has failed to state a cause of action under this section because an exception to the waiver of sovereign immunity applies. *Bojanski v. Foley*, 18 Neb. App. 929, 798 N.W.2d 134 (2011).

Even though this section has been amended in 1993, 1999, 2004, 2005, and 2007, claims for invasion of privacy are still not among those claims for which sovereign immunity provides protection for State employees or officers. *Bojanski v. Foley*, 18 Neb. App. 929, 798 N.W.2d 134 (2011).

81-8,227.

The beneficence of the discovery rule is not bestowed on a potential plaintiff where the potential plaintiff in fact discovers, or in the exercise of reasonable diligence should have discovered, an injury within the initial period of limitations running from the wrongful act or omission. *Carruth v. State*, 271 Neb. 433, 712 N.W.2d 575 (2006).

81-8,303.

A cause of action for misrepresentation is not a "dispute regarding a contract" under subdivision (1) of this section, because the gravamen of the case is in tort and is independent from any underlying contract. *Zawaideh v. Nebraska Dept. of Health & Human Servs.*, 285 Neb. 48, 825 N.W.2d 204 (2013).

81-8,305.

This section does not violate article VIII, section 9, of the Nebraska Constitution. *Pavers, Inc. v. Board of Regents*, 276 Neb. 559, 755 N.W.2d 400 (2008).

ANNOTATIONS

81-1170.01.

Requests need not be made under this section before filing suit in retirement benefits controversies. *Livengood v. Nebraska State Patrol Ret. Sys.*, 273 Neb. 247, 729 N.W.2d 55 (2007).

81-1372.

The comparability requirement of the Industrial Relations Act is superseded by the 2-year contract requirement of the State Employees Collective Bargaining Act. *State v. State Code Agencies Teachers Assn.*, 280 Neb. 459, 788 N.W.2d 238 (2010).

81-1377.

The specific number of unused sick leave hours included in a retirement calculation does not constitute a retirement program under subsection (2) of this section. *Livengood v. Nebraska State Patrol Ret. Sys.*, 273 Neb. 247, 729 N.W.2d 55 (2007).

81-1382.

The January 10 deadline provided in this section is not jurisdictional. *State v. State Code Agencies Teachers Assn.*, 280 Neb. 459, 788 N.W.2d 238 (2010).

81-1383.

Parties are not permitted to offer additional evidence before the Commission of Industrial Relations. The commission's review of a special master's ruling is an appeal and does not provide for the admission of additional evidence. *State v. State Code Agencies Teachers Assn.*, 280 Neb. 459, 788 N.W.2d 238 (2010).

81-2026.

Subsection (3) of this section, as it existed in 2002, is ambiguous as to the proper distribution of a deceased trooper's annuity where there are surviving minor children who are not all in the care of a surviving spouse. Consistent with the legislative intent of subsection (3) of this section, to provide benefits to the surviving members of a trooper's family, this section requires distribution of benefits to all of a deceased trooper's minor children, regardless of with whom they reside. *Zach v. Eacker*, 271 Neb. 868, 716 N.W.2d 437 (2006).

81-2031.

The election to receive either a refund of contributions plus accrued interest or a monthly annuity is made by "the officer." *Klimek v. Klimek*, 18 Neb. App. 82, 775 N.W.2d 444 (2009).

81-2032.

The amendment of anti-attachment statutes to allow a civil judgment to attach to the distributed retirement assets of State Patrol officers and other public employees who had committed six specified crimes constituted special legislation in violation of the Nebraska Constitution. The Legislature's attempt to create very limited exceptions to an absolute privilege from attachment of a public employee's retirement assets resulted in a law that benefited only a select group of victims and arbitrarily protected public employees who were convicted of comparably serious crimes, yet retained an absolute privilege from attachment of their retirement assets because their crimes were not included in the amendment. *J.M. v. Hobbs*, 288 Neb. 546, 849 N.W.2d 480 (2014).

A benefit is a cash payment or service provided for under an annuity, pension plan, or insurance policy. *J.M. v. Hobbs*, 281 Neb. 539, 797 N.W.2d 227 (2011).

An annuity is a fixed sum of money payable periodically. *J.M. v. Hobbs*, 281 Neb. 539, 797 N.W.2d 227 (2011).

This section exempts annuities or benefits a person is entitled to receive under the Nebraska State Patrol Retirement Act from execution, even in the person's possession. *J.M. v. Hobbs*, 281 Neb. 539, 797 N.W.2d 227 (2011).

ANNOTATIONS

83-174.01.

This section is not unconstitutionally vague. In re Interest of A.M., 281 Neb. 482, 797 N.W.2d 233 (2011).

A prerequisite of the Sex Offender Commitment Act is a criminal conviction for a sex offense. In re Interest of J.R., 277 Neb. 362, 762 N.W.2d 305 (2009).

83-174.02.

This section provides a mechanism for identifying potentially dangerous sex offenders prior to their release from incarceration and for notifying prosecuting authorities so that they have adequate time to determine whether to file a petition under the Sex Offender Commitment Act before the offender's release date. It does not create any substantive or procedural rights in the offender who is the subject of the mental health evaluation. In re Interest of D.H., 281 Neb. 554, 797 N.W.2d 263 (2011).

83-174.03.

Because lifetime community supervision under this section is an additional form of punishment, a jury, rather than a trial court, must make a specific finding concerning the facts necessary to establish an aggravated offense where such facts are not specifically included in the elements of the offense of which the defendant is convicted. State v. Alfredson, 282 Neb. 476, 804 N.W.2d 153 (2011).

When a crime is committed before the enactment of a statute which imposed an additional punishment of lifetime community supervision, inclusion of that punishment violates the Ex Post Facto Clauses of the Nebraska and federal Constitutions. State v. Simnick, 279 Neb. 499, 779 N.W.2d 335 (2010).

The legislative intent in enacting this section was to establish an additional form of punishment for some sex offenders. State v. Payan, 277 Neb. 663, 765 N.W.2d 192 (2009).

Where the facts necessary to establish an aggravated offense as defined by the Sex Offender Registration Act are not specifically included in the elements of the offense of which the defendant is convicted, such facts must be specifically found by the jury in order to impose lifetime community supervision as a term of the sentence. State v. Payan, 277 Neb. 663, 765 N.W.2d 192 (2009).

83-178.

When a defendant in a capital sentencing proceeding places his or her mental health at issue either by asserting mental retardation or by asserting mental illness, there is good cause under subsection (2) of this section for the prosecution to obtain access to the defendant's mental health records in the possession of the Department of Correctional Services. State v. Vela, 279 Neb. 94, 777 N.W.2d 266 (2009).

83-183.

This section, when construed with section 83-183.01, does not require that an inmate be provided with full-time employment as a prerequisite to the applicability of rules and regulations promulgated under the authority of section 83-183.01. Hurbenca v. Nebraska Dept. of Corr. Servs., 18 Neb. App. 31, 773 N.W.2d 402 (2009).

83-183.01.

Section 83-183, when construed with this section, does not require that an inmate be provided with full-time employment as a prerequisite to the applicability of rules and regulations promulgated under the authority of this section. Hurbenca v. Nebraska Dept. of Corr. Servs., 18 Neb. App. 31, 773 N.W.2d 402 (2009).

83-1,106.

Under subsection (4) of this section, the conduct in question need not be the same or related to the conduct for which time was originally served. State v. Carnge, 288 Neb. 347, 847 N.W.2d 302 (2014).

Section 47-503 and subsection (1) of this section use similar language, so the reasoning of cases involving one of these provisions is applicable to cases involving the other. State v. Wills, 285 Neb. 260, 826 N.W.2d 581 (2013).

ANNOTATIONS

A defendant ordered to complete a work ethic camp was “in custody.” *State v. Becker*, 282 Neb. 449, 804 N.W.2d 27 (2011).

Under this section, when consecutive sentences are imposed for two or more offenses, periods of presentence incarceration may be credited only against the aggregate of all terms imposed: an offender who receives consecutive sentences is entitled to credit against only the first sentence imposed, while an offender sentenced to concurrent terms in effect receives credit against each sentence. *State v. Williams*, 282 Neb. 182, 802 N.W.2d 421 (2011).

The phrase “in custody” under this section means judicially imposed physical confinement in a governmental facility authorized for detention, control, or supervision of a defendant before, during, or after a trial on a criminal charge. *State v. Anderson*, 18 Neb. App. 329, 779 N.W.2d 623 (2010).

83-1,107.

A defendant must serve the mandatory minimum sentence before earning good time credit toward either the maximum or minimum sentence. *State v. Castillas*, 285 Neb. 174, 826 N.W.2d 255 (2013).

Good time reductions do not apply to mandatory minimum sentences. *State v. Castillas*, 285 Neb. 174, 826 N.W.2d 255 (2013).

Multiple mandatory minimum sentences must be served consecutively. *State v. Castillas*, 285 Neb. 174, 826 N.W.2d 255 (2013).

When a mandatory minimum sentence is involved, the mandatory discharge date is computed by subtracting the mandatory minimum sentence from the maximum sentence, halving the difference, and adding that difference to the mandatory minimum. *State v. Castillas*, 285 Neb. 174, 826 N.W.2d 255 (2013).

83-1,108.

“Good time” under this section should not be applied against a mandatory minimum sentence imposed under section 29-2221(1). *Hurbenca v. Nebraska Dept. of Corr. Servs.*, 16 Neb. App. 222, 742 N.W.2d 773 (2007).

83-1,110.

A defendant must serve the mandatory minimum sentence before earning good time credit toward either the maximum or minimum sentence. *State v. Castillas*, 285 Neb. 174, 826 N.W.2d 255 (2013).

Good time reductions do not apply to mandatory minimum sentences. *State v. Castillas*, 285 Neb. 174, 826 N.W.2d 255 (2013).

Multiple mandatory minimum sentences must be served consecutively. *State v. Castillas*, 285 Neb. 174, 826 N.W.2d 255 (2013).

When a mandatory minimum sentence is involved, the mandatory discharge date is computed by subtracting the mandatory minimum sentence from the maximum sentence, halving the difference, and adding that difference to the mandatory minimum. *State v. Castillas*, 285 Neb. 174, 826 N.W.2d 255 (2013).

An inmate sentenced to life imprisonment for first degree murder is not eligible for parole until the Nebraska Board of Pardons commutes his or her sentence to a term of years. *Poindexter v. Houston*, 275 Neb. 863, 750 N.W.2d 688 (2008).

83-1,126.

Communications to the Board of Pardons are protected by absolute privilege. *Kocontes v. McQuaid*, 279 Neb. 335, 778 N.W.2d 410 (2010).

83-1,127.02.

This section mandates that a sentencing court must impose a 15-year operator’s license revocation whenever a person restricted to operating a motor vehicle equipped with an ignition interlock device is found to have operated a vehicle without such an ignition interlock device. Such a revocation is in addition to, rather than as part of, any term of probation imposed by the sentencing court. *State v. Donner*, 13 Neb. App. 85, 690 N.W.2d 181 (2004).

ANNOTATIONS

83-365.

There is no requirement that the Department of Health and Human Services offer proof that the cost of the care, support, maintenance, and treatment is fair and reasonable. In re Guardianship of Gaube, 14 Neb. App. 259, 707 N.W.2d 16 (2005).

83-4,122.

In prison disciplinary cases which involve the imposition of disciplinary isolation or the loss of good time credit, the standard of proof to sustain the charge is "substantial evidence" rather than "some evidence." Witmer v. Nebraska Dept. of Corr. Servs., 13 Neb. App. 297, 691 N.W.2d 185 (2005).

83-4,145.

Defendants are to be given credit for time served at work camp programs. State v. Becker, 282 Neb. 449, 804 N.W.2d 27 (2011).

83-964.

Under former law, Nebraska's statutes specifying electrocution as the mode of inflicting the death penalty are separate, and severable, from the procedures by which the trial court sentences the defendant. State v. Mata, 275 Neb. 1, 745 N.W.2d 229 (2008).

Under former law, that a method of execution is cruel and unusual punishment bears solely on the legality of the execution of the sentence and not on the validity of the sentence itself. State v. Mata, 275 Neb. 1, 745 N.W.2d 229 (2008).

83-965.

This section is not an unconstitutional delegation of legislative power. State v. Ellis, 281 Neb. 571, 799 N.W.2d 267 (2011).

83-1211.

A service recipient's liability for costs shall not be determined based on a finding of whether such costs are fair and reasonable. In re Guardianship of Gaube, 14 Neb. App. 259, 707 N.W.2d 16 (2005).

84-712.

A party seeking a writ of mandamus under section 84-712.03 has the burden to satisfy three elements: (1) The requesting party is a citizen of the state or the other person interested in the examination of the public records; (2) the document sought is a public record as defined by section 84-712.01; and (3) the requesting party has been denied access to the public record as guaranteed by this section. Evertson v. City of Kimball, 278 Neb. 1, 767 N.W.2d 751 (2009).

The Nebraska Department of Correctional Services had no obligation to transport an inmate in its custody to an office where a particular record was located to examine the record. Russell v. Clarke, 15 Neb. App. 221, 724 N.W.2d 840 (2006).

84-712.01.

A four-part functional equivalency test is the appropriate analytical model for determining whether a private entity which has an ongoing relationship with a governmental entity can be considered an agency, branch, or department of such governmental entity within the meaning of subsection (1) of this section, such that its records are subject to disclosure upon request under Nebraska's public records laws. The factors to be considered in applying this test are (1) whether the private entity performs a governmental function, (2) the level of governmental funding of the private entity, (3) the extent of government involvement with or regulation of the private entity, and (4) whether the private entity was created by the government. Frederick v. City of Falls City, 289 Neb. 864, 857 N.W.2d 569 (2015).

A party seeking a writ of mandamus under section 84-712.03 has the burden to satisfy three elements: (1) The requesting party is a citizen of the state or other person interested in the examination of the public records; (2) the document sought is a public record as defined by this section; and (3) the requesting party has been denied access

ANNOTATIONS

to the public record as guaranteed by section 84-712. *Evertson v. City of Kimball*, 278 Neb. 1, 767 N.W.2d 751 (2009).

Subsection (1) of this section does not require a citizen to show that a public body has actual possession of a requested record. Subsection (3) of this section requires that the “of or belonging to” language be construed liberally; this broad definition includes any documents or records that a public body is entitled to possess—regardless of whether the public body takes possession. The public’s right of access should not depend on where the requested records are physically located. *Evertson v. City of Kimball*, 278 Neb. 1, 767 N.W.2d 751 (2009).

Under subsection (1) of this section, the reference to “data” in the last sentence shows that the Legislature intended public records to include a public body’s component information, not just its completed reports or documents. *Evertson v. City of Kimball*, 278 Neb. 1, 767 N.W.2d 751 (2009).

Under this section, requested materials in a private party’s possession are public records if the following requirements are met: (1) The public body, through a delegation of its authority to perform a government function, contracted with a private party to carry out the government function; (2) the private party prepared the records under the public body’s delegation of authority; (3) the public body was entitled to possess the materials to monitor the private party’s performance; and (4) the records are used to make a decision affecting public interest. *Evertson v. City of Kimball*, 278 Neb. 1, 767 N.W.2d 751 (2009).

Records of deaths that occurred at a state-run mental institution, indicating the place of burial, are public records as defined by this section. *State ex rel. Adams Cty. Historical Soc. v. Kinyoun*, 277 Neb. 749, 765 N.W.2d 212 (2009).

84-712.03.

A party seeking a writ of mandamus under this section has the burden to satisfy three elements: (1) The requesting party is a citizen of the state or other person interested in the examination of the public records; (2) the document sought is a public record as defined by section 84-712.01; and (3) the requesting party has been denied access to the public record as guaranteed by section 84-712. *Evertson v. City of Kimball*, 278 Neb. 1, 767 N.W.2d 751 (2009).

If a requesting party satisfies its prima facie claim for release of public records under this section, the public body opposing disclosure must show by clear and convincing evidence that section 84-712.05 or 84-712.08 exempts the records from disclosure. *Evertson v. City of Kimball*, 278 Neb. 1, 767 N.W.2d 751 (2009).

84-712.05.

Because the Legislature has expressed a strong public policy for disclosure, Nebraska courts must narrowly construe statutory exemptions shielding public records from disclosure. *Evertson v. City of Kimball*, 278 Neb. 1, 767 N.W.2d 751 (2009).

If a requesting party satisfies its prima facie claim for release of public records under section 84-712.03, the public body opposing disclosure must show by clear and convincing evidence that this section or section 84-712.08 exempts the records from disclosure. *Evertson v. City of Kimball*, 278 Neb. 1, 767 N.W.2d 751 (2009).

The investigatory record exception does not apply to protect material compiled ancillary to an agency’s routine administrative functions or oversight activities. *Evertson v. City of Kimball*, 278 Neb. 1, 767 N.W.2d 751 (2009).

Under subdivision (5) of this section, a public body can withhold from the public records of its investigation into an employee’s conduct only if the investigation focuses on specifically alleged illegal acts. *Evertson v. City of Kimball*, 278 Neb. 1, 767 N.W.2d 751 (2009).

Under subdivision (5) of this section, a public record is an investigatory record where (1) the activity giving rise to the document sought is related to the duty of investigation or examination with which the public body is charged and (2) the relationship between the investigation or examination and that public body’s duty to investigate or examine supports a colorable claim of rationality. This two-part test provides a deferential burden-of-proof rule for a public body performing an investigation or examination with which it is charged. *Evertson v. City of Kimball*, 278 Neb. 1, 767 N.W.2d 751 (2009).

ANNOTATIONS

84-712.08.

Because the Legislature has expressed a strong public policy for disclosure, Nebraska courts must narrowly construe statutory exemptions shielding public records from disclosure. *Evertson v. City of Kimball*, 278 Neb. 1, 767 N.W.2d 751 (2009).

If a requesting party satisfies its prima facie claim for release of public records under section 84-712.03, the public body opposing disclosure must show by clear and convincing evidence that section 84-712.05 or this section exempts the records from disclosure. *Evertson v. City of Kimball*, 278 Neb. 1, 767 N.W.2d 751 (2009).

84-901.

Under the Administrative Procedure Act, an appellate court may reverse, vacate, or modify a district court's judgment or final order for errors appearing on the record. *Murray v. Neth*, 17 Neb. App. 900, 773 N.W.2d 394 (2009).

Because the University of Nebraska College of Law Student-Faculty Honor Committee and the College of Law dean are not authorized by law to make rules and regulations, they are not "agencies," and thus, their decisions are not subject to judicial review under the Administrative Procedure Act. *Kerr v. Board of Regents*, 15 Neb. App. 907, 739 N.W.2d 224 (2007).

84-911.

A taxpayer has standing to challenge a state official's failure to comply with a clear statutory duty to assess or collect taxes—as distinguished from legitimate discretion to decide whether to tax. But the taxpayer must show that the official's unlawful failure to comply with a duty to tax would otherwise go unchallenged because no other potential party is better suited to bring the action. Under this section, a taxpayer has standing to challenge an agency's unlawful regulation that negates the agency's statutory duty to assess taxes. No other potential parties are better suited than a taxpayer to claim that a state agency or official has violated a statutory duty to assess taxes when the persons or entities directly and immediately affected by the alleged violation are beneficially, instead of adversely, affected. *Project Extra Mile v. Nebraska Liquor Control Comm.*, 283 Neb. 379, 810 N.W.2d 149 (2012).

When this section is read consistently with the declaratory judgment statutes, the only limitations placed on the relief that a plaintiff can obtain in a declaratory judgment action under this section are the limitations imposed by sovereign immunity principles. Neither this section nor sovereign immunity bars injunctive relief in a declaratory judgment action under this section when such relief would not require state officials to expend public funds. *Project Extra Mile v. Nebraska Liquor Control Comm.*, 283 Neb. 379, 810 N.W.2d 149 (2012).

84-912.01.

This section did not require a hearing before the Department of Administrative Services to decide the issues raised by the petitioners, the petition for a declaratory order did not require the department to act in a quasi-judicial manner, and the proceeding was not a contested case under the Administrative Procedure Act. *Kaplan v. McClurg*, 271 Neb. 101, 710 N.W.2d 96 (2006).

84-913.03.

Whether the hearing is conducted by videoconference is permissive and discretionary. *Robbins v. Neth*, 15 Neb. App. 67, 722 N.W.2d 76 (2006).

84-914.

Ex parte communications that the director of the Department of Motor Vehicles had with police officers who were potential witnesses at a motorist's administrative license revocation hearing did not violate the motorist's due process rights; neither officer was a party in the license revocation proceeding nor a person outside the Department of Motor Vehicles having an interest in the motorist's case. *Walz v. Neth*, 17 Neb. App. 891, 773 N.W.2d 387 (2009).

84-917.

An issue that has not been presented in a petition for judicial review has not been properly preserved for consideration by the district court. *Skaggs v. Nebraska State Patrol*, 282 Neb. 154, 804 N.W.2d 611 (2011).

ANNOTATIONS

Subsection (5)(b)(i) of this section permits the district court to review only matters which were not properly raised in the proceedings before an administrative agency. *Skaggs v. Nebraska State Patrol*, 282 Neb. 154, 804 N.W.2d 611 (2011).

A party is “aggrieved” within the meaning of subsection (1) of this section if it has standing to invoke a court’s jurisdiction—that is, if it has a legal or equitable right, title, or interest in the subject matter of the controversy. *Central Neb. Pub. Power Dist. v. North Platte NRD*, 280 Neb. 533, 788 N.W.2d 252 (2010).

Any aggrieved party seeking judicial review of an administrative decision under the Administrative Procedure Act must file a petition within 30 days after service of that decision, pursuant to this section. The Administrative Procedure Act makes no mention of an extended or different deadline for filing a cross-petition in the district court. *Ahmann v. Correctional Ctr. Lincoln*, 276 Neb. 590, 755 N.W.2d 608 (2008).

In accordance with subsection (5)(a) of this section, when reviewing a final decision of an administrative agency in a contested case under the Administrative Procedure Act, a court may not take judicial notice of an adjudicative fact that was not presented to the agency, because the taking of such evidence would impermissibly expand the court’s statutory scope of review de novo on the record of the agency. *Betterman v. Department of Motor Vehicles*, 273 Neb. 178, 728 N.W.2d 570 (2007).

Under subsection (6)(b) of this section, a district court has discretion concerning the disposition of an appeal from an administrative agency. *Nebraska Liq. Distrib. v. Nebraska Liq. Cont. Comm.*, 272 Neb. 390, 722 N.W.2d 10 (2006).

The Department of Banking and Finance is statutorily authorized to require payment for the costs of preparing the official record from the party seeking review of its decision prior to transmitting the record. *JHK, Inc. v. Nebraska Dept. of Banking & Finance*, 17 Neb. App. 186, 757 N.W.2d 515 (2008).

The district court lacked subject matter jurisdiction because the petitioner failed to timely include as a party defendant the Department of Correctional Services, a necessary party under the Administrative Procedure Act. *Tlamka v. Parry*, 16 Neb. App. 793, 751 N.W.2d 664 (2008).

In a true de novo review, the district court’s decision is to be made independently of the agency’s prior disposition and the district court is not required to give deference to the findings of fact and the decision of the agency hearing officer. *DeBoer v. Nebraska Dept. of Motor Vehicles*, 16 Neb. App. 760, 751 N.W.2d 651 (2008).

In an appeal under subsection (5)(a) of this section, the district court conducts a de novo review of the record of the agency. *Clark v. Tyrrell*, 16 Neb. App. 692, 750 N.W.2d 364 (2008).

Pursuant to subsection (2)(a) of this section, the phrase “county where the action is taken” is the site of the first adjudicated hearing of a disputed claim. *Yelli v. Neth*, 16 Neb. App. 639, 747 N.W.2d 459 (2008).

If petition for review filed pursuant to this section is not timely, district court does not have jurisdiction to consider merits and can properly dismiss petition. *Roubal v. State*, 14 Neb. App. 554, 710 N.W.2d 359 (2006).

Judgments rendered by an administrative agency acting in a quasi-judicial capacity are not subject to collateral attack in a separate action in county court challenging the validity of the underlying claim, but must be properly appealed pursuant to this section. In re *Guardianship of Gaube*, 14 Neb. App. 259, 707 N.W.2d 16 (2005).

84-918.

A judgment or final order rendered by a district court in a judicial review under the Administrative Procedure Act may be reversed, vacated, or modified by an appellate court for errors appearing on the record. When reviewing such an order, the inquiry is whether the decision conforms to the law, is supported by competent evidence, and is neither arbitrary, capricious, nor unreasonable. *Parker v. State ex rel. Bruning*, 276 Neb. 359, 753 N.W.2d 843 (2008).

84-1408.

A county board of equalization is a public body whose meetings shall be open to the public. *Wolf v. Grubbs*, 17 Neb. App. 292, 759 N.W.2d 499 (2009).

ANNOTATIONS

84-1409.

As an administrative agency of the county, a county board of equalization is a public body. *Wolf v. Grubbs*, 17 Neb. App. 292, 759 N.W.2d 499 (2009).

The electors of a township at their annual meeting are a public body under the Open Meetings Act. *State ex rel. Newman v. Columbus Township Bd.*, 15 Neb. App. 656, 735 N.W.2d 399 (2007).

84-1410.

There is no absolute discovery privilege for communications that occur during a closed session. *State ex rel. Upper Republican NRD v. District Judges*, 273 Neb. 148, 728 N.W.2d 275 (2007).

84-1411.

Under subsection (1) of this section, the Legislature has imposed only two conditions on the public body's notification method of a public meeting: (1) It must give reasonable advance publicized notice of the time and place of each meeting and (2) it must be recorded in the public body's minutes. *City of Elkhorn v. City of Omaha*, 272 Neb. 867, 725 N.W.2d 792 (2007).

A county board of commissioners and a county board of equalization are not required to give separate notices when the notice states only the time and place that the boards meet and directs a citizen to where the agendas for each board can be found. *Wolf v. Grubbs*, 17 Neb. App. 292, 759 N.W.2d 499 (2009).

A county board of equalization is a public body which is required to give advanced publicized notice of its meetings. *Wolf v. Grubbs*, 17 Neb. App. 292, 759 N.W.2d 499 (2009).

Notice of recessed and reconvened meetings must be given in the same fashion as the original meeting. *Wolf v. Grubbs*, 17 Neb. App. 292, 759 N.W.2d 499 (2009).

True notice of a meeting is not given by burying such in the minutes of a prior board proceeding. *Wolf v. Grubbs*, 17 Neb. App. 292, 759 N.W.2d 499 (2009).

84-1413.

There is no requirement that a public body make a record of where notice was published or posted. *Wolf v. Grubbs*, 17 Neb. App. 292, 759 N.W.2d 499 (2009).

84-1414.

The Legislature has granted standing to a broad scope of its citizens for the very limited purpose of challenging meetings allegedly in violation of the Open Meetings Act, so that they may help police the public policy embodied by the act. *Schauer v. Grooms*, 280 Neb. 426, 786 N.W.2d 909 (2010).

Any citizen of the state may commence an action to declare a public body's action void. *City of Elkhorn v. City of Omaha*, 272 Neb. 867, 725 N.W.2d 792 (2007).

The reading of ordinances constitutes a formal action under subsection (1) of this section. *City of Elkhorn v. City of Omaha*, 272 Neb. 867, 725 N.W.2d 792 (2007).

Voiding an entire meeting is a proper remedy for violations of the Open Meetings Act. Once a meeting has been declared void pursuant to Nebraska's public meetings law, board members are prohibited from considering any information obtained at the illegal meeting. *Wolf v. Grubbs*, 17 Neb. App. 292, 759 N.W.2d 499 (2009).

86-140.

This section places no limitation on the right to negotiate or review access charges. *AT&T Communications v. Nebraska Public Serv. Comm.*, 283 Neb. 204, 811 N.W.2d 666 (2012).

ANNOTATIONS

86-158.

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).

86-2,106.

Even if subdivision (3)(a) of this section prohibits a county attorney from obtaining a person's noncontent telecommunication records by issuing an investigative subpoena, the Legislature has not provided a remedy for a violation of this provision, and the violation of a state statute restricting searches is insufficient to show a Fourth Amendment violation under the U.S. Constitution. *State v. Knutson*, 288 Neb. 823, 852 N.W.2d 307 (2014).

86-324.

The Nebraska Telecommunications Universal Service Fund Act is not an unconstitutional delegation of authority to the Public Service Commission. *Schumacher v. Johanns*, 272 Neb. 346, 722 N.W.2d 37 (2006).

The surcharge assessed by the Public Service Commission based on the Nebraska Telecommunications Universal Service Fund Act is not a tax. *Schumacher v. Johanns*, 272 Neb. 346, 722 N.W.2d 37 (2006).

86-457.

Subsections (1) through (3) of this section exclusively apply to postpaid wireless services, while subsections (4) through (6) apply to prepaid wireless services. *TracFone Wireless v. Nebraska Pub. Serv. Comm.*, 279 Neb. 426, 778 N.W.2d 452 (2010).

The plain language of subsection (5) of this section permits the Public Service Commission to require compliance with the surcharges and methods for collection and remittance that it establishes. *TracFone Wireless v. Nebraska Pub. Serv. Comm.*, 279 Neb. 426, 778 N.W.2d 452 (2010).

87-127.

The construction given the federal Trademark Act of 1946 as amended (Lanham Trade-Mark Act) should be examined as persuasive authority for interpreting and construing the Trademark Registration Act. *ADT Security Servs. v. A/C Security Systems*, 15 Neb. App. 666, 736 N.W.2d 737 (2007).

The Lanham Trade-Mark Act provides that a party can recover the infringer's profits, any damages sustained, and the costs of the action. *ADT Security Servs. v. A/C Security Systems*, 15 Neb. App. 666, 736 N.W.2d 737 (2007).

87-128.

Pursuant to subsection (1) of this section, the statutory hallmarks of an abandoned service or trademark are (a) when its use has been discontinued with intent not to resume such use, which may be inferred from the circumstances, or its nonuse for 2 consecutive years shall constitute prima facie evidence of abandonment or (b) when any course of conduct of the owner, including acts of omission as well as commission, causes the mark to lose its significance as a mark. *ADT Security Servs. v. A/C Security Systems*, 15 Neb. App. 666, 736 N.W.2d 737 (2007).

87-301.

The terms of the Uniform Deceptive Trade Practices Act provide only for equitable relief consistent with general principles of equity. *State ex rel. Stenberg v. Consumer's Choice Foods*, 276 Neb. 481, 755 N.W.2d 583 (2008).

87-302.

To establish a violation of the Uniform Deceptive Trade Practices Act, there must have been a representation regarding the nature of goods or services and the representation must have been for characteristics or benefits that the goods or services did not have. *State ex rel. Stenberg v. Consumer's Choice Foods*, 276 Neb. 481, 755 N.W.2d 583 (2008).

ANNOTATIONS

87-303.

Nebraska's Uniform Deceptive Trade Practices Act does not permit an injunction to prevent the copying of a product. *Gengenbach v. Hawkins Mfg.*, 18 Neb. App. 488, 785 N.W.2d 853 (2010).

Under Nebraska's Uniform Deceptive Trade Practices Act, injunctive relief granted for the copying of an article is limited to the prevention of confusion or misunderstanding as to the source. *Gengenbach v. Hawkins Mfg.*, 18 Neb. App. 488, 785 N.W.2d 853 (2010).

By its own terms, subsection (a) of this section provides only for equitable relief consistent with general principles of equity. *Reinbrecht v. Walgreen Co.*, 16 Neb. App. 108, 742 N.W.2d 243 (2007).

The Uniform Deceptive Trade Practices Act, specifically this section, does not provide a private right of action for damages. *Reinbrecht v. Walgreen Co.*, 16 Neb. App. 108, 742 N.W.2d 243 (2007).

87-502.

Although Nebraska's Trade Secrets Act is based on the Uniform Trade Secrets Act, Nebraska's definition of a trade secret differs significantly from the uniform act. If an alleged trade secret is ascertainable at all by any means that are not "improper," the would-be secret is preemptorily excluded from coverage under Nebraska's act. *First Express Servs. Group v. Easter*, 286 Neb. 912, 840 N.W.2d 465 (2013).

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).

ANNOTATIONS

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).

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).

ANNOTATIONS

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 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).



CHAPTER 1 ACCOUNTANTS

Section

1-105.	Act, how cited.
1-106.	Terms, defined.
1-113.	Advisory committee; membership.
1-116.	Certified public accountant; examination; eligibility.
1-118.	Certified public accountant; reexamination; waiting period.
1-119.	Certified public accountant; examination fee.
1-121.	Certified public accountant; fees; when payable.
1-136.02.	Permit; when issued.
1-136.04.	Permit issuance; experience in lieu of being a college or university graduate.
1-153.	Peer review; rules and regulations.

1-105 Act, how cited.

Sections 1-105 to 1-171 shall be known and may be cited as the Public Accountancy Act.

Source: Laws 1957, c. 1, § 64, p. 78; Laws 1991, LB 75, § 14; Laws 1994, LB 957, § 7; R.S.Supp., 1996, § 1-169; Laws 1997, LB 114, § 1; Laws 2009, LB31, § 1; Laws 2015, LB159, § 1.

1-106 Terms, defined.

For purposes of the Public Accountancy Act, unless the context otherwise requires:

- (1) Board means the Nebraska State Board of Public Accountancy;
- (2) Certificate means a certificate issued under sections 1-114 to 1-124;
- (3) Firm means a partnership, limited liability company, or corporation engaged in the practice of public accountancy in this state entitled to register with the board or a proprietorship engaged in the practice of public accountancy in this state;
- (4) Partnership includes, but is not limited to, a limited liability partnership;
- (5) Peer review means a review of one or more aspects of the professional work of a firm that either or both performs attest engagements or performs compilations by 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 and who is not affiliated with the firm being reviewed;
- (6) Permit means a permit to engage in the practice of public accountancy in this state issued under section 1-136;
- (7) Practice privilege means the privilege of an accountant to practice public accountancy or hold himself or herself out as a certified public accountant in this state in accordance with section 1-125.01;
- (8) State means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States; and

(9) Temporary practice privilege means the privilege of a foreign accountant to temporarily practice public accountancy in this state in accordance with section 1-125.02.

Source: Laws 1957, c. 1, § 1, p. 55; Laws 1991, LB 75, § 1; Laws 1997, LB 114, § 3; Laws 2009, LB31, § 2; Laws 2015, LB159, § 2.

1-113 Advisory committee; membership.

(1) The board shall appoint an advisory committee consisting of at least seven members. A majority of the members shall be appointed as representatives of the postsecondary educational institutions of Nebraska engaged in the instruction of accounting and auditing, including the University of Nebraska, the Nebraska state colleges, and private universities and colleges. One member of the advisory committee shall be a certified public accountant who is a member of the board.

(2) The advisory committee shall meet at the direction of the board and shall advise the board upon the rules and regulations for section 1-116 relating to educational requirements. The board may also consult the advisory committee on any other issues which it deems appropriate.

Source: Laws 1991, LB 75, § 2; Laws 1997, LB 114, § 11; Laws 2016, LB853, § 1.
Effective date July 21, 2016.

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.

1-118 Certified public accountant; reexamination; waiting period.

(1) The board may by rule and regulation prescribe the terms and conditions under which a person who does not pass the examination may be reexamined. The board may also provide by rule and regulation for a reasonable waiting period for reexamination.

(2) A person shall be entitled to any number of reexaminations under section 1-114 subject to the rules and regulations of the board.

Source: Laws 1957, c. 1, § 13, p. 59; Laws 1976, LB 619, § 4; Laws 1984, LB 473, § 8; Laws 1991, LB 75, § 7; Laws 1997, LB 114, § 15; Laws 2003, LB 214, § 2; Laws 2009, LB31, § 8; Laws 2016, LB853, § 2.

Effective date July 21, 2016.

1-119 Certified public accountant; examination fee.

The board shall charge a fee as established by the board not to exceed two hundred dollars for the examination provided for under the Public Accountancy Act. An applicant for the examination may be required to pay additional fees as charged by and remitted or paid to a third party for administering the examination, if required by the board.

Source: Laws 1957, c. 1, § 14, p. 60; Laws 1976, LB 619, § 5; Laws 1976, LB 961, § 1; Laws 1979, LB 278, § 1; Laws 1984, LB 473, § 9; Laws 1991, LB 75, § 8; Laws 1997, LB 114, § 16; Laws 2003, LB 214, § 3; Laws 2009, LB31, § 9; Laws 2016, LB853, § 3.

Effective date July 21, 2016.

1-121 Certified public accountant; fees; when payable.

The applicable fee shall be paid by the applicant at the time he or she applies for examination or reexamination.

Source: Laws 1957, c. 1, § 16, p. 60; Laws 1991, LB 75, § 10; Laws 1997, LB 114, § 18; Laws 2016, LB853, § 4.

Effective date July 21, 2016.

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 or foreign country, 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 or foreign country, 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 account-

ant 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; Laws 2016, LB853, § 5.
Effective date July 21, 2016.

1-136.04 Permit issuance; experience in lieu of being a college or university graduate.

Any person who has passed the examination described in section 1-114 may qualify for issuance of a permit under subdivision (1)(a) of section 1-136 by (1) having four years of public accounting experience satisfactory to the board in any state or foreign country in practice as a certified public accountant or as a public accountant or in any state or foreign country in employment as a staff accountant by anyone engaging in the practice of public accountancy, or any combination of either of such types of experience, or (2) having five years of auditing experience satisfactory to the board in the office of the Auditor of Public Accounts or in the Department of Revenue, in lieu of being a graduate from a college or university of recognized standing.

Source: Laws 1977, LB 290, § 6; Laws 1984, LB 473, § 19; Laws 1991, LB 75, § 13; Laws 1997, LB 114, § 30; Laws 2009, LB31, § 20; Laws 2016, LB853, § 6.
Effective date July 21, 2016.

1-153 Peer review; rules and regulations.

The board may adopt and promulgate rules and regulations to require a firm to enroll in and comply with all requirements of a board-approved program of peer review and comply with all restrictions placed on any permit by the board in response to the results of a peer review.

Source: Laws 2015, LB159, § 3.

CHAPTER 2 AGRICULTURE

Article.

2. State and County Fairs.
 - (f) County Agricultural Society Act. 2-259, 2-264.
3. Community Gardens Act. 2-301 to 2-305.
9. Noxious Weed Control. 2-945.01 to 2-970.
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. 2-1587 to 2-1592.
 - (e) Water Planning and Review Process. 2-15,106.
18. Potato Development.
 - Part I. 2-1807, 2-1808.
26. Pesticides. 2-2624 to 2-2656.
32. Natural Resources. 2-3204 to 2-3228.
37. Dry Bean Resources. 2-3753 to 2-3763.
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.
43. Agricultural Liming Materials. 2-4323 to 2-4327.
46. Erosion and Sediment Control. 2-4603 to 2-4613.
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.

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.

ARTICLE 3

COMMUNITY GARDENS ACT

Section

- 2-301. Act, how cited.
- 2-302. Legislative findings and declarations; legislative intent; purpose of act.
- 2-303. Terms, defined.
- 2-304. Use of vacant public land; conditions; application; response.
- 2-305. Community gardens task force; members; goals; reports.

2-301 Act, how cited.

Sections 2-301 to 2-305 shall be known and may be cited as the Community Gardens Act.

Source: Laws 2015, LB175, § 11.

2-302 Legislative findings and declarations; legislative intent; purpose of act.

(1) The Legislature finds and declares that:

(a) Community gardens provide significant health, educational, and social benefits to the general public, especially for those who reside in urban and suburban areas of this state;

(b) The community garden movement (i) continues to provide low-cost food that is fresh and nutritious for those who may be unable to readily afford fresh fruits and vegetables for themselves or their families, (ii) promotes public health and healthier individual lifestyles by encouraging better eating habits and increased physical activity by growing food, (iii) fosters the retention and expansion of open spaces, particularly in urban environments, (iv) enhances urban and suburban environmental quality and community beautification, (v)

provides inexpensive community building activities, recreation, and physical exercise for all age groups, (vi) establishes a safe place for community involvement and helps to reduce the incidence of crime, (vii) engenders a closer relationship between urban residents, nature, and the local environment, and (viii) fosters green job training and ecological education at all levels; and

(c) It is the public policy of this state to promote and foster growth in the number of community gardens and the acreage of such gardens.

(2) It is the intent of the Legislature and the purpose of the Community Gardens Act to foster growth in the number, size, and scope of community gardens in this state by encouraging state agencies, municipalities, and private parties in their efforts to promote community gardens.

Source: Laws 2015, LB175, § 12.

2-303 Terms, defined.

For purposes of the Community Gardens Act:

(1) Community garden means public or private land upon which individuals have the opportunity to raise a garden on land which they do not themselves own;

(2) Garden means a piece or parcel of land appropriate for cultivation of herbs, fruits, flowers, nuts, honey, poultry for egg production, maple syrup, ornamental or vegetable plants, nursery products, or vegetables;

(3) Municipality means any county, village, or city or any office or agency of a county, village, or city;

(4) State agency means any department or other agency of the State of Nebraska;

(5) Use means to avail oneself of or to employ without conveyance of title gardens on vacant public land by any individual or organization; and

(6) Vacant public land means any land owned by the state or another governmental subdivision, including a municipality, that is not in use for a public purpose, is otherwise unoccupied, idle, or not being actively utilized for a period of at least six months, and is suitable for garden use.

Source: Laws 2015, LB175, § 13.

2-304 Use of vacant public land; conditions; application; response.

(1) A state agency or municipality having title to vacant public land may permit community organizations to use such lands for community garden purposes. Such use of vacant public land may be conditioned on the community organization having liability insurance and accepting liability for injury or damage resulting from use of the vacant public land for community garden purposes. State agencies and municipalities may adopt and promulgate rules, regulations, ordinances, or resolutions to establish an application process for a community garden. The applicant may include a request for access to a fire hydrant or other source of water owned or operated by the state agency or municipality or by a utility district in order to provide water to the community garden. The state agency, municipality, or utility district shall consider whether to supply the water to the applicant at a reduced or fixed rate.

(2) A state agency or municipality which receives an application pursuant to this section shall respond to the applicant within sixty days from the date on

which the application is received and shall make a final determination within one hundred eighty days from such date.

Source: Laws 2015, LB175, § 14.

2-305 Community gardens task force; members; goals; reports.

(1) The Director of Agriculture shall establish a community gardens task force on or before August 1, 2015, to identify and develop ways to encourage state agencies, municipalities, and individuals to establish and expand community gardens. The director shall designate a chairperson of the task force. The members of the task force shall be appointed by the director and shall include no more than nine members. At least three of the members shall be representatives of nonprofit organizations involved with community gardens. The remaining members may include representation from appropriate state agencies, existing community gardens, counties, cities, towns, villages, utility districts, and school districts.

(2) The director may request the assistance of other state agencies to carry out the work of the task force.

(3) The goals of the task force may include, but are not limited to, the study, evaluation, and development of recommendations (a) to encourage the establishment and expansion of community gardens by state agencies, municipalities, and individuals, (b) to encourage cooperation between the activities and operations of community gardens and the provision of donated food to local voluntary food assistance programs for the poor and disadvantaged, and (c) to increase the benefits that community gardens may provide to the community in which they are located.

(4) In carrying out its duties under subsection (3) of this section, the task force may consider recommendations that (a) encourage the execution of conservation easements by state agencies, municipalities, or individuals to establish or protect community gardens, (b) encourage the donation or lease of lands for community gardens, (c) encourage development of model zoning codes, local land-use laws, or other municipal policies that could encourage the establishment or retention of community gardens, and (d) provide for any other activity to achieve the goals deemed appropriate by the task force.

(5) The task force shall issue a preliminary report to the Department of Agriculture and electronically to the Legislature no later than December 15, 2015, and shall issue a final report to the Department of Agriculture and electronically to the Legislature no later than December 15, 2016.

Source: Laws 2015, LB175, § 15.

ARTICLE 9

NOXIOUS WEED CONTROL

Section

- | | |
|-----------|---|
| 2-945.01. | Act, how cited. |
| 2-955. | Notice; kinds; effect; failure to comply; powers of control authority. |
| 2-958.02. | Grant program; applications; selection; considerations; priority; section, how construed; director; duties. |
| 2-967. | Repealed. Laws 2016, LB1038, § 19. |
| 2-968. | Repealed. Laws 2016, LB1038, § 19. |
| 2-969. | Riparian Vegetation Management Task Force; created; members. |
| 2-970. | Riparian Vegetation Management Task Force; duties; meetings; report. |

2-945.01 Act, how cited.

Sections 2-945.01 to 2-970 shall be known and may be cited as the Noxious Weed Control Act.

Source: Laws 1989, LB 49, § 1; Laws 1994, LB 76, § 450; Laws 2004, LB 869, § 1; Laws 2006, LB 1226, § 2; Laws 2007, LB701, § 3; Laws 2016, LB1038, § 1.
Effective date July 21, 2016.

2-955 Notice; kinds; effect; failure to comply; powers of control authority.

(1) Notices for control of noxious weeds shall consist of two kinds: General notices, as prescribed by rules and regulations adopted and promulgated by the director, which notices shall be on a form prescribed by the director; and individual notices, which notices shall be on a form prescribed by this section. Failure to publish general weed notices or to serve individual notices as provided in this section shall not relieve any person from the necessity of full compliance with the Noxious Weed Control Act and rules and regulations adopted and promulgated pursuant to the act.

(a) General notice shall be published by each control authority, in one or more newspapers of general circulation throughout the area over which the control authority has jurisdiction, on or before May 1 of each year and at such other times as the director may require or the control authority may determine.

(b) Whenever any control authority finds it necessary to secure more prompt or definite control of weeds on particular land than is accomplished by the general published notice, it shall cause to be served individual notice upon the owner of record of such land at his or her last-known address, giving specific instructions and methods when and how certain named weeds are to be controlled. Such methods may include definite systems of tillage, cropping, management, and use of livestock.

Each control authority shall use one or both of the following forms for all individual notices: (i)

..... County Weed Control Authority

OFFICIAL NOTICE

Section 2-952, Reissue Revised Statutes of Nebraska, places an affirmative duty upon every person to control noxious weeds on land under such person's ownership or control. Information received by the control authority, including an onsite investigation by the county weed control superintendent or a deputy, indicated the existence of an uncontrolled noxious weed infestation on property owned by you at:

The noxious weed or weeds are The method of control recommended by the control authority is as follows:

Other appropriate control methods are acceptable if approved by the county weed control superintendent.

Because the stage of growth of the noxious weed infestation on the above-specified property warrants immediate control, if such infestation remains uncontrolled after ten days from the date specified at the bottom of this notice, the control authority may enter upon such property for the purpose of taking

the appropriate weed control measures. Costs for the control activities of the control authority shall be at the expense of the owner of the property and shall become a lien on the property as a special assessment levied on the date of control.

..... Weed Control Superintendent

Dated.....;

or (ii)

..... County Weed Control Authority

OFFICIAL NOTICE

Section 2-952, Reissue Revised Statutes of Nebraska, places an affirmative duty upon every person to control noxious weeds on land under such person's ownership or control. Information received by the control authority, including an onsite investigation by the county weed control superintendent or a deputy, indicates the existence of an uncontrolled noxious weed infestation on property owned by you at:

The noxious weed or weeds are The method of control recommended by the control authority is as follows:

Other appropriate control methods are acceptable if approved by the county weed control superintendent. If, within fifteen days from the date specified at the bottom of this notice, the noxious weed infestation on such property, as specified above, has not been brought under control, you may, upon conviction, be subject to a fine of \$100.00 per day for each day of noncompliance beginning on, up to a maximum of fifteen days of noncompliance (maximum \$1,500).

Upon request to the control authority, within fifteen days from the date specified at the bottom of this notice, you are entitled to a hearing before the control authority to challenge the existence of a noxious weed infestation on property owned by you at

..... Weed Control Superintendent

Dated.....

In all counties having a population of four hundred thousand or more inhabitants as determined by the most recent federal decennial census, the control authority may dispense with the individual notices and may publish general notices if published in one or more newspapers of general circulation throughout the area over which such control authority has jurisdiction. Such notice shall be published weekly for four successive weeks prior to May 1 of each year or at such other times as the control authority deems necessary. In no event shall a fine be assessed against a landowner as prescribed in subdivision (3)(a) of this section unless the control authority has caused individual notice to be served upon the landowner as specified in this subdivision.

(2) At the request of any owner served with an individual notice pursuant to subdivision (1)(b)(ii) of this section, the control authority shall hold an informal public hearing to allow such landowner an opportunity to be heard on the question of the existence of an uncontrolled noxious weed infestation on such landowner's property.

(3) Whenever the owner of the land on which noxious weeds are present has neglected or failed to control them as required pursuant to the act and any

notice given pursuant to subsection (1) of this section, the control authority having jurisdiction shall proceed as follows:

(a) If, within fifteen days from the date specified on the notice required by subdivision (1)(b)(ii) of this section, the owner has not taken action to control the noxious weeds on the specified property and has not requested a hearing pursuant to subsection (2) of this section, the control authority shall notify the county attorney who shall proceed against such owner as prescribed in this subdivision. A person who is responsible for an infestation of noxious weeds on particular land under his or her ownership and who refuses or fails to control the weeds on the infested area within the time designated in the notice delivered by the control authority shall, upon conviction, be guilty of an infraction pursuant to sections 29-431 to 29-438, except that the penalty shall be a fine of one hundred dollars per day for each day of violation up to a total of one thousand five hundred dollars for fifteen days of noncompliance; or

(b) If, within ten days from the date specified in the notice required by subdivision (1)(b)(i) of this section, the owner has not taken action to control the noxious weeds on the specified property and the stage of growth of such noxious weeds warrants immediate control to prevent spread of the infestation to neighboring property, the control authority may cause proper control methods to be used on such infested land, including necessary destruction of growing crops, and shall advise the record owner of the cost incurred in connection with such operation. The cost of any such control shall be at the expense of the owner. In addition the control authority shall immediately cause notice to be filed of possible unpaid weed control assessments against the property upon which the control measures were used in the register of deeds office in the county where the property is located. If unpaid for two months, the control authority shall certify to the county treasurer the amount of such expense and such expense shall become a lien on the property upon which the control measures were taken as a special assessment levied on the date of control. The county treasurer shall add such expense to and it shall become and form a part of the taxes upon such land and shall bear interest at the same rate as taxes.

Nothing contained in this section shall be construed to limit satisfaction of the obligation imposed hereby in whole or in part by tax foreclosure proceedings. The expense may be collected by suit instituted for that purpose as a debt due the county or by any other or additional remedy otherwise available. Amounts collected under subdivision (3)(b) of this section shall be deposited to the noxious weed control fund of the control authority or, if no noxious weed control fund exists, to the county general fund.

Source: Laws 1965, c. 7, § 4, p. 82; Laws 1969, c. 13, § 4, p. 158; Laws 1974, LB 694, § 1; Laws 1975, LB 14, § 5; Laws 1983, LB 154, § 1; Laws 1987, LB 1, § 3; Laws 1987, LB 138, § 6; Laws 1989, LB 49, § 7; Laws 1995, LB 589, § 1; Laws 2010, LB731, § 2; Laws 2016, LB742, § 1.
Effective date July 21, 2016.

2-958.02 Grant program; applications; selection; considerations; priority; section, how construed; director; duties.

(1) From funds available in the Noxious Weed and Invasive Plant Species Assistance Fund, the director may administer a grant program to assist local

control authorities and other weed management entities in the cost of implementing and maintaining noxious weed control programs and in addressing special weed control problems as provided in this section.

(2) The director shall receive applications by local control authorities and weed management entities for assistance under this subsection and, in consultation with the advisory committee created under section 2-965.01, award grants for any of the following eligible purposes:

(a) To conduct applied research to solve locally significant weed management problems;

(b) To demonstrate innovative control methods or land management practices which have the potential to reduce landowner costs to control noxious weeds or improve the effectiveness of noxious weed control;

(c) To encourage the formation of weed management entities;

(d) To respond to introductions or infestations of invasive plants that threaten or potentially threaten the productivity of cropland and rangeland over a wide area;

(e) To respond to introductions and infestations of invasive plant species that threaten or potentially threaten the productivity and biodiversity of wildlife and fishery habitats on public and private lands;

(f) To respond to special weed control problems involving weeds not included in the list of noxious weeds promulgated by rule and regulation of the director if the director has approved a petition to bring such weeds under the county control program;

(g) To conduct monitoring or surveillance activities to detect, map, or determine the distribution of invasive plant species and to determine susceptible locations for the introduction or spread of invasive plant species; and

(h) To conduct educational activities.

(3) The director shall select and prioritize applications for assistance under subsection (2) of this section based on the following considerations:

(a) The seriousness of the noxious weed or invasive plant problem or potential problem addressed by the project;

(b) The ability of the project to provide timely intervention to save current and future costs of control and eradication;

(c) The likelihood that the project will prevent or resolve the problem or increase knowledge about resolving similar problems in the future;

(d) The extent to which the project will leverage federal funds and other nonstate funds;

(e) The extent to which the applicant has made progress in addressing noxious weed or invasive plant problems;

(f) The extent to which the project will provide a comprehensive approach to the control or eradication of noxious weeds or invasive plant species as identified and listed by the Nebraska Invasive Species Council;

(g) The extent to which the project will reduce the total population or area of infestation of a noxious weed or invasive plant species as identified and listed by the Nebraska Invasive Species Council;

(h) The extent to which the project uses the principles of integrated vegetation management and sound science; and

(i) Such other factors that the director determines to be relevant.

(4) The director shall receive applications for grants under this subsection and shall award grants to recipients and programs eligible under this subsection. Priority shall be given to grant applicants whose proposed programs are consistent with vegetation management goals and priorities and plans and policies of the Riparian Vegetation Management Task Force established under section 2-970. Beginning in fiscal year 2016-17, it is the intent of the Legislature to appropriate one million dollars annually for the management of vegetation within the banks of a natural stream or within one hundred feet of the banks of a channel of any natural stream. Such funds shall only be used to pay for activities and equipment as part of vegetation management programs that have as their primary objective improving conveyance of streamflow in natural streams. Grants from funds appropriated as provided in this subsection shall be disbursed only to weed management entities, local weed control authorities, and natural resources districts whose territory includes river basins, with priority given to river basins that are the subject of an interstate compact or decree. The Game and Parks Commission shall assist grant recipients in implementing grant projects under this subsection, and interlocal agreements under the Interlocal Cooperation Act or the Joint Public Agency Act shall be utilized whenever possible in carrying out the grant projects.

(5) Nothing in this section shall be construed to relieve control authorities of their duties and responsibilities under the Noxious Weed Control Act or the duty of a person to control the spread of noxious weeds on lands owned and controlled by him or her.

(6) The Department of Agriculture may adopt and promulgate necessary rules and regulations to carry out this section.

(7) The director may annually apply for conservation funding from the Natural Resources Conservation Service of the United States Department of Agriculture.

Source: Laws 2004, LB 869, § 5; Laws 2007, LB701, § 4; Laws 2009, LB98, § 2; Laws 2016, LB1038, § 2.
Effective date July 21, 2016.

Cross References

Interlocal Cooperation Act, see section 13-801.

Joint Public Agency Act, see section 13-2501.

2-967 Repealed. Laws 2016, LB1038, § 19.

2-968 Repealed. Laws 2016, LB1038, § 19.

2-969 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 ever been determined to be fully appropriated pursuant to section 46-714 or 46-720 or is designated as overappropriated pursuant to section 46-713 by the Department of Natural Resources; one surface water project representative from a river basin that has not been determined to be fully appropriated pursuant to section 46-714 or 46-720 or is not 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 State Forester, the Game and Parks Commission, and the University of Nebraska; three representatives selected from a list of at least ten individuals nominated by the Nebraska Association of Resources Districts; two representatives selected from a list of at least five individuals 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 nonvoting, ex officio 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.

Source: Laws 2016, LB1038, § 3.
Effective date July 21, 2016.

2-970 Riparian Vegetation Management Task Force; duties; meetings; report.

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. An annual report shall be submitted to the Governor and the Legislature by June 30 each year with the first report due on June 30, 2017. 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 of the total appropriation to the program per fiscal year.

Source: Laws 2016, LB1038, § 4.
Effective date July 21, 2016.

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.

Section

- 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.
- 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 transfer-

ring 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 require-

ments, 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

§ 2-1091.02

AGRICULTURE

(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 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	\$24 per hour	\$27 per hour

and reinspections

\$0.42 per mile

\$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.

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.

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.

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.

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.

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.

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.

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.

§ 2-1501

AGRICULTURE

Section

- 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

- 2-1587. Nebraska Resources Development Fund; created; reserve fund; administration; investment.
- 2-1588. Fund; allocation; report; projects; costs.
- 2-1592. Grant or loan; application; deadline; procedure.

(e) WATER PLANNING AND REVIEW PROCESS

- 2-15,106. Annual report; contents.

(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.

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.

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.

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) When the commission has approved an allocation of funds to a program, project, or activity, the Department of Natural Resources shall establish a subaccount in the Water Sustainability Fund and credit the entire amount of the allocation to the subaccount. Individual subaccounts shall be established for each program, project, or activity approved by the commission. The commission may approve a partial allocation to a program, project, or activity based upon available unallocated funds in the Water Sustainability Fund, but the amount of unfunded allocations shall not exceed eleven million dollars. Additional allocations to a program, project, or activity shall be credited to the same subaccount as the original allocation. Subaccounts shall not be subject to transfer out of the Water Sustainability Fund, except that the commission may authorize the transfer of excess or unused funds from a subaccount and into the unreserved balance of the fund.

(5) 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.

(6) 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.

(7) 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; Laws 2015, LB661, § 21; Laws 2016, LB957, § 1.

Effective date March 31, 2016.

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.

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.

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.

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.

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.

2-1513 Water Sustainability Fund; legislative analysis.

The Appropriations Committee of the Legislature shall, beginning with the FY2023-25 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; Laws 2015, LB661, § 22.

(c) NEBRASKA RESOURCES DEVELOPMENT FUND

2-1587 Nebraska Resources Development Fund; created; reserve fund; administration; investment.

(1) There is hereby created the Nebraska Resources Development Fund to be administered by the department. The State Treasurer shall credit to the fund, to carry out sections 2-1586 to 2-1595, such money as is (a) appropriated to or transferred into the fund by the Legislature, (b) paid to the state as fees, deposits, payments, and repayments relating to the fund, both principal and interest, and (c) donated as gifts, bequests, or other contributions to such fund from public or private entities. Funds made available by any department or agency of the United States may also be credited to this fund if so directed by such department or agency. The money in the fund shall not be subject to any fiscal year or biennium limitation requiring reappropriation of the unexpended balance at the end of the fiscal year or biennium. Transfers may be made from the fund to the General Fund at the direction of the Legislature.

(2) To aid in the funding of projects and to prevent excessive fluctuations in appropriation requirements for the Nebraska Resources Development Fund, the department shall create a reserve fund to be used only for projects requiring total expenditures from the Nebraska Resources Development Fund in excess of five million dollars. Unless disapproved by the Governor, the department may credit to such reserve fund that portion of any appropriation to the Nebraska Resources Development Fund which exceeds five million dollars. The department may also credit to the reserve fund such other funds as it determines are available.

(3) Any money in the Nebraska Resources Development Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1974, LB 975, § 2; R.S.1943, (1977), § 2-3264; Laws 1984, LB 985, § 1; Laws 1986, LB 258, § 5; Laws 1995, LB 7, § 8; Laws 2000, LB 900, § 32; Laws 2009, First Spec. Sess., LB3, § 4; Laws 2015, LB661, § 23.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

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, unless specific appropriations or transfers to exceed the March 30, 2014, allocation amounts are approved by the Legislature. If such specific appropriations or transfers are made, the commission shall develop procedures to allocate the additional funding to projects approved as of March 30, 2014. Allocations shall not exceed funds appropriated for such purpose. Any of such funds remaining after all such project costs have been completely funded shall be transferred to the Water Sustainability Fund by the State Treasurer. Prior to March 30, 2014, the Nebraska Resources Development 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, LB 179, § 1; Laws 2012, LB 782, § 3; Laws 2014, LB 906, § 9; Laws 2015, LB 661, § 24.

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.

(e) WATER PLANNING AND REVIEW PROCESS

2-15,106 Annual report; contents.

On or before September 15 for each odd-numbered year and on or before the date provided in subsection (1) of section 81-132 for each even-numbered year, the director shall submit an annual report and plan of work for the state water planning and review process to the Legislature and Governor. The report

submitted to the Legislature shall be submitted electronically. The report shall include a listing of expenditures for the past fiscal year, a summary and analysis of work completed in the past fiscal year, funding requirements for the next fiscal year, and a projection and analysis of work to be completed and estimated funding requirements for such work for the next succeeding four years. The explanation of future funding requirements shall include an explanation of the proposed use of such funds and the anticipated results of the expenditure of such funds. The report shall, to the extent possible, identify such information as it affects each agency or other recipient of program funds. The explanation of future funding requirements shall be in a form suitable for providing an explanation of that portion of the budget request pertaining to the state water planning and review process.

Source: Laws 1981, LB 326, § 8; R.S.Supp.,1982, § 2-3289; Laws 1984, LB 1106, § 42; Laws 2000, LB 900, § 47; Laws 2002, Second Spec. Sess., LB 12, § 1; Laws 2012, LB782, § 4; Laws 2016, LB1092, § 1.

Effective date July 21, 2016.

ARTICLE 18 POTATO DEVELOPMENT

PART I

Section

- 2-1807. Potato shipper; annual statement; excise tax; amount; administrative fee; violations; penalty.
2-1808. Nebraska Potato Development Fund; creation; disbursement; investment.

PART I

2-1807 Potato shipper; annual statement; excise tax; amount; administrative fee; violations; penalty.

(1) Beginning July 1, 1997, every potato shipper shall render and have on file with the Department of Agriculture by the last day of July an annual statement under oath, on forms prescribed by the department, which shall set forth the number of pounds of potatoes grown in Nebraska which were sold or shipped by him or her during the preceding fiscal year beginning on July 1 and ending on June 30. For every potato shipper who was required to file an annual statement for calendar year 1996, a short period statement covering January 1, 1997, through June 30, 1997, shall be filed and the excise taxes paid by July 31, 1997, as required by this section. For every potato shipper who was required to file a quarterly statement for the period of January 1, 1997, through March 31, 1997, a final quarterly statement covering April 1, 1997, through June 30, 1997, shall be filed and the excise taxes paid by July 31, 1997, as required by this section. At the time the sworn statement is filed and in connection therewith, each such potato shipper shall pay and remit to the department an excise tax of not to exceed two cents per one hundred pounds upon the potatoes shown in such statement to have been sold, which tax is hereby levied and imposed. The tax shall be set in the manner prescribed in subsection (3) of this section. The department shall transmit to the State Treasurer all money, checks, drafts, or other mediums of exchange thus received. The department shall have authority to adjust all errors in making payment. Any such potato shipper who shall neglect or refuse to file such statement, or to pay the tax herein imposed, within

the time prescribed, shall be guilty of a Class IV misdemeanor. No potatoes shall be subject to tax more than once under the Nebraska Potato Development Act.

(2) All excise taxes imposed by this section are delinquent on August 1 of the year due. The department shall impose an additional administrative fee of five percent per month of the excise taxes for each month or portion thereof such taxes are delinquent not to exceed one hundred percent of such taxes. The purpose of the additional administrative fee is to cover the administrative costs associated with collecting the excise taxes. All money collected as an additional administrative fee shall be remitted to the State Treasurer for credit to the Nebraska Potato Development Fund.

(3) The department shall, upon the recommendation of the committee, have the power to set the excise tax prescribed in subsection (1) of this section. The tax shall be one cent per one hundred pounds from July 19, 1980, until adjusted by the department. Adjusted rates shall be effective for periods of not less than one year. The applicable rate of the excise tax shall be prescribed in rules and regulations adopted by the department in the manner prescribed by law.

Source: Laws 1945, c. 4, § 7, p. 72; Laws 1947, c. 4, § 3, p. 61; Laws 1951, c. 9, § 2, p. 80; Laws 1963, c. 12, § 1, p. 90; Laws 1969, c. 20, § 2, p. 186; Laws 1977, LB 40, § 17; Laws 1980, LB 833, § 1; Laws 1997, LB 202, § 1; Laws 2016, LB909, § 1.
Effective date July 21, 2016.

2-1808 Nebraska Potato Development Fund; creation; disbursement; investment.

The State Treasurer is hereby directed to establish and set up in the treasury of the State of Nebraska a fund to be known as the Nebraska Potato Development Fund, to which fund shall be credited, for the uses and purposes of the Nebraska Potato Development Act and its enforcement, all taxes and fees collected by the Department of Agriculture. After appropriation, the Director of Administrative Services, upon receipt of proper vouchers approved by the director of the department, shall issue his or her warrants on such funds and the State Treasurer shall pay the same out of the money credited to the fund. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1945, c. 4, § 8, p. 72; Laws 1969, c. 584, § 29, p. 2359; Laws 1995, LB 7, § 10; Laws 2016, LB909, § 2.
Effective date July 21, 2016.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

**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.

Section

- 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 determine 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 preconstruction 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

- 2-3204. Budget.
- 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.

2-3204 Budget.

A natural resources district may adopt either an annual or a biennial budget pursuant to the Nebraska Budget Act.

Source: Laws 2015, LB164, § 1.

Cross References

Nebraska Budget Act, see section 13-501.

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.

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.

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.

Cross References

Interlocal Cooperation Act, see section 13-801.

ARTICLE 37

DRY BEAN RESOURCES

Section

2-3753. Commission; powers and duties.

2-3755. Dry beans; fee; adjustment; payment.

2-3760. Repealed. Laws 2015, LB 242, § 6.

2-3762. Commission; annual report; contents.

2-3763. Dry Bean Development, Utilization, Promotion, and Education Fund; created; use; investment.

2-3753 Commission; powers and duties.

The commission shall have the following powers and duties:

(1) To adopt and devise a dry bean program consisting of research, education, advertising, publicity, and promotion to increase total consumption of dry beans on a state, national, and international basis;

(2) To prepare and approve a budget consistent with limited receipts and the scope of the dry bean program;

(3) To adopt and promulgate reasonable rules and regulations necessary to carry out the dry bean program;

(4) To procure and evaluate data and information necessary for the proper administration and operation of the dry bean program;

(5) To employ personnel and contract for services which are necessary for the proper operation of the dry bean program;

(6) To establish a means whereby the grower and processor of dry beans has the opportunity at least annually to offer his or her ideas and suggestions relative to commission policy for the coming year;

(7) To authorize the expenditure of funds and contracting of expenditures to conduct proper activities of the program;

(8) To bond such persons as may be necessary in order to insure adequate protection of funds;

(9) To keep minutes of its meetings and other books and records which will clearly reflect all of the acts and transactions of the commission and to keep such records open to examination by any grower or processor participant during normal business hours;

(10) To prohibit any funds collected by the commission from being expended directly or indirectly to promote or oppose any candidate for public office or to influence state legislation. The commission shall not expend more than fifteen percent of its annual budget to influence federal legislation. The purpose of such expenditures for federal lobbying activity shall be limited to activity supporting the underlying objectives of the dry bean program relating to market development, education, and research;

(11) To establish an administrative office at such place in the state as may be suitable for the proper discharge of the functions of the commission; and

(12) To adopt and promulgate rules and regulations to carry out the Dry Bean Resources Act.

Source: Laws 1987, LB 145, § 19; Laws 2015, LB242, § 1.

2-3755 Dry beans; fee; adjustment; payment.

(1) Beginning August 1, 1987, there shall be paid to the commission a fee of six cents per hundredweight upon all dry beans grown in the state during 1987 and thereafter and sold through commercial channels. Beginning January 1, 1989, until July 31, 2015, the commission may, whenever it determines that the fees provided by this section are yielding more or less than is required to carry out the intent and purposes of the Dry Bean Resources Act, reduce or increase such fee for such period as it shall deem justifiable, but not less than one year and not to exceed ten cents per hundredweight.

(2) Beginning August 1, 2015, the fee imposed by this section shall be fifteen cents per hundredweight. Beginning January 1, 2017, the commission may, whenever it determines that the fees provided by this section are yielding more or less than is required to carry out the intent and purposes of the act, reduce or increase such fee for such period as it shall deem justifiable, but not less than one year and not to exceed twenty-four cents per hundredweight.

(3) Two-thirds of the fee levied under this section shall be paid by the grower at the time of sale or delivery and shall be collected by the first purchaser. The first purchaser shall pay the remaining one-third of the fee. No dry beans shall be subject to the fee more than once.

Source: Laws 1987, LB 145, § 21; Laws 2015, LB242, § 2.

2-3760 Repealed. Laws 2015, LB 242, § 6.

2-3762 Commission; annual report; contents.

(1) The commission shall prepare and make available an annual report at least thirty days prior to January 1 of each year which shall set forth in detail the income received from the dry bean assessment for the previous year and shall include:

(a) The expenditure of all funds by the commission during the previous year for the administration of the Dry Bean Resources Act;

(b) The action taken by the commission on all contracts requiring the expenditure of funds by the commission;

(c) A description of all such contracts;

(d) Detailed explanation of all programs relating to the discovery, promotion, and development of bean products and industries for the utilization of dry beans, the direct expense associated with each program, and copies of such programs if in writing; and

(e) The name and address of each member of the commission and a copy of all rules and regulations adopted and promulgated by the commission.

(2) The report and a copy of all contracts requiring expenditure of funds by the commission shall be available to the public upon request. Notice of availability of such report shall be provided to the Director of Agriculture, the Clerk of the Legislature, and each grower and first purchaser subject to the checkoff.

Source: Laws 1987, LB 145, § 28; Laws 2015, LB242, § 3.

2-3763 Dry Bean Development, Utilization, Promotion, and Education Fund; created; use; investment.

The State Treasurer shall establish in the treasury of the State of Nebraska a fund to be known as the Dry Bean Development, Utilization, Promotion, and Education Fund, to which fund shall be credited funds collected by the commission pursuant to the Dry Bean Resources Act, including license fees, royalties, or any repayments relating to the fund. The fund shall be expended for the administration of such 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 1987, LB 145, § 29; Laws 1995, LB 7, § 20; Laws 2015, LB242, § 4.

Cross References

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

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.

§ 2-3951**AGRICULTURE**

Section

- 2-3981. Dairy plants, milk for manufacturing purposes, and pickup tankers; quality tests; standards.
- 2-3982. Classification for sediment content; sediment standards; determination; effect.
- 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 appropriated 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 ownership 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.

ARTICLE 43

AGRICULTURAL LIMING MATERIALS

Section

- 2-4323. Retailer licensee; tonnage report; inspection fee; additional administrative fee; department; powers; director; duties.
- 2-4324. Fees; disbursement.
- 2-4326. Director; department; enforcement; orders; seizure of material; procedure.
- 2-4327. Violations; penalty; written warning; Attorney General or county attorney; duties; enforcement; appeal.

2-4323 Retailer licensee; tonnage report; inspection fee; additional administrative fee; department; powers; director; duties.

(1) Every retailer licensee shall file, not later than the last day of January and July of each year, a semiannual tonnage report on forms provided by the department, setting forth the number of net tons of each agricultural liming material sold in Nebraska during the preceding six-month period, which report shall cover the periods from July 1 to December 31 and January 1 to June 30, and such other information as the director shall deem necessary. All persons required to be licensed pursuant to the Agricultural Liming Materials Act shall file such report regardless of whether any inspection fee is due. Upon filing the report, such person shall pay the inspection fee at the rate prescribed pursuant to this section. The inspection fee shall be at the rate fixed by the director but not exceeding ten cents per ton. The fee shall be set at an amount to cover the expenses of the inspection provided in section 2-4325 and the costs of administering this section. The minimum inspection fee required pursuant to this section shall be five dollars, and no inspection fee shall be paid more than once for any one product. In the case of agricultural lime slurry, the fee shall be paid on the base lime material only.

(2) If a person fails to report and pay the fee required by subsection (1) of this section by January 31 and July 31, the fee 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 Fertilizers and Soil Conditioners Administrative Fund. Failure to make an accurate statement of tonnage or to pay the inspection fee or comply as provided in this subsection shall constitute sufficient cause for the cancellation of all product registrations or licenses on file for such person.

(3) The director shall annually make information available in such form as he or she may deem proper concerning the tons of agricultural liming material sold in this state. Such report shall in no way divulge the operation of any registrant or licensee.

Source: Laws 1981, LB 396, § 23; Laws 1983, LB 539, § 8; Laws 2015, LB92, § 1.

2-4324 Fees; disbursement.

All fees paid to the department pursuant to the Agricultural Liming Materials Act shall be remitted to the State Treasurer for credit to the Fertilizers and Soil Conditioners Administrative Fund. All money credited to the fund shall be used by the department to aid in defraying expenses of administering the Agricultural Liming Materials Act and the Nebraska Commercial Fertilizer and Soil Conditioner Act.

Source: Laws 1981, LB 396, § 24; Laws 2003, LB 157, § 3; Laws 2015, LB92, § 2.

Cross References

Nebraska Commercial Fertilizer and Soil Conditioner Act, see section 81-2,162.22.

2-4326 Director; department; enforcement; orders; seizure of material; procedure.

(1) When the director has reasonable cause to believe agricultural liming materials are being sold in violation of the Agricultural Liming Materials Act or the rules and regulations adopted and promulgated pursuant to the act, he or she may issue and enforce a written or printed stop-sale, stop-use, or removal order to the owner or custodian of any lot of agricultural liming material. The department may order the owner or custodian to hold such material at a designated place when the department finds such material is being offered or exposed for sale by the owner or custodian in violation of the act or the rules and regulations. Such material shall be released when the act or the rules and regulations have been complied with, such violations have otherwise been legally disposed of in writing, and all costs and expense incurred in connection with such material's holding have been paid. This section shall not apply if the owner or custodian is the ultimate consumer of the agricultural liming material and he or she has title to such materials.

(2) Any agricultural liming materials not in compliance with the act or the rules and regulations shall be subject to seizure on complaint of the director to a court of competent jurisdiction in the area in which the agricultural liming materials are located. If the court finds the agricultural liming materials to be in violation of the act or the rules and regulations and orders the condemnation of the agricultural liming materials, such agricultural liming materials shall be disposed of in any manner consistent with the quality of the agricultural liming materials and the laws of the State of Nebraska. The court shall not order disposition without first giving the claimant an opportunity to apply to the court for release of the agricultural liming materials or for permission to process or relabel such product to bring it into compliance with the act.

Source: Laws 1981, LB 396, § 26; Laws 1983, LB 539, § 10; Laws 1988, LB 871, § 27; Laws 2015, LB92, § 3.

2-4327 Violations; penalty; written warning; Attorney General or county attorney; duties; enforcement; appeal.

(1) Any person violating the Agricultural Liming Materials Act shall be guilty of a Class IV misdemeanor upon the first conviction thereof, and a Class II misdemeanor for each subsequent conviction thereof.

(2) Nothing in the act shall be construed to require the director or his or her duly authorized agent to report a violation in order to prosecute or to institute

seizure proceedings as a result of minor violations of the act when he or she believes that the public interest will best be served by a suitable written warning to the violator.

(3) 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 such violation or threatened violation, shall pursue appropriate proceedings pursuant to section 2-4326 or this section or both without delay.

(4) In order to insure compliance with the act, the department may 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 adopted and promulgated pursuant to the act. 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.

(5) Any person adversely affected by an action, order, or ruling made by the department pursuant to the act may appeal the action, order, or ruling, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1981, LB 396, § 27; Laws 2015, LB92, § 4.

Cross References

Administrative Procedure Act, see section 84-920.

ARTICLE 46

EROSION AND SEDIMENT CONTROL

Section

- 2-4603. Terms, defined.
- 2-4604. State program; director; duties; program contents; revisions; hearings.
- 2-4605. District program; contents; review.
- 2-4608. Excess soil erosion; complaint; inspection; remedial action; failure to comply; cease and desist order.
- 2-4610. Conformance with farm unit conservation plan or soil-loss tolerance level; effect; cost-sharing assistance; availability; lack of cost-sharing assistance; effect.
- 2-4612. Order for immediate compliance; when authorized.
- 2-4613. District court action; procedures; order; appeal; failure to comply with order; effect.

2-4603 Terms, defined.

For purposes of the Erosion and Sediment Control Act, unless the context otherwise requires:

(1) Commission means the Nebraska Natural Resources Commission;

(2) Conservation agreement means an agreement between the owner or operator of a farm unit and the district in which the owner or operator agrees to implement a farm unit conservation plan or, with the approval of the district within which the farm unit is located, a portion of a farm unit conservation plan. The agreement shall include a schedule for implementation and may be conditioned on the district or other public entity furnishing technical, planning, or financial assistance in the establishment of the soil and water conservation practices necessary to implement the plan or a portion of the plan;

(3) Director means the Director of Natural Resources;

(4) District means a natural resources district;

(5) Erosion or sediment control practice means:

(a) The construction or installation and maintenance of permanent structures or devices necessary to carry, to a suitable outlet away from any building site, any commercial or industrial development, or any publicly or privately owned recreational or service facility not served by a central storm sewer system, any water which would otherwise cause erosion in excess of the applicable soil-loss tolerance level and which does not carry or constitute sewage or industrial or other waste;

(b) The employment of temporary devices or structures, temporary seeding, fiber mats, plastic, straw, diversions, silt fences, sediment traps, or other measures adequate either to prevent erosion in excess of the applicable soil-loss tolerance level or to prevent excessive downstream sedimentation from land which is the site of or is directly affected by any nonagricultural land-disturbing activity; or

(c) The establishment and maintenance of vegetation upon the right-of-way of any completed portion of any public street, road, or highway or the construction or installation thereon of permanent structures or devices or other measures adequate to prevent erosion of the right-of-way in excess of the applicable soil-loss tolerance level;

(6) Excess erosion means the occurrence of erosion in excess of the applicable soil-loss tolerance level which causes or contributes to an accumulation of sediment upon the lands of any other person to the detriment or damage of such other person;

(7) Farm unit conservation plan means a plan jointly developed by the owner and, if appropriate, the operator of a farm unit and the district within which the farm unit is located based upon the determined conservation needs for the farm unit and identifying the soil and water conservation practices which may be expected to prevent soil loss by erosion from that farm unit in excess of the applicable soil-loss tolerance level. The plan may also, if practicable, identify alternative practices by which such objective may be attained;

(8) Nonagricultural land-disturbing activity means a land change, including, but not limited to, tilling, clearing, grading, excavating, transporting, or filling land, which may result in soil erosion from wind or water and the movement of sediment and sediment-related pollutants into the waters of the state or onto lands in the state but does not include the following:

(a) Activities related directly to the production of agricultural, horticultural, or silvicultural crops, including, but not limited to, tilling, planting, or harvesting of such crops;

(b) Installation of aboveground public utility lines and connections, fenceposts, sign posts, telephone poles, electric poles, and other kinds of posts or poles;

(c) Emergency work to protect life or property;

(d) Activities related to the construction of housing, industrial, and commercial developments on sites under two acres in size; and

(e) Activities related to the operation, construction, or maintenance of industrial or commercial public power district or public power and irrigation district

facilities or sites when such activity is conducted pursuant to state or federal law or is part of the operational plan for such facility or site;

(9) Person means any individual, partnership, limited liability company, firm, association, joint venture, public or private corporation, trust, estate, commission, board, institution, utility, cooperative, municipality or other political subdivision of this state, interstate body, or other legal entity;

(10) Soil and water conservation practice means a practice which serves to prevent erosion of soil by wind or water in excess of the applicable soil-loss tolerance level from land used only for agricultural, horticultural, or silvicultural purposes. Soil and water conservation practice includes, but is not limited to:

(a) Permanent soil and water conservation practice, including the planting of perennial grasses, legumes, shrubs, or trees, the establishment of grassed waterways, the construction of terraces, and other permanent soil and water practices approved by the district; and

(b) Temporary soil and water conservation practice, including the planting of annual or biennial crops, use of strip-cropping, contour planting, minimum or mulch tillage, and other cultural practices approved by the district; and

(11) Soil-loss tolerance level means the maximum amount of soil loss due to erosion by wind or water, expressed in terms of tons per acre per year, which is determined to be acceptable in accordance with the Erosion and Sediment Control Act. Soil loss may be impacted by water erosion which may include (a) sheet and rill erosion which includes relatively uniform soil loss across the entire field slope which may leave small channels located at regular intervals across the slope and (b) ephemeral gully erosion which occurs in well-defined depressions or natural drainageways where concentrated overland flow results in the convergence of rills forming deeper and wider channels.

Source: Laws 1986, LB 474, § 3; Laws 1988, LB 594, § 1; Laws 1993, LB 121, § 80; Laws 1994, LB 480, § 22; Laws 2015, LB206, § 1.

2-4604 State program; director; duties; program contents; revisions; hearings.

(1) The director shall, in cooperation with the commission, the Department of Environmental Quality, the Natural Resources Conservation Service of the United States Department of Agriculture, and other appropriate state and federal agencies, develop and coordinate a comprehensive state erosion and sediment control program designed to reduce soil erosion in this state to tolerable levels. The program, which shall be reasonable and attainable, shall include:

(a) The soil-loss tolerance level for the various types of soils in the state;

(b) State goals and a state strategy for reducing soil losses on all lands in the state to an amount no more than the applicable soil-loss tolerance level;

(c) Guidelines for establishing priorities for implementation of the program at the state and local levels;

(d) Types of assistance to be provided by the state to districts, cities, and counties in the implementation of the state and local erosion and sediment control programs; and

(e) Such other elements as the director deems appropriate in accordance with the objectives of the Erosion and Sediment Control Act, including any recommendations for further legislative or administrative action.

(2) The state erosion and sediment control program may be revised by the director and the commission at any time. Before approving any such changes, the director and the commission shall conduct at least four public hearings or meetings to receive information from interested persons in different parts of the state.

Source: Laws 1986, LB 474, § 4; Laws 1993, LB 3, § 5; Laws 2015, LB206, § 2.

2-4605 District program; contents; review.

(1) Each district shall, with the approval of the director, adopt a district program for implementation of the state erosion and sediment control program. Each district's program shall include the:

(a) Soil-loss tolerance levels for the various types of soils in the district. The soil-loss tolerance levels shall be adopted and promulgated as rules and regulations and may be more but not less stringent than those adopted by the director. It is the intent of the Legislature that no land within the state be assigned a soil-loss tolerance level that cannot reasonably be applied to such land;

(b) Recommended erosion or sediment control practices and soil and water conservation practices which are suitable for controlling erosion and sedimentation within the district; and

(c) Programs, procedures, and methods the district plans to adopt and employ to implement the state erosion and sediment control program. Each district may subsequently amend or modify the program as necessary, subject to the approval of the director.

(2) The director with the advice and recommendation of the commission shall review each district's program and all amendments thereto and shall approve the program or amendments if the director determines that the district's program is reasonable, attainable, and in conformance with the state erosion and sediment control program.

Source: Laws 1986, LB 474, § 5; Laws 1988, LB 594, § 2; Laws 2015, LB206, § 3.

2-4608 Excess soil erosion; complaint; inspection; remedial action; failure to comply; cease and desist order.

(1) Except to the extent jurisdiction has been assumed by a municipality or county in accordance with section 2-4606, the district may inspect or cause to be inspected any land within the district upon receipt of a written and signed complaint which alleges that soil erosion is occurring in excess of the applicable soil-loss tolerance level. Complaints shall be filed on a form provided by the director. Complaints may be filed by any owner or operator of land being damaged by sediment, by any state agency or political subdivision whose roads or other public facilities are being damaged by sediment, by any state agency or political subdivision with responsibility for water quality maintenance if it is alleged that the soil erosion complained of is adversely affecting water quality, or by a staff member or other agent of the district authorized by the board of

directors to file such complaints. Inspections following receipt of a written and signed complaint may be made only after notice to the owner and, if appropriate, the operator of the land involved, and such person shall be given an opportunity to accompany the inspector.

(2) The owner, the operator if appropriate, and the district may agree to a plan and schedule for eliminating excess erosion on and sedimentation from the land involved. Any such agreement may be enforced in district court in the same manner as an administrative order issued pursuant to the Erosion and Sediment Control Act. If no agreement is reached, the findings of the inspection shall be presented to the district board of directors and the owner and, if appropriate, the operator of the land shall be given a reasonable opportunity to be heard at a meeting of the board or, if requested, at a public hearing. If the district finds that the alleged sediment damage is occurring and that excess erosion is occurring on the land inspected, it shall issue an administrative order to the owner of record and, if appropriate, to the operator describing the land and stating as nearly as possible the extent to which the soil erosion exceeds the applicable soil-loss tolerance level. When the complained-of erosion is the result of agricultural, horticultural, or silvicultural activities, the district shall direct the owner and, if appropriate, the operator to bring the land into conformance with the applicable soil-loss tolerance level. When the complained-of erosion is the result of a nonagricultural land-disturbing activity, the district may authorize the owner and, if appropriate, the operator to either bring such land into conformance with the soil-loss tolerance level or to prevent sediment resulting from excess erosion from leaving such land.

(3) The district may specify, as applicable, alternative soil and water conservation practices or erosion or sediment control practices which the owner and, if appropriate, the operator may use to comply with the administrative order. A copy of the administrative order shall be delivered by either personal service or certified or registered mail to each person to whom it is directed and shall:

(a) In the case of erosion occurring on the site of any nonagricultural land-disturbing activity, state a reasonable time after service or mailing of the order when the work necessary to establish or maintain erosion or sediment control practices shall be commenced and the time, not more than forty-five days after service or mailing of the order, when the work shall be satisfactorily completed;

(b) In all other cases, state the time, not more than six months after service or mailing of the order, the work needed to establish or maintain the necessary soil and water conservation practices or permanent erosion control practices shall be commenced and the time, not more than one year after the service or mailing of the order, the work shall be satisfactorily completed, unless the requirements of the order are superseded by section 2-4610; and

(c) State any reasonable requirements regarding the operation, utilization, and maintenance of the practices to be installed, constructed, or applied.

(4) Following refusal of a landowner to discontinue an activity causing erosion described in this section and to establish a plan and schedule for eliminating excess erosion pursuant to subsection (2) of this section, and if the immediate discontinuance of such activity is necessary to reduce or eliminate damage to neighboring property, the district may petition the district court for an order to the owner and, if appropriate, the operator, to immediately cease and desist such activity until excess erosion can be brought into conformance

with the soil-loss tolerance level or sediment resulting from excess erosion is prevented from leaving the property.

(5) Upon failure to comply with the order, the owner or, if appropriate, the operator shall be deemed in violation of the Erosion and Sediment Control Act and subject to further actions as provided by such act.

Source: Laws 1986, LB 474, § 8; Laws 1988, LB 594, § 3; Laws 1994, LB 480, § 23; Laws 2015, LB206, § 4.

2-4610 Conformance with farm unit conservation plan or soil-loss tolerance level; effect; cost-sharing assistance; availability; lack of cost-sharing assistance; effect.

(1) Any person owning or operating private agricultural, horticultural, or silvicultural lands who has a farm unit conservation plan approved by the district and is implementing and maintaining the plan in strict compliance with a conservation agreement or any person whose normal agricultural, horticultural, and silvicultural practices are in conformance with the applicable soil-loss tolerance level shall, for purposes of such land, be deemed to be in compliance with the requirements of the Erosion and Sediment Control Act and any approved erosion and sediment control program.

(2) To prevent excess erosion and sediment from leaving the land due to any agricultural or nonagricultural land-disturbing activity, cost-sharing assistance may be available from any district. Such assistance may be used for any erosion or sediment control practice. The lack of available cost-sharing assistance does not offset the requirement that the owner and, if appropriate, the operator of such land comply with the terms of an approved plan of compliance or an administrative order.

Source: Laws 1986, LB 474, § 10; Laws 1988, LB 594, § 4; Laws 1994, LB 480, § 24; Laws 2015, LB206, § 5.

2-4612 Order for immediate compliance; when authorized.

The district shall petition the district court for a court order requiring immediate compliance with an administrative order previously issued by the district if:

(1) The work necessary to comply with the administrative order is not commenced on or before the date specified in such order or in any supplementary orders subsequently issued unless, in the judgment of the district, the failure to commence or complete the work as required by the administrative order is due to factors beyond the control of the person to whom such order is directed and the person can be relied upon to commence and complete the necessary work at the earliest possible time;

(2) The work is not being performed with due diligence or is not satisfactorily completed by the date specified in the administrative order or the practices are not being operated, utilized, or maintained as required;

(3) The work is not of a type or quality specified by the district and, when completed, it will not or does not reduce soil erosion from such land below the soil-loss tolerance level or, to the extent excess erosion is permitted by the district for a nonagricultural land-disturbing activity, will not or does not prevent sediment resulting from such excess erosion from leaving the land involved; or

(4) The person to whom the administrative order is directed advises the district that he or she does not intend to commence or complete such work.

Source: Laws 1986, LB 474, § 12; Laws 1988, LB 594, § 5; Laws 2015, LB206, § 6.

2-4613 District court action; procedures; order; appeal; failure to comply with order; effect.

In the district court action, the burden of proof shall be upon the district to show that soil erosion is occurring in excess of the applicable soil-loss tolerance level and that the landowner or operator has not established or maintained soil and water conservation practices or erosion or sediment control practices in compliance with the district's erosion and sediment control program. Upon receiving satisfactory proof, the court shall issue an order directing the owner or operator to comply with the administrative order previously issued by the district. The court may modify the administrative order if deemed necessary. Notice of the court order shall be given by either personal service or certified or registered mail to each person to whom the order is directed, who may, within thirty days from the date of the court order, appeal to the Court of Appeals. Any person who fails to comply with the court order issued within the time specified in such order, unless the order has been stayed pending an appeal, shall be deemed in contempt of court and punished accordingly.

Source: Laws 1986, LB 474, § 13; Laws 1991, LB 732, § 10; Laws 2015, LB206, § 7.

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.

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.

CHAPTER 3 AERONAUTICS

Article.

1. General Provisions. 3-106, 3-159.
3. Airport Zoning. 3-301 to 3-333.
4. Regulation of Structures. 3-402 to 3-408.
5. City Airport Authority. 3-502.
6. County Airport Authority. 3-613.
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.

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.

**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 4
REGULATION OF STRUCTURES**

Section

- 3-402. Terms, defined.
3-407.01. Meteorological evaluation tower; marking; owner; registration; contents; duties; failure to comply; effect.
3-408. Violations; penalty.

3-402 Terms, defined.

As used in sections 3-401 to 3-409, unless the context otherwise requires:

(1) Structure means any manmade object which is built, constructed, projected, or erected upon, from, and above the surface of the earth, including, but not limited to, towers, antennas, buildings, wires, cables, and chimneys;

(2) Meteorological evaluation tower means an anchored structure, including all guy wires and accessory facilities, on which one or more meteorological instruments are mounted for the purpose of meteorological data collection;

(3) Obstruction means any structure which obstructs the air space required for the flight of aircraft and in the landing and taking off of aircraft at any airport or restricted landing area; and

(4) Person means any public utility, public district, or other governmental division or subdivision or any person, corporation, partnership, or limited liability company.

Source: Laws 1955, c. 7, § 2, p. 68; Laws 1993, LB 121, § 85; Laws 2015, LB469, § 5.

3-407.01 Meteorological evaluation tower; marking; owner; registration; contents; duties; failure to comply; effect.

(1) A meteorological evaluation tower, the height of which is at least fifty feet above the surface of the ground at point of installation, shall be marked according to subsection (2) of this section. This section applies to a meteorological evaluation tower that is located outside the corporate limits of a city or village.

(2) A meteorological evaluation tower described in subsection (1) of this section shall: (a) Be painted in seven equal-width and alternating bands of aviation orange and white beginning with orange at the top of the tower and ending with orange at the base; (b) have two or more spherical marker balls at least twenty-one inches in diameter that are aviation orange in color and attached to each outer guy wire connected to the tower with the top ball no further than twenty feet from the top wire connection and the remaining ball or balls at or below the midpoint of the tower on the outer guy wires; and (c) have yellow safety sleeves installed on each outer guy wire extending at least fourteen feet above the anchor point of the guy wire.

(3) The owner of a meteorological evaluation tower subject to this section shall, not less than ten business days prior to erecting the tower, register with the Department of Aeronautics the name and address of the owner, the height and location of the tower, and any other information that the department deems necessary for aviation safety. The owner of a tower subject to this section shall also report the removal of the tower to the department not more than thirty business days after its removal. The department shall make the information received pursuant to this subsection available to the public within five business days.

(4) The owner of a meteorological evaluation tower described in subsection (1) of this section that was erected prior to May 28, 2015, and which is either lighted, marked with balls at least twenty-one inches in diameter, painted, or modified in some other manner so it is recognizable in clear air during daylight hours from a distance of not less than two thousand feet, shall mark the tower as required by subsection (2) of this section within two years after May 28, 2015, or at such time the tower is taken down for maintenance or other purposes, whichever comes first, except that the owner of a tower erected prior to May 28, 2015, which is not lighted, marked, painted, or modified as described in this subsection shall mark such tower as required by subsection (2) of this section within ninety days after May 28, 2015. The registration requirements of subsection (3) of this section shall be performed by the owner of a tower erected prior to May 28, 2015, within fifteen business days after May 28, 2015.

(5) A material failure to comply with the marking and registration requirements of this section shall be admissible as evidence of negligence on the part of an owner of a meteorological evaluation tower in an action in tort for property damage, bodily injury, or death resulting from an aerial collision with such unmarked or unregistered tower.

(6) The department may adopt and promulgate rules and regulations for carrying out the purposes of this section.

Source: Laws 2015, LB469, § 6.

3-408 Violations; penalty.

Any person, firm, or corporation (1) violating any of the provisions of sections 3-401 to 3-409, (2) submitting false information in the application for a permit, (3) violating any rule or regulation adopted and promulgated by the Department of Aeronautics pursuant to sections 3-401 to 3-409, (4) failing to do and perform any act required by sections 3-401 to 3-409, or (5) violating the terms of any permit issued pursuant to sections 3-401 to 3-409, shall be guilty of a Class III misdemeanor. Each day any violation continues or any structure erected in violation of sections 3-401 to 3-409 shall continue in existence shall constitute a separate offense.

Source: Laws 1955, c. 7, § 8, p. 70; Laws 1977, LB 40, § 31; Laws 2015, LB469, § 7.

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 6

COUNTY AIRPORT AUTHORITY

Section

3-613. Authority; powers.

3-613 Authority; powers.

Any authority established under sections 3-601 to 3-622 shall have power:

- (1) To sue and be sued;
- (2) To have a seal and alter the same at pleasure;
- (3) To acquire, hold, and dispose of personal property for its corporate purposes;
- (4) To acquire in the name of the county, by purchase or condemnation, real property or rights or easements therein necessary or convenient for its corporate purposes and, except as may otherwise be provided in such sections, to use the same so long as its corporate existence continues. Such power shall not be exercised by authorities created after September 2, 1973, without further approval until such time as three or more members of the authority have been elected. If the exercise of such power is necessary while three or more appointed members remain on the authority, the appointing body shall approve all proceedings under this subdivision;

(5) To make bylaws for the management and regulation of its affairs and, subject to agreements with bondholders, to make rules and regulations for the

use of projects and the establishment and collection of rentals, fees, and all other charges for services or commodities sold, furnished, or supplied by such authority. Any person violating such rules shall be guilty of a Class III misdemeanor;

(6) With the consent of the county, to use the services of agents, employees, and facilities of the county, for which the authority may reimburse the county a proper proportion of the compensation or cost thereof, and also to use the services of the county attorney as legal advisor to the authority;

(7) To appoint officers, agents, and employees and fix their compensation;

(8) To make contracts, leases, and all other instruments necessary or convenient to the corporate purposes of the authority;

(9) To design, construct, maintain, operate, improve, and reconstruct, so long as its corporate existence continues, such projects as are necessary and convenient to the maintenance and development of aviation services to and for the county in which such authority is established, including landing fields, heliports, hangars, shops, passenger and freight terminals, control towers, and all facilities necessary or convenient in connection with any such project, to contract for the construction, operation, or maintenance of any parts thereof or for services to be performed thereon, and to rent parts thereof and grant concessions thereon, all on such terms and conditions as the authority may determine. This subdivision shall not be construed to affect the obligation of a lessee to pay taxes if taxes are due under sections 77-202, 77-202.11, and 77-202.12;

(10) To include in such project, subject to zoning restrictions, space and facilities for any or all of the following: Public recreation; business, trade, or other exhibitions; sporting or athletic events; public meetings; conventions; and all other kinds of assemblages and, in order to obtain additional revenue, space and facilities for business and commercial purposes. Whenever the authority deems it to be in the public interest, the authority may lease any such project or any part or parts thereof or contract for the management and operation thereof or any part or parts thereof. Any such lease or contract may be for such period of years as the authority shall determine. This subdivision shall not be construed to affect the obligation of a lessee to pay taxes if taxes are due under sections 77-202, 77-202.11, and 77-202.12;

(11) To charge fees, rentals, and other charges for the use of projects under the jurisdiction of such authority subject to and in accordance with such agreement with bondholders as may be made as hereinafter provided. Subject to contracts with bondholders, all fees, rentals, charges, and other revenue derived from any project shall be applied to the payment of operating, administration, and other necessary expenses of the authority properly chargeable to such project and to the payment of the interest on and principal of bonds or for making sinking-fund payments therefor. Subject to contracts with bondholders, the authority may treat one or more projects as a single enterprise with respect to revenue, expenses, the issuance of bonds, maintenance, operation, or other purposes;

(12) To annually request of the county board the amount of tax to be levied for airport purposes subject to section 77-3443, not to exceed three and five-tenths cents on each one hundred dollars of taxable valuation of all the taxable property in such county. Property tax levies for bonds issued by the authority pursuant to section 3-617 are not included in the levy limits established by this

subdivision. The governing body shall levy and collect the taxes so requested at the same time and in the same manner as other taxes are levied and collected, and the proceeds of such taxes when due and as collected shall be set aside and deposited in the special account or accounts in which other revenue of the authority is deposited;

(13) To construct and maintain under, along, over, or across a project, telephone, telegraph, or electric wires and cables, fuel lines, gas mains, water mains, and other mechanical equipment not inconsistent with the appropriate use of such project, to contract for such construction and to lease the right to construct and use the same, or to use the same on such terms for such period of time and for such consideration as the authority shall determine;

(14) To accept grants, loans, or contributions from the United States, the State of Nebraska, any agency or instrumentality of either of them, or the county in which such authority is established and to expend the proceeds thereof for any corporate purposes;

(15) To incur debt and issue negotiable bonds and to provide for the rights of the holders thereof;

(16) To enter on any lands, waters, and premises for the purposes of making surveys, soundings, and examinations; and

(17) To do all things necessary or convenient to carry out the powers expressly conferred on such authorities by sections 3-601 to 3-622.

Source: Laws 1969, c. 141, § 13, p. 653; Laws 1973, LB 22, § 4; Laws 1977, LB 40, § 33; Laws 1979, LB 187, § 16; Laws 1992, LB 719A, § 14; Laws 1996, LB 1114, § 21; Laws 1997, LB 269, § 6; Laws 2001, LB 173, § 7; Laws 2016, LB774, § 1.
Operative date July 21, 2016.

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 4

ALIENS

Section

- 4-111. Public benefits; verification of lawful presence; attestation required; professional or commercial license; requirements.
- 4-112. Public benefits; applicant; eligibility; verification; presumption.

4-111 Public benefits; verification of lawful presence; attestation required; professional or commercial license; requirements.

(1) Verification of lawful presence in the United States pursuant to section 4-108 requires that the applicant for public benefits attest in a format prescribed by the Department of Administrative Services that:

(a) He or she is a United States citizen; or

(b) He or she 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.

(2) A state agency or political subdivision of the State of Nebraska may adopt and promulgate rules and regulations or procedures for the electronic filing of the attestation required under subsection (1) of this section if such attestation is substantially similar to the format prescribed by the Department of Administrative Services.

(3)(a) The Legislature finds that it is in the best interest of the State of Nebraska to make full use of the skills and talents in the state by ensuring that a person who is work-authorized is able to obtain a professional or commercial license and practice his or her profession.

(b) For purposes of a professional or commercial license, the Legislature finds that a person not described in subdivision (1)(a) or (1)(b) of this section who submits (i) an unexpired employment authorization document issued by the United States Department of Homeland Security, Form I-766, and (ii) documentation issued by the United States Department of Homeland Security, the United States Citizenship and Immigration Services, or any other federal agency, such as one of the types of Form I-797 used by the United States Citizenship and Immigration Services, demonstrating that such person is described in section 202(c)(2)(B)(i) through (ix) of the federal REAL ID Act of 2005, Public Law 109-13, has demonstrated lawful presence pursuant to section 4-108 and is eligible to obtain such license. Such license shall be valid only for the period of time during which such person's employment authorization document is valid. Nothing in this subsection shall affect the requirements to obtain a professional or commercial license that are unrelated to the lawful presence requirements demonstrated pursuant to this subsection.

(c) Nothing in this subsection shall be construed to grant eligibility for any public benefits other than obtaining a professional or commercial license.

(d) Any person who has complied with the requirements of this subsection shall have his or her employment authorization document verified through the Systematic Alien Verification for Entitlements Program operated by the United

States Department of Homeland Security or an equivalent program designated by the United States Department of Homeland Security.

(e) The Legislature enacts this subsection pursuant to the authority provided in 8 U.S.C. 1621(d), as such section existed on January 1, 2016.

Source: Laws 2009, LB403, § 4; Laws 2016, LB947, § 1.
Effective date April 21, 2016.

4-112 Public benefits; applicant; eligibility; verification; presumption.

For any applicant who has executed a document described in subdivision (1)(b) of section 4-111, eligibility for public benefits shall be verified through the Systematic Alien Verification for Entitlements Program operated by the United States Department of Homeland Security or an equivalent program designated by the United States Department of Homeland Security. Until such verification of eligibility is made, such attestation may be presumed to be proof of lawful presence for purposes of sections 4-108 to 4-113 unless such verification is required before providing the public benefit under another provision of state or federal law.

Source: Laws 2009, LB403, § 5; Laws 2016, LB947, § 2.
Effective date April 21, 2016.

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.

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.

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.

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.

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.

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.

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.

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.

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.

CHAPTER 8

BANKS AND BANKING

Article.

1. General Provisions. 8-101 to 8-1,140.
2. Trust Companies. 8-204 to 8-234.
3. Building and Loan Associations. 8-318 to 8-374.
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.
15. Acquisition or Merger of Financial Institutions.
 - (c) Cross-Industry Acquisition or Merger of Financial Institution. 8-1510.
21. Interstate Branching and Merger Act. 8-2104.
23. Interstate Trust Company Office Act. 8-2306, 8-2311.
26. Credit Report Protection Act. 8-2601 to 8-2615.
27. Nebraska Money Transmitters Act. 8-2701 to 8-2748.
28. Real Estate Financing Enforcement and Servicing. 8-2801.

ARTICLE 1

GENERAL PROVISIONS

Section

- 8-101. Terms, defined.
- 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.
- 8-115.01. Banks; new charter; transfer of charter; procedure.
- 8-116. Banks; capital stock; amount required.
- 8-117. Conditional bank charter; application; contents; hearing; notice; expenses; conversion to full bank charter; extension; written request; notice of expiration.
- 8-128. Capital stock; increase; decrease; notice; publication; denial by department, when.
- 8-135. Deposits; withdrawal methods authorized; section; how construed.
- 8-153. Checks; preprinted information; cleared at par; exception.
- 8-155. Repealed. Laws 2014, LB 714, § 1.
- 8-156. Repealed. Laws 2014, LB 714, § 1.
- 8-157. Branch banking; Director of Banking and Finance; powers.
- 8-157.01. Establishing financial institution; automatic teller machines; use; availability; user financial institution; switch; use and access; duties; department; enforcement action; limitation.
- 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.

8-101 Terms, defined.

For purposes of the Nebraska Banking Act, unless the context otherwise requires:

(1) Bank subsidiary corporation means a corporation which has a bank as a shareholder and which is organized for purposes of engaging in activities which are part of the business of banking or incidental to such business except for the receipt of deposits. A bank subsidiary corporation is not to be considered a branch of its bank shareholder;

(2) Capital or capital stock means capital stock;

(3) Department means the Department of Banking and Finance;

(4) Director means the Director of Banking and Finance;

(5) Bank or banking corporation means any incorporated banking institution which was incorporated under the laws of this state as they existed prior to May 9, 1933, and any corporation duly organized under the laws of this state for the purpose of conducting a bank within this state under the act. Bank means any such banking institution which is, in addition to the exercise of other powers, following the practice of repaying deposits upon check, draft, or order and of making loans;

(6) Order includes orders transmitted by electronic transmission;

(7) Automatic teller machine means a machine established and located in the State of Nebraska, whether attended or unattended, which utilizes electronic, sound, or mechanical signals or impulses, or any combination thereof, and from which electronic funds transfers may be initiated and at which banking transactions as defined in section 8-157.01 may be conducted. An unattended automatic teller machine shall not be deemed to be a branch operated by a financial institution;

(8) Automatic teller machine surcharge means a fee that an operator of an automatic teller machine imposes upon a consumer for an electronic funds transfer, if such operator is not the financial institution that holds an account of such consumer from which the electronic funds transfer is to be made;

(9) Data processing center means a facility, wherever located, at which electronic impulses or other indicia of a transaction originating at an automatic teller machine are received and either authorized or routed to a switch or other data processing center in order to enable the automatic teller machine to perform any function for which it is designed;

(10) Point-of-sale terminal means an information processing terminal which utilizes electronic, sound, or mechanical signals or impulses, or any combination thereof, which are transmitted to a financial institution or which are recorded for later transmission to effectuate electronic funds transfer transactions for the purchase or payment of goods and services and which are initiated by an access device. A point-of-sale terminal is not a branch operated by a financial institution. Any terminal owned or operated by a seller of goods and services shall be connected directly or indirectly to an acquiring financial institution;

(11) Making loans includes advances or credits that are initiated by means of credit card or other transaction card. Transaction card and other transactions, including transactions made pursuant to prior agreements, may be brought about and transmitted by means of an electronic impulse. Such loan transactions including transactions made pursuant to prior agreements shall be subject to sections 8-815 to 8-829 and shall be deemed loans made at the place of business of the financial institution;

(12) Financial institution means a bank, savings bank, building and loan association, savings and loan association, or credit union, whether chartered by the United States, the department, or a foreign state agency; any other similar organization which is covered by federal deposit insurance; or a trust company;

(13) Financial institution employees includes parent holding company and affiliate employees;

(14) Switch means any facility where electronic impulses or other indicia of a transaction originating at an automatic teller machine are received and are routed and transmitted to a financial institution or data processing center, wherever located. A switch may also be a data processing center;

(15) Impulse means an electronic, sound, or mechanical impulse, or any combination thereof;

(16) Insolvent means a condition in which (a) the actual cash market value of the assets of a bank is insufficient to pay its liabilities to its depositors, (b) a bank is unable to meet the demands of its creditors in the usual and customary manner, (c) a bank, after demand in writing by the director, fails to make good any deficiency in its reserves as required by law, or (d) the stockholders of a bank, after written demand by the director, fail to make good an impairment of its capital or surplus;

(17) Foreign state agency means 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;

(18) Acquiring financial institution means any financial institution establishing a point-of-sale terminal; and

(19) 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.

Source: Laws 1963, c. 29, § 1, p. 134; Laws 1965, c. 27, § 1, p. 198; Laws 1967, c. 19, § 1, p. 117; Laws 1975, LB 269, § 1; Laws 1976, LB 561, § 1; Laws 1987, LB 615, § 1; Laws 1988, LB 375, § 1; Laws 1993, LB 81, § 1; Laws 1994, LB 611, § 1; Laws 1995, LB 384, § 1; Laws 1997, LB 137, § 1; Laws 1998, LB 1321, § 1; Laws 2000, LB 932, § 1; Laws 2002, LB 1089, § 1; Laws 2003, LB 131, § 1; Laws 2003, LB 217, § 1; Laws 2015, LB348, § 1.

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 func-

tions 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 jurisdiction, 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.

8-115.01 Banks; new charter; transfer of charter; procedure.

When an application required by section 8-120 is made by a corporation, the following procedures shall be followed:

(1) Except as provided for in subdivision (2) of this section, when application is made for a new bank charter, a public hearing shall be held on each application. Notice of the filing of the application shall be published by the department for three weeks in a legal newspaper published in or of general circulation in the county where the applicant proposes to operate the bank. The date for hearing the application shall be not less than thirty days after the last publication of notice of hearing and not more than ninety days after the application has been accepted for filing by the director as substantially complete unless the applicant agrees to a later date. Notice of the filing of the application shall be sent by the department to all financial institutions located in the county where the applicant proposes to operate;

(2) When application is made for a new bank charter and the director determines, in his or her discretion, that the conditions of subdivision (3) of this section are met, then the public hearing requirement of subdivision (1) of this section shall only be required if, (a) after publishing a notice of the proposed application in a newspaper of general circulation in the county where the main office of the applicant is to be located and (b) after giving notice to all financial institutions located within such county, the director receives a substantive objection to the application within fifteen days after the first day of publication;

(3) The director shall consider the following in each application before the public hearing requirement of subdivision (1) of this section may be waived:

(a) Whether the experience, character, and general fitness of the applicant and of the applicant's officers and directors are such as to warrant belief that the applicant will operate the business honestly, fairly, and efficiently;

(b) Whether the length of time that the applicant or a majority of the applicant's officers, directors, and shareholders have been involved in the business of banking in this state has been for a minimum of five consecutive years; and

(c) Whether the condition of financial institutions currently owned by the applicant, the applicant's holding company, if any, or the applicant's officers, directors, or shareholders is such as to indicate that a hearing on the current application would not be necessary;

(4) Except as provided in subdivision (6) of this section, when application is made for transfer of a bank charter and move of the main office of a bank to any location other than within the corporate limits of the city or village of its original charter or, if such bank charter is not located in a city or village, then for transfer outside the county in which it is located, the director shall hold a hearing on the matter if he or she determines, in his or her discretion, that the condition of the applicant warrants a hearing. If the director determines that the condition of the applicant does not warrant a hearing, the director shall (a) publish a notice of the filing of the application in a newspaper of general circulation in the county where the proposed main office and charter of the applicant would be located and (b) give notice of such application to all financial institutions located within the county where the proposed main office and charter would be located and to such other interested parties as the director may determine. If the director receives any substantive objection to the proposed relocation within fifteen days after the first day of publication, he or she shall hold a hearing on the application. Notice of a hearing held pursuant to this subdivision shall be published for two consecutive weeks in a newspaper of general circulation in the county where the main office would be located. The date for hearing the application shall be not less than thirty days after the last publication of notice of hearing and not more than ninety days after the application has been accepted for filing by the director as substantially complete unless the applicant agrees to a later date. When the persons making application for transfer of a main office and charter are officers or directors of the bank, there is a rebuttable presumption that such persons are parties of integrity and responsibility;

(5) Except as provided in subdivision (6) of this section, when application is made for a move of any bank's main office within the city, village, or county, if not chartered within a city or village, of its original charter, the director shall publish notice of the proposed move in a newspaper of general circulation in the county where the main office of the applicant is located and shall give notice of such intended move to all financial institutions located within the county where such bank is located. If the director receives a substantive objection to such move within fifteen days after publishing such notice, he or she shall publish an additional notice and hold a hearing as provided in subdivision (1) of this section;

(6) With the approval of the director, a bank may move its main office and charter to the location of a branch of the bank without public notice or hearing as long as (a) the condition of the bank, in the discretion of the director, does not warrant a hearing and (b) the branch (i) is located in Nebraska, (ii) has

been in operation for at least one year as a branch of the bank or was acquired by the bank pursuant to section 8-1506 or 8-1516, and (iii) is simultaneously relocated to the original main office location;

(7) The director shall send any notice to financial institutions required by this section by first-class mail, postage prepaid, or electronic mail. Electronic mail may be used if the financial institution agrees in advance to receive such notices by electronic mail. A financial institution may designate one office for receipt of any such notice if it has more than one office located within the county where such notice is to be sent or a main office in a county other than the county where such notice is to be sent;

(8) The expense of any publication and mailing required by this section shall be paid by the applicant but payment shall not be a condition precedent to approval by the director; and

(9) Notwithstanding any provision of this section, the director shall take immediate action on any charter application or applications concerned without the benefit of a hearing in the case of an emergency so declared by the Governor, the Secretary of State, and the director.

Source: Laws 1965, c. 25, § 1, p. 191; Laws 1967, c. 19, § 2, p. 117; Laws 1973, LB 164, § 3; Laws 1974, LB 721, § 1; Laws 1979, LB 220, § 2; Laws 2002, LB 957, § 1; Laws 2003, LB 217, § 2; Laws 2005, LB 533, § 2; Laws 2008, LB851, § 1; Laws 2010, LB890, § 1; Laws 2016, LB751, § 1.

Effective date February 25, 2016.

8-116 Banks; capital stock; amount required.

(1) Except as provided in subsection (2) of this section, a charter for a bank shall not be issued unless the corporation applying therefor has surplus and paid-up capital stock in an amount not less than the amount necessary for compliance with subsection (1) of section 8-702 for the insurance of deposits.

(2) The department shall have the authority to determine the minimum amount of paid-up capital stock and surplus required for any corporation applying for a bank charter, which amount shall not be less than the amount provided in subsection (1) of this section.

Source: Laws 1909, c. 10, § 13, p. 72; R.S.1913, § 292; Laws 1919, c. 190, tit. V, art. XVI, § 11, p. 689; Laws 1921, c. 297, § 3, p. 950; C.S.1922, § 7992; Laws 1923, c. 192, § 1, p. 463; C.S.1929, § 8-122; Laws 1935, c. 19, § 1, p. 95; C.S.Supp.,1941, § 8-122; Laws 1943, c. 19, § 3(1), p. 102; R.S.1943, § 8-119; Laws 1959, c. 15, § 3, p. 132; Laws 1961, c. 15, § 1, p. 111; R.R.S.1943, § 8-119; Laws 1963, c. 29, § 16, p. 140; Laws 1967, c. 19, § 3, p. 118; Laws 1973, LB 164, § 4; Laws 1979, LB 220, § 3; Laws 1983, LB 252, § 2; Laws 2002, LB 1094, § 3; Laws 2008, LB851, § 2; Laws 2015, LB155, § 1.

8-117 Conditional bank charter; application; contents; hearing; notice; expenses; conversion to full bank charter; extension; written request; notice of expiration.

(1)(a) The director may grant approval for a conditional bank charter which may remain inactive for an initial period of up to eighteen months.

(b) The purpose for which a conditional bank charter may be granted is limited to the acquisition or potential acquisition of a financial institution which (i) is located in this state or which has a branch in this state and (ii) has been determined to be troubled or failing by its primary state or federal regulator.

(2) A person or persons organizing for and desiring to obtain a conditional bank charter shall make, under oath, and transmit to the department an application prescribed by the department, to include, but not be limited to:

- (a) The name of the proposed bank;
- (b) A draft copy of the articles of incorporation of the proposed bank;
- (c) The names, addresses, financial condition, and business history of the proposed stockholders, officers, and directors of the proposed bank;
- (d) The sources and amounts of capital that would be available to the proposed bank; and
- (e) A preliminary business plan describing the operations of the proposed bank.

(3) Upon receipt of a substantially completed application for a conditional bank charter and payment of the fee required by section 8-602, the director may, in his or her discretion, hold a public hearing on the application. If a hearing is to be held, notice of the filing of the application and the date of hearing thereon shall be published by the department for three weeks in a minimum of two newspapers with general circulation in Nebraska. The newspapers shall be selected at the director's discretion, except that the director shall consider the county or counties of residence of the proposed members of the board of directors of the proposed conditional bank charter in making such selection. The date for hearing the application shall be not less than thirty days after the last publication of notice of hearing. Notice shall also be sent by first-class mail to the main office of all financial institutions doing business in the state. Electronic mail may be used if a financial institution agrees in advance to receive such notice by electronic mail.

(4) If the director determines that a hearing on the application for a conditional bank charter is not necessary, then the department shall publish a notice of the proposed application in a minimum of two newspapers of general circulation in Nebraska. The newspapers shall be selected in accordance with subsection (3) of this section. The department shall send notice of the application by first-class mail to the main office of all financial institutions doing business in the state. Electronic mail may be used if a financial institution agrees in advance to receive such notice by electronic mail. If the director receives a substantive objection to the application within fifteen days after the publication or notice, whichever occurs last, a hearing shall be scheduled on the application.

(5) The expense of any publication and mailing required by this section shall be paid by the applicant but payment shall not be a condition precedent to approval by the director.

(6) If the department upon investigation and after any public hearing on the application is satisfied that (a) the stockholders, officers, and directors of the proposed corporation applying for such conditional bank charter are parties of integrity and responsibility, (b) the applicant has sufficient sources and amounts of capital available to the proposed bank, and (c) the applicant has a

business plan describing the operations of the proposed bank that indicates the proposed bank has a reasonable probability of usefulness and success, the department shall, upon the payment of any required fees and costs, grant a conditional bank charter effective for a period not to exceed eighteen months from the date of issuance.

(7) A conditional bank charter may be converted to a full bank charter upon proof satisfactory to the department that:

(a) The financial institution to be acquired is in a troubled or failing status as required by subsection (1) of this section;

(b) The requirements of section 8-110 have been met;

(c) The requirements of section 8-702 have been met;

(d) Capital stock and surplus in amounts determined pursuant to section 8-116 have been paid in;

(e) The fees required by section 8-602 have been paid to the department; and

(f) Any other conditions imposed by the director have been complied with.

(8) A conditional bank charter may be extended for successive periods of one year if the holder of the charter files a written request for an extension of such charter at least ninety days prior to the expiration date of such charter. Such request shall be accompanied by (a) any information deemed necessary by the department to assure itself that the requirements of subsection (6) of this section continue to be met and (b) the fee required by section 8-602.

(9) The department shall issue a notice of expiration of a conditional bank charter if eighteen months have passed since the issuance of such charter and the holder of such charter (a) has not converted to a full bank charter pursuant to subsection (7) of this section, (b) has not made a request for an extension pursuant to subsection (8) of this section, or (c) has made a request for an extension pursuant to subsection (8) of this section which was not approved by the department.

Source: Laws 2010, LB891, § 2; Laws 2016, LB751, § 2.
Effective date February 25, 2016.

8-128 Capital stock; increase; decrease; notice; publication; denial by department, when.

The paid-in capital stock of any bank may be increased or decreased in the following manner: The stockholders at any regular meeting or at any special meeting duly called for such purpose shall by vote of those owning two-thirds of the capital stock authorize the president or cashier to notify the department of the proposed increase or reduction of paid-in capital stock, and a notice containing a statement of the amount of any proposed reduction of paid-in capital stock shall be published for two weeks in some newspaper published and of general circulation in the county where such bank is located. Reduction of paid-in capital stock shall be discretionary with the department, but shall be denied if granting the same would reduce the paid-in capital stock below the requirements of the Nebraska Banking Act or would impair the security of the depositors. The bank shall notify the department when the proposed increase or decrease of the paid-in capital stock has been consummated.

Source: Laws 1909, c. 10, § 34, p. 82; R.S.1913, § 313; Laws 1919, c. 190, tit. V, art. XVI, § 34, p. 699; C.S.1922, § 8014; C.S.1929, § 8-153;

Laws 1933, c. 18, § 34, p. 152; C.S.Supp.,1941, § 8-153; R.S. 1943, § 8-157; Laws 1961, c. 15, § 7, p. 113; R.R.S.1943, § 8-157; Laws 1963, c. 29, § 28, p. 145; Laws 1987, LB 2, § 8; Laws 1998, LB 1321, § 8; Laws 2015, LB155, § 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, 2016, 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; Laws 2016, LB760, § 1.

Effective date July 21, 2016.

8-153 Checks; preprinted information; cleared at par; exception.

All checks, unless sent to banks as special collection items, shall have preprinted the magnetically encoded routing and transit symbol of the bank and either the name of the maker or the magnetically encoded account number of the maker. Except for checks sent to banks as special collection items or checks presented for payment by the payee in person, all checks drawn on any bank organized under the laws of this state shall be cleared at par by the bank on which they are drawn. The term at par applies only to the settlement of checks between collecting and paying or remitting banks and does not apply to or prohibit a bank from deducting a fee from the face amount of the check for paying the check if the check is presented to the bank by the payee in person.

Source: Laws 1945, c. 11, § 1, p. 110; R.R.S.1943, § 8-163.01; Laws 1963, c. 29, § 53, p. 157; Laws 1979, LB 269, § 1; Laws 2015, LB155, § 3.

8-155 Repealed. Laws 2014, LB 714, § 1.

8-156 Repealed. Laws 2014, LB 714, § 1.

8-157 Branch banking; Director of Banking and Finance; powers.

(1) Except as otherwise provided in this section and section 8-2103, the general business of every bank shall be transacted at the place of business specified in its charter.

(2)(a)(i) Except as provided in subdivision (2)(a)(ii) of this section, with the approval of the director, any bank located in this state may establish and maintain in this state an unlimited number of branches at which all banking transactions allowed by law may be made.

(ii) Any bank that owns or controls more than twenty-two percent of the total deposits in Nebraska, as described in subdivision (2)(c) of section 8-910 and computed in accordance with subsection (3) of section 8-910, or any bank that is a subsidiary of a bank holding company that owns or controls more than twenty-two percent of the total deposits in Nebraska, as described in subdivision (2)(c) of section 8-910 and computed in accordance with subsection (3) of section 8-910, shall not establish and maintain an unlimited number of branches as provided in subdivision (2)(a)(i) of this section. With the approval of the director, a bank as described in this subdivision may establish and maintain in the county in which such bank is located an unlimited number of branches at which all banking transactions allowed by law may be made, except that if such bank is located in a Class I or Class III county, such bank may establish and maintain in Class I and Class III counties an unlimited number of branches at which all banking transactions allowed by law may be made.

(iii) Any bank which establishes and maintains branches pursuant to subdivision (2)(a)(i) of this section and which subsequently becomes a bank as described in subdivision (2)(a)(ii) of this section shall not be subject to the limitations as to location of branches contained in subdivision (2)(a)(ii) of this section with regard to any such established branch and shall continue to be entitled to maintain any such established branch as if such bank had not become a bank as described in subdivision (2)(a)(ii) of this section.

(b) With the approval of the director, any bank or any branch may establish and maintain a mobile branch at which all banking transactions allowed by law may be made. Such mobile branch may consist of one or more vehicles which may transact business only within the county in which such bank or such branch is located and within counties in this state which adjoin such county.

(c) For purposes of this subsection:

(i) Class I county means a county in this state with a population of four hundred thousand or more as determined by the most recent federal decennial census;

(ii) Class II county means a county in this state with a population of at least two hundred thousand and less than four hundred thousand as determined by the most recent federal decennial census;

(iii) Class III county means a county in this state with a population of at least one hundred thousand and less than two hundred thousand as determined by the most recent federal decennial census; and

(iv) Class IV county means a county in this state with a population of less than one hundred thousand as determined by the most recent federal decennial census.

(3) With the approval of the director, a bank may establish and maintain branches acquired pursuant to section 8-1506 or 8-1516. All banking transactions allowed by law may be made at such branches.

(4) With the approval of the director, a bank may acquire the assets and assume the deposits of a branch of another financial institution in Nebraska if the acquired branch is converted to a branch of the acquiring bank. All banking transactions allowed by law may be made at a branch acquired pursuant to this subsection.

(5) With the approval of the director, a bank may establish a branch pursuant to subdivision (6) of section 8-115.01. All banking transactions allowed by law may be made at such branch.

(6) The name given to any branch established and maintained pursuant to this section shall not be substantially similar to the name of any existing bank or branch which is unaffiliated with the newly created branch and is located in the same city, village, or county. The name of such newly created branch shall be approved by the director.

(7) A bank which has a main chartered office or an approved branch located in the State of Nebraska may, through any of its executive officers, including executive officers licensed as such pursuant to section 8-139, or designated agents, conduct a loan closing at a location other than the place of business specified in the bank's charter or any branch thereof.

(8) A bank which has a main chartered office or approved branch located in the State of Nebraska may, upon notification to the department, establish savings account programs at any elementary or secondary school, whether public or private, that has students who reside in the same city or village as the main chartered office or branch of the bank, or, if the main office of the bank is located in an unincorporated area of a county, at any school that has students who reside in the same unincorporated area. The savings account programs shall be limited to the establishment of individual student accounts and the receipt of deposits for such accounts.

(9) Upon receiving an application for a branch to be established pursuant to subdivision (2)(a) of this section, to establish a mobile branch pursuant to subdivision (2)(b) of this section, to acquire a branch of another financial institution pursuant to subsection (4) of this section, to establish or acquire a branch pursuant to subsection (1) of section 8-2103, or to move the location of an established branch other than a move made pursuant to subdivision (6) of section 8-115.01, the director shall hold a public hearing on the matter if he or she determines, in his or her discretion, that the condition of the applicant bank warrants a hearing. If the director determines that the condition of the bank does not warrant a hearing, the director shall publish a notice of the filing of the application in a newspaper of general circulation in the county where the proposed branch or mobile branch would be located, the expense of which shall be paid by the applicant bank. If the director receives any substantive objection to the proposed branch or mobile branch within fifteen days after publication of such notice, he or she shall hold a hearing on the application. Notice of a hearing held pursuant to this subsection shall be published for two consecutive weeks in a newspaper of general circulation in the county where

the proposed branch or mobile branch would be located. The date for hearing the application shall not be more than ninety days after the filing of the application and not less than thirty days after the last publication of notice of hearing. The expense of any publication required by this section shall be paid by the applicant but payment shall not be a condition precedent to approval by the director.

Source: Laws 1927, c. 33, § 1, p. 153; C.S.1929, § 8-1,118; R.S.1943, § 8-1,105; Laws 1959, c. 17, § 1, p. 141; R.R.S.1943, § 8-1,105; Laws 1963, c. 29, § 57, p. 158; Laws 1973, LB 312, § 1; Laws 1975, LB 269, § 2; Laws 1977, LB 77, § 1; Laws 1983, LB 58, § 1; Laws 1983, LB 252, § 4; Laws 1984, LB 1026, § 1; Laws 1985, LB 295, § 1; Laws 1985, LB 625, § 1; Laws 1986, LB 983, § 3; Laws 1987, LB 615, § 2; Laws 1988, LB 703, § 1; Laws 1989, LB 272, § 1; Laws 1990, LB 956, § 4; Laws 1991, LB 190, § 1; Laws 1991, LB 782, § 1; Laws 1992, LB 470, § 1; Laws 1992, LB 757, § 3; Laws 1993, LB 81, § 7; Laws 1995, LB 456, § 1; Laws 1995, LB 599, § 2; Laws 1996, LB 1275, § 3; Laws 1997, LB 56, § 1; Laws 1997, LB 136, § 1; Laws 1997, LB 137, § 6; Laws 1997, LB 351, § 9; Laws 2002, LB 957, § 4; Laws 2002, LB 1089, § 2; Laws 2002, LB 1094, § 5; Laws 2003, LB 217, § 7; Laws 2005, LB 533, § 9; Laws 2008, LB851, § 6; Laws 2010, LB890, § 4; Laws 2012, LB963, § 2; Laws 2016, LB742, § 2; Laws 2016, LB751, § 3.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB742, section 2, with LB751, section 3, to reflect all amendments.

Note: Changes made by LB751 became effective February 25, 2016. Changes made by LB742 became effective July 21, 2016.

8-157.01 Establishing financial institution; automatic teller machines; use; availability; user financial institution; switch; use and access; duties; department; enforcement action; limitation.

(1) Any establishing financial institution 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, transferring funds from checking accounts to savings accounts, transferring funds from savings accounts to checking accounts, transferring funds from either checking accounts and savings accounts to accounts of other customers, transferring payments 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, account balance inquiry, and 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. Any automatic teller machine owned by a nonfinancial institution third party shall be sponsored by an establishing financial institution. Neither such automatic teller machines nor the transactions conducted thereat shall be construed as the establishment of a branch or as branch banking.

(2) Any financial institution may become a user financial institution by agreeing to pay the establishing financial institution the automatic teller ma-

chine usage fee. Such agreement shall be implied by the use of such automatic teller machines.

(3)(a) Beginning November 1, 2016, (i) all automatic teller machines shall be made available on a nondiscriminating basis for use by Nebraska customers of a user financial institution and (ii) all Nebraska automatic teller machine transactions initiated by Nebraska customers of a user financial institution shall be made on a nondiscriminating basis.

(b) It shall not be deemed discrimination if (i) an automatic teller machine does not offer the same transaction services as other automatic teller machines, (ii) there are no automatic teller machine usage fees charged between affiliate financial institutions for the use of automatic teller machines, (iii) the automatic teller machine usage fees of an establishing financial institution that authorizes and directly or indirectly routes Nebraska automatic teller machine transactions to multiple switches, all of which comply with the requirements of subdivision (3)(d) of this section, differ solely upon the fact that the automatic teller machine usage fee schedules of such switches differ from one another, (iv) automatic teller machine usage fees differ based upon whether the transaction initiated at an automatic teller machine is subject to a surcharge or provided on a surcharge-free basis, (v) the manner in which an establishing financial institution authorizes and directly or indirectly routes Nebraska automatic teller machine transactions results in the same automatic teller machine usage fees for all user financial institutions for essentially the same service routed over the same switch, or (vi) the automatic teller machines established or sponsored by an establishing financial institution are made available for use by Nebraska customers of any user financial institution which agrees to pay the automatic teller machine usage fee and which conforms to the operating rules and technical standards established by the switch to which a Nebraska automatic teller machine transaction is directly or indirectly routed.

(c) 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 the automatic teller machine is not made available on a nondiscriminating basis or that Nebraska automatic teller machine transactions initiated at such automatic teller machine are not made on a nondiscriminating basis.

(d) A switch (i) shall provide to all financial institutions that have a main office or approved branch located in the State of Nebraska and that conform to the operating rules and technical standards established by the switch an equal opportunity to participate in the switch for the use of and access thereto; (ii) shall implement the same automatic teller machine usage fee for all user financial institutions for essentially the same service; (iii) shall be capable of operating to accept and route Nebraska automatic teller machine transactions, whether receiving data from an automatic teller machine, an establishing financial institution, or a data processing center; and (iv) shall be capable of being directly or indirectly connected to every data processing center for any automatic teller machine.

(e) The director, upon notice and after a hearing, may terminate or suspend the operation of any switch with respect to all Nebraska automatic teller machine transactions if he or she determines that the switch is not being operated in the manner required under subdivision (3)(d) of this section.

(f) Subject to the requirement for a financial institution to comply with this subsection, no user financial institution or establishing financial institution shall be required to become a member of any particular switch.

(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, 2016. 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 by a financial institution, a group of two or more financial institutions, or a combination of a financial institution or financial institutions and a third party or parties. Such parties may contract with a seller of goods and services or any other third party for the operation of point-of-sale terminals.

(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.

(7) Nothing in this section shall be construed to prohibit nonbank employees from assisting in transactions originated at automatic teller machines or point-of-sale terminals, and such assistance shall not be deemed to be engaging in the business of banking.

(8)(a) Beginning September 1, 2015, and thereafter annually by September 1, any entity operating as a switch in Nebraska prior to September 1, 2015, regardless of whether the switch had been approved by the department, shall file a notice with the department setting forth its name, address, and contact information for an officer authorized to answer inquiries related to its operations in Nebraska.

(b) On or after September 1, 2015, any entity intending to operate in Nebraska as a switch shall file a notice with the department setting forth its name, address, and contact information for an officer authorized to answer inquiries related to its operations in Nebraska. Such notice shall be filed at least thirty days prior to the date on which the switch commences operations, and thereafter annually by September 1.

(9) Nothing in this section prohibits ordinary clearinghouse transactions between financial institutions.

(10) 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. 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 (a) if an automatic teller machine has been made available or Nebraska automatic teller machine transactions have been made on a nondiscriminating basis for use by Nebraska customers of a user financial institution or (b) if a switch complies with subdivision (3)(d) of this section.

(11) 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.

(12) Switch fees shall not be subject to this section or be regulated by the department.

(13) Nothing in this section shall prevent a group of two or more credit unions, each of which has a main chartered office or an approved branch located in the State of Nebraska, from participating in a credit union service organization organized on or before January 1, 2015, for the purpose of owning automatic teller machines, provided that all participating credit unions have an ownership interest in the credit union service organization and that the credit union service organization has an ownership interest in each of the participating credit unions' automatic teller machines. Such participation and any automatic teller machine usage fees associated with Nebraska automatic teller machine transactions initiated by customers of participating credit unions at such automatic teller machines shall not be considered for purposes of determining if such automatic teller machines have been made available on a nondiscriminating basis or if Nebraska automatic teller machine transactions initiated at such automatic teller machines have been made on a nondiscriminating basis, provided that all Nebraska automatic teller machine transactions initiated by customers of participating credit unions result in the same automatic teller machine usage fees for essentially the same service routed over the same switch.

(14)(a) Except for any violation of this subsection, the department shall take no enforcement action under this section between May 14, 2015, and November 1, 2016, with respect to access to automatic teller machines, Nebraska automatic teller machine usage fees, or any agreements relating to Nebraska automatic teller machine usage fees which existed on May 14, 2015, except for changes in automatic teller machine usage fees announced prior to May 14, 2015.

(b) Nebraska automatic teller machine usage fees or agreements relating to Nebraska automatic teller machine usage fees in effect on May 14, 2015, shall remain unchanged until April 1, 2016, except for changes in automatic teller machine usage fees announced prior to May 14, 2015.

(c) There shall be a moratorium on the implementation of any agreement with new members relating to Nebraska automatic teller machine usage fees between May 14, 2015, and April 1, 2016, except for changes in automatic teller machine usage fees announced prior to May 14, 2015.

(d) Any agreement implemented on or after April 1, 2016, relating to Nebraska automatic teller machine usage fees shall comply with subsection (3) of this section.

(e) Commencing November 1, 2016, Nebraska automatic teller machine usage fees and any agreements relating to Nebraska automatic teller machine usage fees shall comply with subsection (3) of this section.

(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) 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;

(c) Affiliate financial institution means any financial institution which is a subsidiary of the same bank holding company;

(d) Automatic teller machine usage fee means any per transaction fee established by a switch or otherwise established on behalf of an establishing financial institution and collected from the user financial institution and paid to the establishing financial institution for the use of the automatic teller machine. An automatic teller machine usage fee shall not include switch fees;

(e) 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;

(f) Essentially the same service means the same Nebraska automatic teller machine transaction offered by an establishing financial institution irrespective of the user financial institution, the Nebraska customer of which initiates the Nebraska automatic teller machine transaction. A Nebraska automatic teller machine transaction that is subject to a surcharge is not essentially the same service as the same banking transaction for which a surcharge is not imposed;

(g) Establishing financial institution means any financial institution which has a main chartered office or approved branch located in the State of Nebraska that establishes or sponsors an automatic teller machine or any out-of-state financial institution that establishes or sponsors an automatic teller machine;

(h) Financial institution means a bank, savings bank, building and loan association, savings and loan association, or credit union, whether chartered by the department, the United States, or a foreign state agency; any other similar organization which is covered by federal deposit insurance; or a subsidiary of any such entity;

(i) Foreign financial institution means a financial institution located outside the United States;

(j) Nebraska automatic teller machine transaction means a banking transaction as defined in subsection (1) of this section which is (i) initiated at an automatic teller machine established in whole or in part or sponsored by an establishing financial institution, (ii) for an account of a Nebraska customer of a user financial institution, and (iii) processed through a switch regardless of whether it is routed directly or indirectly from an automatic teller machine;

(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;

(l) Sponsoring an automatic teller machine means the acceptance of responsibility by an establishing financial institution for compliance with all provisions

of law governing automatic teller machines and Nebraska automatic teller machine transactions in connection with an automatic teller machine owned by a nonfinancial institution third party;

(m) Switch fee means a fee established by a switch and assessed to a user financial institution or to an establishing financial institution other than an automatic teller machine usage fee; and

(n) User financial institution means any financial institution which has a main chartered office or approved branch located in the State of Nebraska which avails itself of and provides its customers with automatic teller machine services.

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; Laws 2015, LB348, § 2; Laws 2016, LB760, § 2.
Effective date July 21, 2016.

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.

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, 2016, 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; Laws 2015, LB286, § 1; Laws 2016, LB676, § 1. Effective date March 10, 2016.

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.

8-234. Branch trust offices authorized; procedure.

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.

8-234 Branch trust offices authorized; procedure.

(1) With the approval of the Director of Banking and Finance, a corporation organized to do business as a trust company under the Nebraska Trust Company Act may establish and maintain branch trust offices within this state and in any other state pursuant to section 8-2303.

(2) A corporation organized to do business as a trust company under the Nebraska Trust Company Act, in order to establish a branch trust office in Nebraska pursuant to subsection (1) of this section, shall apply to the Director of Banking and Finance on a form prescribed by the director. Upon receipt of a substantially complete application, the director shall hold a public hearing on the matter if he or she determines, in his or her discretion, that the condition of the corporation organized to do business as a trust company warrants a hearing. If the director determines that the condition of the corporation organized to do business as a trust company does not warrant a hearing, the director shall (a) publish a notice of the filing of the application in a newspaper of general circulation in the county where the proposed branch trust office would be located and (b) give notice of such application for a branch trust

office to all financial institutions within the county where the proposed branch trust office would be located and to such other interested parties as the director may determine. The director shall send the notice to financial institutions by first-class mail, postage prepaid, or electronic mail. Electronic mail may be used if the financial institution agrees in advance to receive such notices by electronic mail. A financial institution may designate one office for receipt of any such notice if it has more than one office located within the county where such notice is to be sent or a main office in a county other than the county where such notice is to be sent. If the director receives a substantive objection to the proposed branch trust office within fifteen days after publication of such notice, he or she shall hold a hearing on the application. Notice of a hearing held pursuant to this subsection shall be published for two consecutive weeks in a newspaper of general circulation in the county where the proposed branch trust office would be located. The expense of any publication and mailing required by this section shall be paid by the applicant but payment shall not be a condition precedent to approval by the director. The date for hearing the application shall not be more than ninety days after the filing of the application and not less than thirty-one days after the last publication of notice of hearing. The costs of the hearing shall be assessed in accordance with the rules and regulations of the Department of Banking and Finance.

(3) The director shall approve the application for a branch trust office if he or she finds that (a) the establishment of the branch trust office would not adversely affect the financial condition of the corporation organized to do business as a trust company, (b) there is a need in the community for the branch trust office, and (c) establishment of the branch trust office would be in the public interest.

(4) With the approval of the director, a state-chartered bank authorized to conduct a trust business pursuant to sections 8-159 to 8-162 may establish and maintain branch trust offices within this state and in any other state pursuant to section 8-2303. The procedure for the establishment of any branch trust office under this subsection shall be the same as provided in subsections (2) and (3) of this section. The activities at the branch trust office shall be limited to the activities permitted by the Nebraska Trust Company Act, and the general business of banking shall not be conducted at the branch trust office. Nothing in this subsection is intended to prohibit the establishment of a branch pursuant to section 8-157 at which trust business may be conducted.

(5) A branch trust office of a corporation organized to do business as a trust company or of a state-chartered bank shall not be closed without the prior written approval of the director.

Source: Laws 1998, LB 1321, § 52; Laws 2002, LB 1089, § 5; Laws 2003, LB 217, § 10; Laws 2005, LB 533, § 14; Laws 2008, LB851, § 10; Laws 2010, LB890, § 7; Laws 2016, LB751, § 4.
Effective date February 25, 2016.

ARTICLE 3

BUILDING AND LOAN ASSOCIATIONS

Section

8-318. Stock; share account; deposits; withdrawal methods authorized; investments by fiduciaries; rights; retirement plan, investments; building and loan association as trustee or custodian; powers and duties.

Section

- 8-345.01. Automatic teller machines; authorized.
- 8-355. Federal savings and loan; associations organized under laws of Nebraska; rights, privileges, benefits, and immunities; exception.
- 8-374. Department; hearing on application; notice; purpose.

8-318 Stock; share account; deposits; withdrawal methods authorized; investments by fiduciaries; rights; retirement plan, investments; building and loan association as trustee or custodian; powers and duties.

(1)(a) Shares of stock in any association, or in any federal savings and loan association incorporated under the provisions of the federal Home Owners' Loan Act of 1933, with its principal office and place of business in this state, may be subscribed for, held, transferred, surrendered, withdrawn, and forfeited and payments thereon received and receipted for by any person, regardless of age, in the same manner and with the same binding effect as though such person were of the age of majority, except that a minor or his or her estate shall not be bound on his or her subscription to stock except to the extent of payments actually made thereon.

(b) Whenever a share account is accepted by any building and loan association in the name of any person, regardless of age, the deposit may be withdrawn by the shareholder by any of the following methods:

(i) 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 shareholder and constitutes a valid release in discharge to the building and loan association for all payments so made; or

(ii) Electronic means through:

(A) Preauthorized direct withdrawal;

(B) An automatic teller machine;

(C) A debit card;

(D) A transfer by telephone;

(E) A network, including the Internet; or

(F) Any electronic terminal, computer, magnetic tape, or other electronic means.

(c) 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 it existed on January 1, 2016, and shall not affect the legal relationships between a minor and any person other than the building and loan association.

(2) All trustees, guardians, personal representatives, administrators, and conservators appointed by the courts of this state may invest and reinvest in, acquire, make withdrawals in whole or in part, hold, transfer, or make new or additional investments in or transfers of shares of stock in any (a) building and loan association organized under the laws of the State of Nebraska or (b) federal savings and loan association incorporated under the provisions of the federal Home Owners' Loan Act of 1933, having its principal office and place of business in this state, without an order of approval from any court.

(3) Trustees created solely by the terms of a trust instrument may invest in, acquire, hold, and transfer such shares, and make withdrawals, in whole or in

part, therefrom, without any order of court, unless expressly limited, restricted, or prohibited therefrom by the terms of such trust instrument.

(4) All building and loan associations referred to in this section are qualified to act as trustee or custodian within the provisions of the federal Self-Employed Individuals Tax Retirement Act of 1962, as amended, or under the terms and provisions of section 408(a) of the Internal Revenue Code, if the provisions of such retirement plan require the funds of such trust or custodianship to be invested exclusively in shares or accounts in the association or in other associations. If any such retirement plan, within the judgment of the association, constitutes a qualified plan under the federal Self-Employed Individuals Tax Retirement Act of 1962, or under the terms and provisions of section 408(a) of the Internal Revenue Code, and the regulations promulgated thereunder at the time the trust was established and accepted by the association, is subsequently determined not to be such a qualified plan or subsequently ceases to be such a qualified plan, in whole or in part, the association may continue to act as trustee of any deposits theretofore made under such plan and to dispose of the same in accordance with the directions of the member and beneficiaries thereof. No association, in respect to savings made under this section, shall be required to segregate such savings from other assets of the association. The association shall keep appropriate records showing in proper detail all transactions engaged in under the authority of this section.

Source: Laws 1899, c. 17, § 7, p. 88; R.S.1913, § 492; Laws 1919, c. 190, tit. V, art. XIX, § 8, p. 726; C.S.1922, § 8090; C.S.1929, § 8-308; Laws 1939, c. 4, § 1, p. 62; C.S.Supp.,1941, § 8-308; R.S.1943, § 8-318; Laws 1953, c. 11, § 1, p. 76; Laws 1955, c. 11, § 1, p. 77; Laws 1971, LB 375, § 1; Laws 1975, LB 208, § 2; Laws 1986, LB 909, § 8; Laws 1995, LB 574, § 3; Laws 2005, LB 533, § 16; Laws 2016, LB760, § 3.
Effective date July 21, 2016.

8-345.01 Automatic teller machines; authorized.

Nothing in section 8-157.01 shall prohibit building and loan associations as defined in sections 8-301 to 8-340.01 from establishing and operating new automatic teller machines for the purpose of transmitting savings and loan transactions.

Source: Laws 1975, LB 508, § 2; Laws 1993, LB 81, § 53; Laws 2000, LB 932, § 14; Laws 2003, LB 131, § 6; Laws 2016, LB760, § 4.
Effective date July 21, 2016.

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, 2016, 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; Laws 2015, LB286, § 2; Laws 2016, LB676, § 2.
Effective Date March 10, 2016.

8-374 Department; hearing on application; notice; purpose.

(1) Prior to issuing a certificate of approval, the department, upon receiving an application for a stock savings and loan association, shall (a) publish notice of filing of the application for a period of three weeks in a legal newspaper published in or of general circulation in the county where the applicant proposes to operate the savings and loan association and (b) give notice of such application for a stock savings and loan association to all financial institutions within the county where the proposed main office of the stock savings and loan would be located and to such other interested parties as the director may determine. The director shall send the notice to financial institutions by first-class mail, postage prepaid, or electronic mail. Electronic mail may be used if the financial institution agrees in advance to receive such notices by electronic mail. A financial institution may designate one office for receipt of any such notice if it has more than one office located within the county where such notice is to be sent or a main office in a county other than the county where such notice is to be sent.

(2) A public hearing shall be held on each application. The date for hearing the application shall be not more than ninety days after filing the application and not less than thirty days after the last publication of notice. Such hearing shall be held to determine:

(a) Whether the articles of incorporation and bylaws conform to the requirements of sections 8-356 to 8-384 and contain a just and equitable plan for the management of the association's business;

(b) Whether the persons organizing such association are of good character and responsibility;

(c) Whether in the department's judgment a need exists for such an institution in the community to be served;

(d) Whether there is a reasonable probability of its usefulness and success; and

(e) Whether the same can be established without undue injury to properly conducted existing local savings and loan associations, whether mutual or capital stock in formation.

(3) The expense of any publication and mailing required by this section shall be paid by the applicant but payment shall not be a condition precedent to approval by the director.

Source: Laws 1981, LB 500, § 19; Laws 2008, LB851, § 12; Laws 2010, LB890, § 9; Laws 2016, LB751, § 5.
Effective date February 25, 2016.

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 Corporation 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.
- 8-1106. Registration by coordination.
- 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; fees; consent to service of process.
- 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 certificate, 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.

8-1106 Registration by coordination.

(1) Any security for which a registration statement has been filed under the Securities Act of 1933 in connection with the same offering may be registered by coordination.

(2) A registration statement under this section shall contain the following information and be accompanied by the following documents, in addition to payment of the registration fee prescribed in section 8-1108 and, if required under section 8-1112, a consent to service of process meeting the requirements of that section:

(a) One copy of the prospectus filed under the Securities Act of 1933 together with all amendments thereto;

(b) The amount of securities to be offered in this state;

(c) The states in which a registration statement or similar document in connection with the offering has been or is expected to be filed;

(d) Any adverse order, judgment, or decree previously entered in connection with the offering by any court or the Securities and Exchange Commission;

(e) If the director by rule or otherwise requires, a copy of the articles of incorporation and bylaws or their substantial equivalents currently in effect, a copy of any agreements with or among underwriters, a copy of any indenture or other instrument governing the issuance of the security to be registered, and a specimen or copy of the security;

(f) If the director requests, any other information or copies of any other documents filed under the Securities Act of 1933; and

(g) An undertaking to forward promptly all amendments to the federal registration statement, other than an amendment which merely delays the effective date.

(3) A registration statement under this section shall automatically become effective at the moment the federal registration statement or qualification becomes effective if all the following conditions are satisfied:

(a) No stop order is in effect and no proceeding is pending under the Securities Act of 1933, as amended, or under section 8-1109;

(b) The registration statement has been on file with the director for at least ten days; and

(c) A statement of the maximum and minimum proposed offering prices and the maximum underwriting discounts and commissions has been filed and the offering is made within those limitations. The registrant shall promptly notify the director by facsimile transmission or electronic mail of the date and time when the federal registration statement became effective and the content of the price amendment, if any, and shall promptly file a posteffective amendment containing the information and documents in the price amendment. Price amendment shall mean the final federal amendment which includes a state-

ment of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price.

Upon failure to receive the required notification and posteffective amendment with respect to the price amendment, the director may enter a stop order, without notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until there has been compliance with this subsection, if he or she promptly notifies the registrant by telephone or electronic mail and promptly confirms by letter sent postage prepaid when he or she notifies by telephone or electronic mail of the issuance of the order. If the registrant proves compliance with the requirements of this subsection as to notice and posteffective amendment, the stop order shall be void as of the time of its entry. The director may by rule or otherwise waive either or both of the conditions specified in subsections (2) and (3) of this section. If the federal registration statement or qualification becomes effective before all these conditions have been satisfied and they are not waived, the registration statement shall automatically become effective as soon as all the conditions have been satisfied.

Source: Laws 1965, c. 549, § 6, p. 1776; Laws 1967, c. 29, § 1, p. 142; Laws 1977, LB 263, § 3; Laws 1988, LB 795, § 3; Laws 1993, LB 216, § 4; Laws 2015, LB252, § 1; Laws 2016, LB771, § 1.
Effective date July 21, 2016.

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; fees; consent to service of process.

(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, togeth-

er 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)(a) The director, by rule and regulation or order, may require the filing of any document required to be 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) of the Securities Act of 1933 together with a filing fee of two hundred dollars.

(b) The director, by rule and regulation or order, may require the filing of any document required to be filed with the Securities and Exchange Commission under the Securities Act of 1933 with respect to a federal covered security under section 18(b)(4) of the Securities Act of 1933 together with a filing fee of two hundred dollars. In addition, for federal covered securities under section 18(b)(4)(E) of the Securities Act of 1933, the director may also require the submission of a consent to service of process signed by the issuer and may require that such filing be made no later than fifteen days after the first sale of such federal covered security in this state.

(c) In connection with filings made pursuant to subdivisions (a) and (b) of this subsection, the director, by rule and regulation or order, may require the filing of all documents which are part of any amendment which the issuer is required to file with the Securities and Exchange Commission.

(3) 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.

(4) 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.

(5) 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.

(6) 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; Laws 2015, LB252, § 2; Laws 2016, LB771, § 2.
Effective date July 21, 2016.

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, 2015;

(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 deci-

sions 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 and regulation 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 and regulation 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;

(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; or

(24)(a) An offer or a sale of a security made after August 30, 2015, by an issuer if the offer or sale is conducted in accordance with all the following requirements:

(i) The issuer of the security is a business entity organized under the laws of Nebraska and authorized to do business in Nebraska;

(ii) The transaction meets the requirements of the federal exemption for intrastate offerings in section 3(a)(11) of the Securities Act of 1933, 15 U.S.C. 77c(a)(11), and Rule 147 adopted under the Securities Act of 1933, 17 C.F.R. 230.147;

(iii) Except as provided in subdivision (c) of this subdivision, the sum of all cash and other consideration to be received for all sales of the security in reliance on the exemption under this subdivision, excluding sales to any accredited investor, does not exceed the following amount:

(A) If the issuer has not undergone, and made available to each prospective investor and the director the documentation resulting from, a financial audit of its most recently completed fiscal year that complies with generally accepted accounting principles, one million dollars, less the aggregate amount received for all sales of securities by the issuer within the twelve months before the first offer or sale made in reliance on the exemption under this subdivision; or

(B) If the issuer has undergone, and made available to each prospective investor and the director the documentation resulting from, a financial audit of its most recently completed fiscal year that complies with generally accepted accounting principles, two million dollars, less the aggregate amount received for all sales of securities by the issuer within the twelve months before the first offer or sale made in reliance on the exemption under this subdivision;

(iv) The issuer does not accept more than five thousand dollars from any single purchaser except that such limitation shall not apply to an accredited investor;

(v) Unless waived by written consent by the director, not less than ten days before the commencement of an offering of securities in reliance on the exemption under this subdivision, the issuer must do all the following:

(A) Make a notice filing with the Department of Banking and Finance on a form prescribed by the director;

(B) Pay a filing fee of two hundred dollars. However, no filing fee is required to file amendments to the form;

(C) Provide the director a copy of the disclosure document to be provided to prospective investors under subdivision (a)(xi) of this subdivision;

(D) Provide the director a copy of an escrow agreement with a bank, regulated trust company, savings bank, savings and loan association, or credit union authorized to do business in Nebraska in which the issuer will deposit the investor funds or cause the investor funds to be deposited. The bank, regulated trust company, savings bank, savings and loan association, or credit union in which the investor funds are deposited is only responsible to act at the direction of the party establishing the escrow agreement and does not have any duty or liability, contractual or otherwise, to any investor or other person;

(E) The issuer shall not access the escrow funds until the aggregate funds raised from all investors equals or exceeds the minimum amount specified in the escrow agreement; and

(F) An investor may cancel the investor's commitment to invest if the target offering amount is not raised before the time stated in the escrow agreement;

(vi) The issuer is not, either before or as a result of the offering, an investment company, as defined in section 3 of the Investment Company Act of 1940, 15 U.S.C. 80a-3, an entity that would be an investment company but for the exclusions provided in section 3(c) of the Investment Company Act of 1940, 15 U.S.C. 80a-3(c), or subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. 78m or 15 U.S.C. 78o(d);

(vii) The issuer informs all prospective purchasers of securities offered under an exemption under this subdivision that the securities have not been registered under federal or state securities law and that the securities are subject to limitations on resale. The issuer shall display the following legend conspicuously on the cover page of the disclosure document:

IN MAKING AN INVESTMENT DECISION, INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF THE ISSUER AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THESE SECURITIES HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR STATE SECURITIES COMMISSION, DEPARTMENT, OR DIVISION OR OTHER REGULATORY AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE. THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED BY SUBSECTION(e) OF SEC RULE 147 (17 C.F.R. 230.147(e)) AS PROMULGATED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND THE APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. INVESTORS SHOULD BE AWARE THAT THEY WILL BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME.;

(viii) The issuer requires each purchaser to certify in writing or electronically as follows:

I understand and acknowledge that I am investing in a high-risk, speculative business venture. I may lose all of my investment, or under some circumstances more than my investment, and I can afford this loss. This offering has not been reviewed or approved by any state or federal securities commission, department, or division or other regulatory authority and no such person or authority has confirmed the accuracy or determined the adequacy of any disclosure made to me relating to this offering. The securities I am acquiring in this offering are illiquid, there is no ready market for the sale of such securities, it may be difficult or impossible for me to sell or otherwise dispose of this investment, and, accordingly, I may be required to hold this investment indefinitely. I may be subject to tax on my share of the taxable income and losses of the company, whether or not I have sold or otherwise disposed of my investment or received any dividends or other distributions from the company.;

(ix) The issuer obtains from each purchaser of a security offered under an exemption under this subdivision evidence that the purchaser is a resident of Nebraska and, if applicable, is an individual accredited investor;

(x) All payments for purchase of securities offered under an exemption under this subdivision are directed to and held by the financial institution specified in

subdivision (a)(v)(D) of this subdivision. The director may request from the financial institutions information necessary to ensure compliance with this section. This information is not a public record and is not available for public inspection;

(xi) The issuer of securities offered under an exemption under this subdivision provides a disclosure document to each prospective investor at the time the offer of securities is made to the prospective investor that contains all the following:

(A) A description of the company, its type of entity, the address and telephone number of its principal office, its history, its business plan, and the intended use of the offering proceeds, including any amounts to be paid, as compensation or otherwise, to any owner, executive officer, director, managing member, or other person occupying a similar status or performing similar functions on behalf of the issuer;

(B) The identity of all persons owning more than twenty percent of the ownership interests of any class of securities of the company;

(C) The identity of the executive officers, directors, managing members, and other persons occupying a similar status or performing similar functions in the name of and on behalf of the issuer, including their titles and their prior experience;

(D) The terms and conditions of the securities being offered and of any outstanding securities of the company; the minimum and maximum amount of securities being offered, if any; either the percentage ownership of the company represented by the offered securities or the valuation of the company implied by the price of the offered securities; the price per share, unit, or interest of the securities being offered; any restrictions on transfer of the securities being offered; and a disclosure of any anticipated future issuance of securities that might dilute the value of securities being offered;

(E) The identity of any person who has been or will be retained by the issuer to assist the issuer in conducting the offering and sale of the securities, including any portal operator but excluding persons acting solely as accountants or attorneys and employees whose primary job responsibilities involve the operating business of the issuer rather than assisting the issuer in raising capital;

(F) For each person identified as required in subdivision (a)(xi)(E) of this subdivision, a description of the consideration being paid to the person for such assistance;

(G) A description of any litigation, legal proceedings, or pending regulatory action involving the company or its management;

(H) The names and addresses of each portal operator that will be offering or selling the issuer's securities under an exemption under this subdivision;

(I) The Uniform Resource Locator for each funding portal that will be used by the portal operator to offer or sell the issuer's securities under an exemption under this subdivision; and

(J) Any additional information material to the offering, including, if appropriate, a discussion of significant factors that make the offering speculative or risky. This discussion must be concise and organized logically and may not be limited to risks that could apply to any issuer or any offering;

(xii) The offering or sale exempted under this subdivision is made exclusively through one or more funding portals and each funding portal is subject to the following:

(A) Before any offer or sale of securities, the issuer must provide to the portal operator evidence that the issuer is organized under the laws of Nebraska and is authorized to do business in Nebraska;

(B) Subject to subdivisions (a)(xii)(C) and (E) of this subdivision, the portal operator must register with the Department of Banking and Finance by filing a statement, accompanied by a two-hundred-dollar filing fee, that includes the following information:

(I) Documentation which demonstrates that the portal operator is a business entity and authorized to do business in Nebraska;

(II) A representation that the funding portal is being used to offer and sell securities pursuant to the exemption under this subdivision; and

(III) The identity and location of, and contact information for, the portal operator;

(C) The portal operator is not required to register as a broker-dealer if all of the following apply with respect to the funding portal and its portal operator:

(I) It does not offer investment advice or recommendations;

(II) It does not solicit purchases, sales, or offers to buy the securities offered or displayed on the funding portal;

(III) It does not compensate employees, agents, or other persons for the solicitation or based on the sale of securities displayed or referenced on the funding portal;

(IV) It is not compensated based on the amount of securities sold, and it does not hold, manage, possess, or otherwise handle investor funds or securities;

(V) The fee it charges an issuer for an offering of securities on the funding portal is a fixed amount for each offering, a variable amount based on the length of time that the securities are offered on the funding portal, or a combination of the fixed and variable amounts;

(VI) It does not identify, promote, or otherwise refer to any individual security offered on the funding portal in any advertising for the funding portal;

(VII) It does not engage in any other activities that the Department of Banking and Finance, by rule, regulation, or order, determines are prohibited of the funding portal; and

(VIII) Neither the portal operator, nor any director, executive officer, general partner, managing member, or other person with management authority over the portal operator, has been subject to any conviction, order, judgment, decree, or other action specified in Rule 506(d)(1) adopted under the Securities Act of 1933, 17 C.F.R. 230.506(d)(1), that would disqualify an issuer under Rule 506(d) adopted under the Securities Act of 1933, 17 C.F.R. 230.506(d), from claiming an exemption specified in Rule 506(a) to Rule 506(c) adopted under the Securities Act of 1933, 17 C.F.R. 230.506(a) to 17 C.F.R. 230.506(c). However, this subdivision does not apply if both of the following are met:

(1) On a showing of good cause and without prejudice to any other action by the director, the director determines that it is not necessary under the circumstances that an exemption is denied; and

(2) The portal operator establishes that it made a factual inquiry into whether any disqualification existed under this subdivision but did not know, and in the exercise of reasonable care, could not have known, that a disqualification existed under this subdivision. The nature and scope of the requisite inquiry will vary based on the circumstances of the issuer and the other offering participants;

(D) If any change occurs that affects the funding portal's registration exemption, the portal operator must notify the Department of Banking and Finance within thirty days after the change occurs;

(E) A registered broker-dealer who also serves as a portal operator must register with the Department of Banking and Finance as a portal operator pursuant to subdivision (a)(xii)(B) of this subdivision, except that the fee for registration shall be waived;

(F) The issuer and the portal operator must maintain records of all offers and sales of securities effected through the funding portal and must provide ready access to the records to the Department of Banking and Finance, upon request. The records of a portal operator under this subdivision are subject to the reasonable periodic, special, or other audits or inspections by a representative of the director, in or outside Nebraska, as the director considers necessary or appropriate in the public interest and for the protection of investors. An audit or inspection may be made at any time and without prior notice. The director may copy, and remove for audit or inspection copies of, all records the director reasonably considers necessary or appropriate to conduct the audit or inspection. The director may assess a reasonable charge for conducting an audit or inspection under this subdivision;

(G) The portal operator shall limit web site access to the offer or sale of securities to only Nebraska residents;

(H) The portal operator shall not hold, manage, possess, or handle investor funds or securities; and

(I) The portal operator may not be an investor in any Nebraska offering under this subdivision.

(b) An issuer of a security, the offer and sale of which is exempt under this subdivision, shall provide, free of charge, a quarterly report to the issuer's investors until no securities issued under an exemption under this subdivision are outstanding. An issuer may satisfy the reporting requirement of this subdivision by making the information available on a funding portal if the information is made available within forty-five days after the end of each fiscal quarter and remains available until the succeeding quarterly report is issued. An issuer shall file each quarterly report under this subdivision with the Department of Banking and Finance and, if the quarterly report is made available on a funding portal, the issuer shall also provide a written copy of the report to any investor upon request. The report must contain all the following:

(i) Compensation received by each director and executive officer, including cash compensation earned since the previous report and on an annual basis and any bonuses, stock options, other rights to receive securities of the issuer or any affiliate of the issuer, or other compensation received; and

(ii) An analysis by management of the issuer of the business operations and financial condition of the issuer.

(c) An offer or a sale under this subdivision to an officer, director, partner, trustee, or individual occupying similar status or performing similar functions with respect to the issuer or to a person owning ten percent or more of the outstanding shares of any class or classes of securities of the issuer does not count toward the monetary limitations in subdivision (a)(iii) of this subdivision.

(d) The exemption under this subdivision may not be used in conjunction with any other exemption under the Securities Act of Nebraska, except for offers and sales to individuals identified in the disclosure document, during the immediately preceding twelve-month period.

(e) The exemption under this subdivision does not apply if an issuer or any director, executive officer, general partner, managing member, or other person with management authority over the issuer, has been subject to any conviction, order, judgment, decree, or other action specified in Rule 506(d)(1) adopted under the Securities Act of 1933, 17 C.F.R. 230.506(d)(1), that would disqualify an issuer under Rule 506(d) adopted under the Securities Act of 1933, 17 C.F.R. 230.506(d), from claiming an exemption specified in Rule 506(a) to Rule 506(c) adopted under the Securities Act of 1933, 17 C.F.R. 230.506(a) to 17 C.F.R. 230.506(c). However, this subdivision does not apply if both of the following are met:

(i) On a showing of good cause and without prejudice to any other action by the director, the director determines that it is not necessary under the circumstances that an exemption is denied; and

(ii) The issuer establishes that it made a factual inquiry into whether any disqualification existed under this subdivision but did not know, and in the exercise of reasonable care, could not have known, that a disqualification existed under this subdivision. The nature and scope of the requisite inquiry will vary based on the circumstances of the issuer and the other offering participants.

(f) For purposes of this subdivision:

(i) Accredited investor means a bank, a savings institution, a trust company, an insurance company, an investment company as defined in the Investment Company Act of 1940, a pension or profit-sharing trust or other financial institution or institutional buyer, an individual accredited investor, or a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity;

(ii) Funding portal means an Internet web site that is operated by a portal operator for the offer and sale of securities pursuant to this subdivision;

(iii) 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; and

(iv) Portal operator means an entity authorized to do business in this state which operates a funding portal and has registered with the Department of Banking and Finance as required by this subdivision.

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; Laws 2015, LB226, § 1.

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.

Section

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

(1) 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.

Note: The operative date of Laws 2014, LB749, was amended by Laws 2015, LB157, and changed to January 1, 2017.

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 for disclosure is made pursuant to subdivision (1)(d) or (1)(e) of section 8-1401;

(c) Otherwise ordered by a court of competent jurisdiction; or

(d) The person making the disclosure waives any or all of the costs.

(2)(a) The requesting person, party, agency, or organization shall pay the actual cost of providing the records or information.

(b) For purposes of this subsection, actual cost means:

(i) Search and processing costs, including the total amount of personnel direct time incurred in locating and retrieving, reproducing, packaging, and preparing records or information for shipment or delivery. Search and processing costs may include the actual cost of extracting information stored by computer in the format in which it is normally produced, based on computer time and necessary supplies;

(ii) Reproduction costs incurred in making copies of records or information requested. The rate for reproduction costs for making copies of requested records or information shall be the usual rate charged by the person making the disclosure to its customers for reproducing copies, including copies pro-

duced by reader-printer reproduction processes. Photographs, films, and other materials shall be reimbursed at actual cost; and

(iii) Transportation costs, including transport of personnel to locate and retrieve the records or information requested and including all other reasonably necessary costs to convey 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; Laws 2015, LB155, § 4.

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.

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.

ARTICLE 15

ACQUISITION OR MERGER OF FINANCIAL INSTITUTIONS

(c) CROSS-INDUSTRY ACQUISITION OR MERGER OF FINANCIAL INSTITUTION
Section

8-1510. Cross-industry acquisition or merger; application; notice; hearing.

(c) CROSS-INDUSTRY ACQUISITION OR MERGER OF FINANCIAL INSTITUTION

8-1510 Cross-industry acquisition or merger; application; notice; hearing.

(1) The Director of Banking and Finance may permit cross-industry acquisition or merger of one or more financial institutions under its supervision upon the application of such institutions to the Department of Banking and Finance. The application shall be made on forms prescribed by the department.

(2) Except as provided for in subsection (3) of this section, when an application is made for such an acquisition or merger, notice of the filing of the

application shall be published by the department three weeks in a legal newspaper in or of general circulation in the county where the applicant proposes to operate the acquired or merged financial institution. A public hearing shall be held on each application. The date for hearing the application shall be not more than ninety days after the filing of the application and not less than thirty days after the last publication of notice after the examination and approval by the department of the application. If the department, upon investigation and after public hearing on the application, is satisfied that the stockholders and officers of the financial institution applying for such acquisition or merger are parties of integrity and responsibility, that the requirements of section 8-702 have been met or some alternate form of protection for depositors has been met, and that the public necessity, convenience, and advantage will be promoted by permitting such acquisition or merger, the department shall, upon payment of the required fees, issue to such institution an order of approval for the acquisition or merger.

(3) When application is made for cross-industry acquisition or merger and the director determines, in his or her discretion, that the financial condition of the financial institution surviving the acquisition or merger is such as to indicate that a hearing on the application would not be necessary, then the hearing requirement of subsection (2) of this section shall only be required if, (a) after publishing a notice of the proposed application in a newspaper of general circulation in the county or counties where the offices of the financial institution to be merged or acquired are located and (b) after giving notice to all financial institutions located within such county or counties, the director receives a substantive objection to the application within fifteen days after the first day of publication. The director shall send the notice to financial institutions by first-class mail, postage prepaid, or electronic mail. Electronic mail may be used if the financial institution agrees in advance to receive such notices by electronic mail. A financial institution may designate one office for receipt of any such notice if it has more than one office located within the county where such notice is to be sent or a main office in a county other than the county where such notice is to be sent.

(4) The expense of any publication and mailing required by this section shall be paid by the applicant but payment shall not be a condition precedent to approval by the director.

Source: Laws 1983, LB 241, § 5; Laws 1990, LB 956, § 16; Laws 2003, LB 217, § 27; Laws 2008, LB851, § 14; Laws 2011, LB74, § 4; Laws 2016, LB751, § 6.
Effective date February 25, 2016.

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, 2017.

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, 2017.

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, 2017.

Cross References

Nebraska Model Business Corporation Act, see section 21-201.

ARTICLE 26

CREDIT REPORT PROTECTION ACT

Section

- 8-2601. Act, how cited.
- 8-2602. Terms, defined.
- 8-2603. Security freeze; request.
- 8-2603.01. Protected consumer; security freeze; request; fee; creation of record for protected consumer; placement of freeze.
- 8-2604. Consumer reporting agency; release of credit report or other information prohibited without authorization.
- 8-2605. Consumer reporting agency; placement of security freeze; when; written confirmation to consumer.
- 8-2606. Consumer reporting agency; disclose process of placing and temporarily lifting security freeze; consumer request to lift freeze; when.
- 8-2608. Consumer reporting agency; mandatory removal of security freeze; conditions.
- 8-2608.01. Protected consumer; security freeze; duration; consumer reporting agency; restrictions on release of information.
- 8-2608.02. Protected consumer; removal of security freeze; request; fee.
- 8-2608.03. Protected consumer; remove security freeze; delete record of protected consumer; when.
- 8-2609. Consumer reporting agency; fee authorized; exceptions.
- 8-2609.01. Protected consumer; consumer reporting agency; fee authorized; exceptions.
- 8-2610. Consumer reporting agency; changes to official information in file; written confirmation required; exceptions.
- 8-2611. Consumer reporting agency; restrictions with respect to third parties; request by third party; how treated.
- 8-2612. Consumer reporting agency; information furnished to governmental agency.
- 8-2613. Act; use of credit report or information derived from file; applicability.
- 8-2614. Entities not considered consumer reporting agencies; not required to place security freeze on file.
- 8-2614.01. Protected consumer provisions; applicability.
- 8-2615. Enforcement of act; Attorney General; powers and duties; violation; civil penalty; recovery of damages.

8-2601 Act, how cited.

Sections 8-2601 to 8-2615 shall be known and may be cited as the Credit Report Protection Act.

Source: Laws 2007, LB674, § 1; Laws 2016, LB835, § 1.
Operative date January 1, 2017.

Cross References

Consumer reporting agency, duty to furnish information to consumer, see section 20-149.

8-2602 Terms, defined.

For purposes of the Credit Report Protection Act:

(1) Consumer reporting agency means any person which, for monetary fees, for dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports;

(2) Credit report has the same meaning as consumer report as defined in 15 U.S.C. 1681a(d);

(3) File, when used in connection with information on any consumer or protected consumer, means all of the information on that consumer or protected consumer recorded and retained by a consumer reporting agency regardless of how the information is stored. File does not include a record;

(4) Protected consumer means an individual who is (a) under sixteen years of age at the time a request for the placement of a security freeze is made or (b) an incapacitated person for whom a guardian or guardian ad litem has been appointed;

(5) Record means a compilation of information that (a) identifies a protected consumer, (b) is created by a consumer reporting agency solely for the purpose of complying with section 8-2603.01, and (c) may not be created or used to consider the protected consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living;

(6) Representative means a person who provides to a consumer reporting agency sufficient proof of authority to act on behalf of a protected consumer;

(7) Security freeze means:

(a) A notice placed in a consumer's file as provided in section 8-2603 that prohibits the consumer reporting agency from releasing a credit report, or any other information derived from the file, in connection with the extension of credit or the opening of a new account, without the express authorization of the consumer;

(b) If a consumer reporting agency does not have a file pertaining to a protected consumer, a restriction that:

(i) Is placed on the protected consumer's record in accordance with section 8-2603.01; and

(ii) Prohibits the consumer reporting agency from releasing the protected consumer's record except as provided in the Credit Report Protection Act; or

(c) If a consumer reporting agency has a file pertaining to the protected consumer, a restriction that:

(i) Is placed on the protected consumer's credit report in accordance with section 8-2603.01; and

(ii) Prohibits the consumer reporting agency from releasing the protected consumer's credit report or any information derived from the protected consumer's credit report except as provided in section 8-2608.01;

(8) Sufficient proof of authority means documentation that shows a representative has authority to act on behalf of a protected consumer. Sufficient proof of authority includes, but is not limited to, an order issued by a court of law, a lawfully executed and valid power of attorney, or a written notarized statement signed by a representative that expressly describes the authority of the repre-

representative to act on behalf of a protected consumer. A representative who is a parent may establish sufficient proof of authority by providing a certified or official copy of the protected consumer's birth certificate;

(9) Sufficient proof of identification means information or documentation that identifies a consumer, a protected consumer, or a representative of a protected consumer. Sufficient proof of identification includes, but is not limited to, a social security number or a copy of a social security card, a certified or official copy of a birth certificate, a copy of a valid driver's license, or any other government-issued identification; and

(10) Victim of identity theft means a consumer or protected consumer who has a copy of an official police report evidencing that the consumer or protected consumer has alleged to be a victim of identity theft.

Source: Laws 2007, LB674, § 2; Laws 2009, LB177, § 1; Laws 2016, LB835, § 2.
Operative date January 1, 2017.

8-2603 Security freeze; request.

A consumer may elect to place a security freeze on his or her file by submitting a request at the address or other point of contact and in the manner specified by the consumer reporting agency.

Source: Laws 2007, LB674, § 3; Laws 2016, LB835, § 3.
Operative date January 1, 2017.

8-2603.01 Protected consumer; security freeze; request; fee; creation of record for protected consumer; placement of freeze.

(1) A consumer reporting agency shall place a security freeze for a protected consumer if:

(a) The consumer reporting agency receives a request from the representative for the placement of the security freeze under this section; and

(b) The representative:

(i) Submits the request to the consumer reporting agency at the address or other point of contact and in the manner specified by the consumer reporting agency;

(ii) Provides to the consumer reporting agency:

(A) Sufficient proof of identification of the protected consumer and the representative; and

(B) Sufficient proof of authority to act on behalf of the protected consumer; and

(iii) Pays to the consumer reporting agency a fee as provided in section 8-2609.01.

(2) If a consumer reporting agency does not have a file pertaining to a protected consumer when the consumer reporting agency receives a request described in subdivision (1)(a) of this section, the consumer reporting agency shall create a record for the protected consumer.

(3) Within thirty days after receiving a request that meets the requirements of this section, a consumer reporting agency shall place a security freeze for the protected consumer.

Source: Laws 2016, LB835, § 4.
Operative date January 1, 2017.

8-2604 Consumer reporting agency; release of credit report or other information prohibited without authorization.

If a security freeze is in place with respect to a consumer's or protected consumer's file, the consumer reporting agency shall not release a credit report or any other information derived from the file to a third party without the prior express authorization of the consumer, protected consumer, or representative. This section does not prevent a consumer reporting agency from advising a third party that a security freeze is in effect with respect to a consumer's or protected consumer's file.

Source: Laws 2007, LB674, § 4; Laws 2016, LB835, § 5.
Operative date January 1, 2017.

8-2605 Consumer reporting agency; placement of security freeze; when; written confirmation to consumer.

(1) A consumer reporting agency shall place a security freeze on a file no later than three business days after receiving a request under section 8-2603.

(2) Until July 1, 2008, a consumer reporting agency shall, within ten business days after receiving a request under section 8-2603, send a written confirmation of the security freeze to the consumer and provide the consumer with a unique personal identification number or password to be used by the consumer when providing authorization for the release of a credit report or any other information derived from his or her file for a specified period of time. Beginning July 1, 2008, a consumer reporting agency shall send such confirmation and provide such identification number or password to the consumer within five business days after receiving a request under section 8-2603.

(3) The written confirmation required under subsection (2) of this section shall include a warning which shall read as follows: WARNING TO PERSONS SEEKING A CREDIT FREEZE AS PERMITTED BY THE CREDIT REPORT PROTECTION ACT: YOU MAY BE DENIED CREDIT AS A RESULT OF A FREEZE PLACED ON YOUR CREDIT.

Source: Laws 2007, LB674, § 5; Laws 2016, LB835, § 6.
Operative date January 1, 2017.

8-2606 Consumer reporting agency; disclose process of placing and temporarily lifting security freeze; consumer request to lift freeze; when.

(1) When a consumer requests a security freeze under section 8-2603, the consumer reporting agency shall disclose the process of placing and temporarily lifting the security freeze, including the process for allowing access to his or her credit report or any other information derived from his or her file for a specified period of time by temporarily lifting the security freeze.

(2) If a consumer wishes to allow his or her credit report or any other information derived from his or her file to be accessed for a specified period of time by temporarily lifting the security freeze placed under section 8-2603, the

consumer shall contact the consumer reporting agency, request that the freeze be temporarily lifted, and provide the following:

(a) Sufficient proof of identification of the consumer;

(b) The unique personal identification number or password provided by the consumer reporting agency under section 8-2605; and

(c) The proper information regarding the specified time period.

(3)(a) Until January 1, 2009, a consumer reporting agency that receives a request from a consumer to temporarily lift a security freeze placed under section 8-2603 on his or her file shall comply with the request no later than three business days after receiving the request.

(b) A consumer reporting agency shall develop procedures involving the use of a telephone, the Internet, or other electronic media to receive and process a request from a consumer to temporarily lift a security freeze placed under section 8-2603 on his or her file in an expedited manner. By January 1, 2009, a consumer reporting agency shall comply with a request to temporarily lift a security freeze within fifteen minutes after receiving such request by telephone or through a secure electronic method.

(4) A consumer reporting agency is not required to temporarily lift a security freeze within the time provided in subsection (3) of this section if:

(a) The consumer fails to meet the requirements of subsection (2) of this section; or

(b) The consumer reporting agency's ability to temporarily lift the security freeze within the time provided in subsection (3) of this section is prevented by:

(i) An act of God, including fire, earthquake, hurricane, storm, or similar natural disaster or phenomena;

(ii) An unauthorized or illegal act by a third party, including terrorism, sabotage, riot, vandalism, labor strike or dispute disrupting operations, or similar occurrence;

(iii) Operational interruption, including electrical failure, unanticipated delay in equipment or replacement part delivery, computer hardware or software failure inhibiting response time, or similar disruption;

(iv) Governmental action, including an emergency order or regulation, judicial or law enforcement action, or similar directive;

(v) Regularly scheduled maintenance, during other than normal business hours, of the consumer reporting agency's system or updates to such system;

(vi) Commercially reasonable maintenance of, or repair to, the consumer reporting agency's system that is unexpected or unscheduled; or

(vii) Receipt of a removal request outside of normal business hours.

For purposes of this subsection, normal business hours means Sunday through Saturday, between the hours of 6:00 a.m. and 9:30 p.m., in the applicable time zone in this state.

Source: Laws 2007, LB674, § 6; Laws 2016, LB835, § 7.

Operative date January 1, 2017.

8-2608 Consumer reporting agency; mandatory removal of security freeze; conditions.

A consumer reporting agency shall remove a security freeze placed under section 8-2603 within three business days after receiving a request for removal from the consumer who provides both of the following:

- (1) Sufficient proof of identity of the consumer; and
- (2) The unique personal identification number or password referred to in subdivision (2)(b) of section 8-2606.

Source: Laws 2007, LB674, § 8; Laws 2016, LB835, § 8.
Operative date January 1, 2017.

8-2608.01 Protected consumer; security freeze; duration; consumer reporting agency; restrictions on release of information.

A security freeze for a protected consumer shall remain in effect unless removed in accordance with section 8-2608.02 or 8-2608.03. A consumer reporting agency may not release the protected consumer's credit report, any information derived from the protected consumer's credit report, or any record created for the protected consumer.

Source: Laws 2016, LB835, § 9.
Operative date January 1, 2017.

8-2608.02 Protected consumer; removal of security freeze; request; fee.

If a protected consumer or the representative wishes to remove a security freeze placed under section 8-2603.01 for the protected consumer, the protected consumer or the representative shall:

- (1) Submit a request for the removal of the security freeze to the consumer reporting agency at the address or other point of contact and in the manner specified by the consumer reporting agency; and
- (2) Provide to the consumer reporting agency:
 - (a)(i) In the case of a request by the protected consumer:
 - (A) Proof that the sufficient proof of authority for the representative to act on behalf of the protected consumer is no longer valid; and
 - (B) Sufficient proof of identification of the protected consumer; or
 - (ii) In the case of a request by the representative:
 - (A) Sufficient proof of identification of the protected consumer and the representative; and
 - (B) Sufficient proof of authority to act on behalf of the protected consumer; and
- (b) Payment of a fee as provided in section 8-2609.01.

Within thirty days after receiving a request that meets the requirements of this section, the consumer reporting agency shall remove the security freeze for the protected consumer.

Source: Laws 2016, LB835, § 10.
Operative date January 1, 2017.

8-2608.03 Protected consumer; remove security freeze; delete record of protected consumer; when.

A consumer reporting agency may remove a security freeze for a protected consumer or delete a record of a protected consumer if the security freeze was

placed or the record was created based on a material misrepresentation of fact by the protected consumer or the protected consumer's representative.

Source: Laws 2016, LB835, § 11.
Operative date January 1, 2017.

8-2609 Consumer reporting agency; fee authorized; exceptions.

(1) A consumer reporting agency may charge a fee of three dollars for placing, temporarily lifting, or removing a security freeze placed under section 8-2603 unless:

(a) The consumer is a victim of identity theft; and

(b) The consumer provides the consumer reporting agency with a copy of an official police report documenting the identity theft.

(2) A consumer reporting agency shall reissue the same or a new personal identification number or password required under section 8-2605 one time without charge and may charge a fee of no more than five dollars for subsequent reissuance of the personal identification number or password.

Source: Laws 2007, LB674, § 9; Laws 2009, LB177, § 3; Laws 2016, LB835, § 12.
Operative date January 1, 2017.

8-2609.01 Protected consumer; consumer reporting agency; fee authorized; exceptions.

(1) A consumer reporting agency may charge a fee of three dollars for each placement or removal of a security freeze for a protected consumer.

(2) A consumer reporting agency shall not charge any fee under this section if:

(a)(i) The protected consumer is a victim of identity theft; and

(ii) The protected consumer's representative provides the consumer reporting agency with a copy of an official police report documenting the identity theft; or

(b)(i) A request for the placement or removal of a security freeze is for a protected consumer who is under the age of sixteen years at the time of the request; and

(ii) The consumer reporting agency has a credit report pertaining to the protected consumer.

Source: Laws 2016, LB835, § 13.
Operative date January 1, 2017.

8-2610 Consumer reporting agency; changes to official information in file; written confirmation required; exceptions.

If a security freeze is in place, a consumer reporting agency may not change any of the following official information in a file without sending a written confirmation of the change to the consumer, protected consumer, or representative within thirty days after the change is made: Name, date of birth, social security number, and address. In the case of an address change, the written confirmation shall be sent to both the new address and the former address. Written confirmation is not required for technical modifications of a consum-

er's or protected consumer's official information, including name and street abbreviations, complete spellings, or transposition of numbers or letters.

Source: Laws 2007, LB674, § 10; Laws 2016, LB835, § 14.
Operative date January 1, 2017.

8-2611 Consumer reporting agency; restrictions with respect to third parties; request by third party; how treated.

(1) A consumer reporting agency may not suggest or otherwise state or imply to a third party that a security freeze on a consumer's or protected consumer's file reflects a negative credit score, history, report, or rating.

(2) If a third party requests access to a credit report or any other information derived from a file in connection with an application for credit or the opening of an account and the consumer, protected consumer, or representative has placed a security freeze on his or her file and does not allow his or her file to be accessed during that specified period of time, the third party may treat the application as incomplete.

Source: Laws 2007, LB674, § 11; Laws 2016, LB835, § 15.
Operative date January 1, 2017.

8-2612 Consumer reporting agency; information furnished to governmental agency.

The Credit Report Protection Act does not prohibit a consumer reporting agency from furnishing to a governmental agency a consumer's or protected consumer's name, address, former address, place of employment, or former place of employment.

Source: Laws 2007, LB674, § 12; Laws 2016, LB835, § 16.
Operative date January 1, 2017.

8-2613 Act; use of credit report or information derived from file; applicability.

The Credit Report Protection Act does not apply to the use of a credit report or any information derived from the file by any of the following:

(1) A person or entity, a subsidiary, affiliate, or agent of that person or entity, an assignee of a financial obligation owing by the consumer or protected consumer to that person or entity, or a prospective assignee of a financial obligation owing by the consumer or protected consumer to that person or entity in conjunction with the proposed purchase of the financial obligation, with which the consumer or protected consumer has or had prior to assignment an account or contract, including a demand deposit account, or to whom the consumer or protected consumer issued a negotiable instrument, for the purposes of reviewing the account or collecting the financial obligation owing for the account, contract, or negotiable instrument. For purposes of this subdivision, reviewing the account includes activities related to account maintenance, monitoring, credit line increases, and account upgrades and enhancements;

(2) A subsidiary, affiliate, agent, assignee, or prospective assignee of a person to whom access has been granted under section 8-2606 for purposes of facilitating the extension of credit or other permissible use;

(3) Any federal, state, or local governmental entity, including, but not limited to, a law enforcement agency, a court, or an agent or assignee of a law enforcement agency or court;

(4) A private collection agency acting under a court order, warrant, or subpoena;

(5) Any person or entity for the purposes of prescreening as provided for by the federal Fair Credit Reporting Act, 15 U.S.C. 1681, as such act existed on September 1, 2007;

(6) Any person or entity administering a credit file monitoring subscription service to which the consumer or protected consumer has subscribed;

(7) Any person or entity for the purpose of providing a consumer, protected consumer, or representative with a copy of the consumer's or protected consumer's credit report or any other information derived from his or her file upon the consumer's, protected consumer's, or representative's request; and

(8) Any person or entity for use in setting or adjusting a rate, adjusting a claim, or underwriting for insurance purposes.

Source: Laws 2007, LB674, § 13; Laws 2016, LB835, § 17.
Operative date January 1, 2017.

8-2614 Entities not considered consumer reporting agencies; not required to place security freeze on file.

The following entities are not consumer reporting agencies for purposes of the Credit Report Protection Act and are not required to place a security freeze under section 8-2603 or 8-2603.01:

(1) A check services or fraud prevention services company that issues reports on incidents of fraud or authorizations for the purpose of approving or processing negotiable instruments, electronic funds transfers, or similar methods of payment;

(2) A deposit account information service company that issues reports regarding account closures due to fraud, substantial overdrafts, automatic teller machine abuse, or similar negative information regarding a consumer or protected consumer, to inquiring banks or other financial institutions for use only in reviewing a consumer's, protected consumer's, or representative's request for a deposit account at the inquiring bank or financial institution; and

(3) A consumer reporting agency that acts only as a reseller of credit information by assembling and merging information contained in the data base of another consumer reporting agency, or multiple consumer reporting agencies, and does not maintain a permanent data base of credit information from which new credit reports are produced. A consumer reporting agency shall honor any security freeze placed on a file by another consumer reporting agency.

Source: Laws 2007, LB674, § 14; Laws 2016, LB835, § 18.
Operative date January 1, 2017.

8-2614.01 Protected consumer provisions; applicability.

Sections 8-2603.01, 8-2608.01, 8-2608.02, 8-2608.03, and 8-2609.01 shall not apply to any person or entity that maintains a data base used solely for the following:

- (1) Criminal record information;
- (2) Personal loss history information;
- (3) Fraud prevention or detection;
- (4) Employment screening; or
- (5) Tenant screening.

Source: Laws 2016, LB835, § 19.
Operative date January 1, 2017.

8-2615 Enforcement of act; Attorney General; powers and duties; violation; civil penalty; recovery of damages.

The Attorney General shall enforce the Credit Report Protection Act. For purposes of the act, the Attorney General may issue subpoenas, adopt and promulgate rules and regulations, and seek injunctive relief and a monetary award for civil penalties, attorney's fees, and costs. Any person who violates the act shall be subject to a civil penalty of not more than two thousand dollars for each violation. The Attorney General may also seek and recover actual damages for each consumer or protected consumer injured by a violation of the act.

Source: Laws 2007, LB674, § 15; Laws 2016, LB835, § 20.
Operative date January 1, 2017.

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.

Section

- 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.
- 8-2744. Violations; orders authorized.
- 8-2745. Violations; penalties.
- 8-2746. Rules and regulations.
- 8-2747. Fees, charges, costs, and fines; disposition.
- 8-2748. Repealed. Laws 2016, LB778, § 9.

8-2701 Act, how cited.

Sections 8-2701 to 8-2747 shall be known and may be cited as the Nebraska Money Transmitters Act.

Source: Laws 2013, LB616, § 1; Laws 2016, LB778, § 1.
Effective date July 21, 2016.

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 main-

tained 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 Transmit-

ters 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 Registry, 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) Initial licenses shall remain in full force and effect until the next succeeding December 31. 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.

(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; Laws 2016, LB778, § 2.
Effective date July 21, 2016.

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 Repealed. Laws 2016, LB778, § 9.

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.

Cross References

Community Development Law, see section 18-2101.



CHAPTER 9

BINGO AND OTHER GAMBLING

Article.

1. General Provisions. 9-1,101.
2. Bingo. 9-262.
3. Pickle Cards. 9-352.
4. Lotteries and Raffles. 9-434.
6. County and City Lotteries. 9-601 to 9-652.
7. Gift Enterprises. 9-701.
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 2

BINGO

Section
 9-262. Violations; penalties; enforcement; venue.

9-262 Violations; penalties; enforcement; venue.

(1) Except when another penalty is specifically provided, any person, licensee, or permittee, or employee or agent thereof, who violates any provision of the Nebraska Bingo Act, or who causes, aids, abets, or conspires with another to cause any person, licensee, or permittee, or any employee or agent thereof, to violate the act, shall be guilty of a Class I misdemeanor for the first offense and a Class IV felony for any second or subsequent violation. Any licensee guilty of violating any provision of the act more than once in a twelve-month period may have its license canceled or revoked.

(2) Each of the following violations of the Nebraska Bingo Act shall be a Class IV felony:

(a) Giving, providing, or offering to give or provide, directly or indirectly, to any public official, employee, or agent of this state, or any agencies or political subdivisions of the state, any compensation or reward or share of the money for property paid or received through gambling activities regulated under Chapter 9 in consideration for obtaining any license, authorization, permission, or privilege to participate in any gaming operation except as authorized by the Nebraska Bingo Act or any rules or regulations adopted and promulgated pursuant to such act;

(b) Knowingly filing a false report under the Nebraska Bingo Act; or

(c) Knowingly falsifying or making any false entry in any books or records with respect to any transaction connected with the conduct of bingo activity.

(3) Intentionally employing or possessing any device to facilitate cheating in a bingo game or using any fraudulent scheme or technique in connection with any bingo game is a violation of the Nebraska Bingo Act. The offense is a:

(a) Class II misdemeanor when the amount gained or intended to be gained through the use of such items, schemes, or techniques is less than five hundred dollars;

(b) Class I misdemeanor when the amount gained or intended to be gained through the use of such items, schemes, or techniques is five hundred dollars or more but less than one thousand five hundred dollars; and

(c) Class IV felony when the amount gained or intended to be gained through the use of such items, schemes, or techniques is one thousand five hundred dollars or more.

(4) In all proceedings initiated in any court or otherwise under the Nebraska Bingo Act, it shall be the duty of the Attorney General and appropriate county attorney to prosecute and defend all such proceedings.

(5) The failure to do any act required by or under the Nebraska Bingo Act shall be deemed an act in part in the principal office of the department. Any prosecution under such act may be conducted in any county where the defendant resides or has a place of business or in any county in which any violation occurred.

(6) In the enforcement and investigation of any offense committed under the Nebraska Bingo Act, the department may call to its aid any sheriff, deputy sheriff, or other peace officer in the state.

Source: Laws 1978, LB 351, § 47; Laws 1983, LB 259, § 32; Laws 1984, LB 949, § 43; Laws 1985, LB 408, § 16; R.S.Supp., 1985, § 9-170; Laws 1986, LB 1027, § 63; Laws 1987, LB 523, § 1; Laws 1988, LB 295, § 33; Laws 1995, LB 344, § 9; Laws 1997, LB 248, § 8; Laws 2015, LB605, § 1.

ARTICLE 3
PICKLE CARDS

Section

9-352. Violations; penalties; enforcement; venue.

9-352 Violations; penalties; enforcement; venue.

(1) Except when another penalty is specifically provided, any person or licensee, or employee or agent thereof, who violates any provision of the Nebraska Pickle Card Lottery Act, or who causes, aids, abets, or conspires with another to cause any person or licensee or any employee or agent thereof to violate the act, shall be guilty of a Class I misdemeanor for the first offense and a Class IV felony for any second or subsequent violation. Any licensee guilty of violating any provision of the act more than once in a twelve-month period may have its license canceled or revoked. Such matters may also be referred to any other state licensing agencies for appropriate action.

(2) Each of the following violations of the Nebraska Pickle Card Lottery Act shall be a Class IV felony:

(a) Giving, providing, or offering to give or provide, directly or indirectly, to any public official, employee, or agent of this state, or any agencies or political subdivisions of this state, any compensation or reward or share of the money for property paid or received through gambling activities regulated under Chapter 9 in consideration for obtaining any license, authorization, permission, or privilege to participate in any gaming operations except as authorized under Chapter 9 or any rules and regulations adopted and promulgated pursuant to such chapter;

(b) Making or receiving payment of a portion of the purchase price of pickle cards by a seller of pickle cards to a buyer of pickle cards to induce the purchase of pickle cards or to improperly influence future purchases of pickle cards;

(c) Using bogus, counterfeit, or nonopaque pickle cards, pull tabs, break opens, punchboards, jar tickets, or any other similar card, board, or ticket or substituting or using any pickle cards, pull tabs, or jar tickets that have been marked or tampered with;

(d) Knowingly filing a false report under the Nebraska Pickle Card Lottery Act;

(e) Knowingly falsifying or making any false entry in any books or records with respect to any transaction connected with the conduct of a lottery by the sale of pickle cards; or

(f) Knowingly selling or distributing or knowingly receiving with intent to sell or distribute pickle cards or pickle card units without first obtaining a license in accordance with the Nebraska Pickle Card Lottery Act pursuant to section 9-329, 9-329.03, 9-330, or 9-332.

(3) Intentionally employing or possessing any device to facilitate cheating in any lottery by the sale of pickle cards or use of any fraudulent scheme or technique in connection with any lottery by the sale of pickle cards is a violation of the Nebraska Pickle Card Lottery Act. The offense is a:

(a) Class II misdemeanor when the amount gained or intended to be gained through the use of such items, schemes, or techniques is less than five hundred dollars;

(b) Class I misdemeanor when the amount gained or intended to be gained through the use of such items, schemes, or techniques is five hundred dollars or more but less than one thousand five hundred dollars; and

(c) Class IV felony when the amount gained or intended to be gained through the use of such items, schemes, or techniques is one thousand five hundred dollars or more.

(4) In all proceedings initiated in any court or otherwise under the act, it shall be the duty of the Attorney General and appropriate county attorney to prosecute and defend all such proceedings.

(5) The failure to do any act required by or under the Nebraska Pickle Card Lottery Act shall be deemed an act in part in the principal office of the department. Any prosecution under such act may be conducted in any county where the defendant resides or has a place of business or in any county in which any violation occurred.

(6) In the enforcement and investigation of any offense committed under the act, the department may call to its aid any sheriff, deputy sheriff, or other peace officer in the state.

Source: Laws 1986, LB 1027, § 118; Laws 1987, LB 523, § 2; Laws 1988, LB 1232, § 50; Laws 1995, LB 344, § 23; Laws 1997, LB 248, § 20; Laws 2015, LB605, § 2.

ARTICLE 4

LOTTERIES AND RAFFLES

Section

9-434. Violations; penalties; enforcement; venue.

9-434 Violations; penalties; enforcement; venue.

(1) Except when another penalty is specifically provided, any person, licensee, or permittee, or employee or agent thereof, who violates any provision of the Nebraska Lottery and Raffle Act, or who causes, aids, abets, or conspires with another to cause any person, licensee, or permittee or employee or agent thereof to violate the act, shall be guilty of a Class I misdemeanor for the first offense and a Class IV felony for any second or subsequent violation. Any licensee guilty of violating any provision of the act more than once in a twelve-month period may have its license canceled or revoked.

(2) Each of the following violations of the Nebraska Lottery and Raffle Act shall be a Class IV felony:

(a) Giving, providing, or offering to give or provide, directly or indirectly, to any public official or employee or agent of this state, or any agencies or political subdivisions of this state, any compensation or reward or share of the money for property paid or received through gambling activities authorized under Chapter 9 in consideration for obtaining any license, authorization, permission, or privileges to participate in any gaming operations except as authorized under Chapter 9 or any rules and regulations adopted and promulgated pursuant to such chapter; or

(b) Knowingly filing a false report under the Nebraska Lottery and Raffle Act.

(3) Intentionally employing or possessing any device to facilitate cheating in any lottery or raffle or using any fraudulent scheme or technique in connection with any lottery or raffle is a violation of the Nebraska Lottery and Raffle Act. The offense is a:

(a) Class II misdemeanor when the amount gained or intended to be gained through the use of such items, schemes, or techniques is less than five hundred dollars;

(b) Class I misdemeanor when the amount gained or intended to be gained through the use of such items, schemes, or techniques is five hundred dollars or more but less than one thousand five hundred dollars; and

(c) Class IV felony when the amount gained or intended to be gained through the use of such items, schemes, or techniques is one thousand five hundred dollars or more.

(4) In all proceedings initiated in any court or otherwise under the act, it shall be the duty of the Attorney General and appropriate county attorney to prosecute and defend all such proceedings.

(5) The failure to do any act required by or under the Nebraska Lottery and Raffle Act shall be deemed an act in part in the principal office of the department. Any prosecution under such act may be conducted in any county where the defendant resides or has a place of business or in any county in which any violation occurred.

(6) In the enforcement and investigation of any offense committed under the act, the department may call to its aid any sheriff, deputy sheriff, or other peace officer in the state.

Source: Laws 1986, LB 1027, § 155; Laws 1987, LB 523, § 3; Laws 1995, LB 344, § 28; Laws 1997, LB 248, § 27; Laws 2015, LB605, § 3.

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.
 9-652. Violations; penalties; enforcement; venue.

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.

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.

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.

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, 2017.

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.

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.

9-652 Violations; penalties; enforcement; venue.

(1) Except when another penalty is specifically provided, any person or licensee, or employee or agent thereof, who knowingly or intentionally violates any provision of the Nebraska County and City Lottery Act, or who causes, aids, abets, or conspires with another to cause any person or licensee or any employee or agent thereof to violate the act, shall be guilty of a Class I misdemeanor for the first offense and a Class IV felony for any second or

subsequent violation. Any licensee guilty of violating the act more than once in a twelve-month period may have its license canceled or revoked.

(2) Each of the following violations of the act shall be a Class IV felony:

(a) Giving, providing, or offering to give or provide, directly or indirectly, to any public official, employee, or agent of this state or any agencies or political subdivisions of this state any compensation or reward or share of the money for property paid or received through gambling activities regulated under the act in consideration for obtaining any license, authorization, permission, or privilege to participate in any gaming operations except as authorized under the act or any rules and regulations adopted and promulgated pursuant to such act;

(b) Knowingly filing a false report under the act; or

(c) Knowingly falsifying or making any false entry in any books or records with respect to any transaction connected with the conduct of a lottery.

(3) Intentionally employing or possessing any device to facilitate cheating in any lottery or using any fraudulent scheme or technique in connection with any lottery is a violation of the act. The offense is a:

(a) Class II misdemeanor when the amount gained or intended to be gained through the use of such device, scheme, or technique is less than five hundred dollars;

(b) Class I misdemeanor when the amount gained or intended to be gained through the use of such device, scheme, or technique is five hundred dollars or more but less than one thousand five hundred dollars; and

(c) Class IV felony when the amount gained or intended to be gained through the use of such device, scheme, or technique is one thousand five hundred dollars or more.

(4) It shall be the duty of the Attorney General or appropriate county attorney to prosecute and defend all proceedings initiated in any court or otherwise under the act.

(5) The failure to do any act required by or under the Nebraska County and City Lottery Act shall be deemed an act in part in the principal office of the department. Any prosecution under such act may be conducted in any county where the defendant resides or has a place of business or in any county in which any violation occurred.

(6) In the enforcement and investigation of any offense committed under the act, the department may call to its aid any sheriff, deputy sheriff, or other peace officer in the state.

Source: Laws 1989, LB 767, § 92; Laws 1993, LB 563, § 21; Laws 1995, LB 344, § 33; Laws 1997, LB 248, § 34; Laws 2015, LB605, § 4.

ARTICLE 7

GIFT ENTERPRISES

Section

9-701. Conduct of gift enterprises; conditions; prohibited acts; violation; penalties; venue; enforcement.

9-701 Conduct of gift enterprises; conditions; prohibited acts; violation; penalties; venue; enforcement.

(1) For purposes of this section:

(a) Financial institution means a bank, savings bank, building and loan association, or savings and loan association, whether chartered by the United States, the Department of Banking and Finance, or a foreign state agency as defined in section 8-101; or any other similar organization which is covered by federal deposit insurance;

(b) Gift enterprise means a contest, game of chance, savings promotion raffle, or game promotion which is conducted within the state or throughout the state and other states in connection with the sale of consumer or trade products or services solely as business promotions and in which the elements of chance and prize are present. Gift enterprise does not include any scheme using the game of bingo or keno; any non-telecommunication-related, player-activated electronic or electromechanical facsimile of any game of chance; or any slot machine of any kind. A gift enterprise shall not utilize pickle cards as defined in section 9-315. Promotional game tickets may be utilized subject to the following:

(i) The tickets utilized shall be manufactured or imprinted with the name of the operator on each ticket;

(ii) The tickets utilized shall not be manufactured with a cost per play printed on them; and

(iii) The tickets utilized shall not be substantially similar to any type of pickle card approved by the Department of Revenue pursuant to section 9-332.01;

(c) Operator means any person, firm, corporation, financial institution, association, governmental entity, or agent or employee thereof who promotes, operates, or conducts a gift enterprise. Operator does not include any nonprofit organization or any agent or employee thereof, except that operator includes any credit union chartered under state or federal law or any agent or employee thereof who promotes, operates, or conducts a gift enterprise; and

(d) Savings promotion raffle means a contest conducted by a financial institution or credit union chartered under state or federal law or any agent or employee thereof in which a chance of winning a designated prize is obtained by the deposit of a specified amount of money in a savings account or other savings program if each entry has an equal chance of winning.

(2) Any operator may conduct a gift enterprise within this state in accordance with this section.

(3) An operator shall not:

(a) Design, engage in, promote, or conduct a gift enterprise in connection with the promotion or sale of consumer products or services in which the winner may be unfairly predetermined or the game may be manipulated or rigged;

(b) Arbitrarily remove, disqualify, disallow, or reject any entry;

(c) Fail to award prizes offered;

(d) Print, publish, or circulate literature or advertising material used in connection with such gift enterprise which is false, deceptive, or misleading; or

(e) Require an entry fee, a payment or promise of payment of any valuable consideration, or any other consideration as a condition of entering a gift enterprise or winning a prize from the gift enterprise, except that a contest, game of chance, or business promotion may require, as a condition of participation, evidence of the purchase of a product or service as long as the purchase price charged for such product or service is not greater than it would

have been without the contest, game of chance, or business promotion. For purposes of this section, consideration shall not include (i) filling out an entry blank, (ii) entering by mail with the purchase of postage at a cost no greater than the cost of postage for a first-class letter weighing one ounce or less, (iii) entering by a telephone call to the operator of or for the gift enterprise at a cost no greater than the cost of postage for a first-class letter weighing one ounce or less. When the only method of entry is by telephone, the cost to the entrant of the telephone call shall not exceed the cost of postage for a first-class letter weighing one ounce or less for any reason, including (A) whether any communication occurred during the call which was not related to the gift enterprise or (B) the fact that the cost of the call to the operator was greater than the cost to the entrant allowed under this section, or (iv) the deposit of money in a savings account or other savings program, regardless of the interest rate earned by such account or program.

(4) An operator shall disclose to participants all terms and conditions of a gift enterprise.

(5)(a) The Department of Revenue may adopt and promulgate rules and regulations necessary to carry out the operation of gift enterprises.

(b) Whenever the department has reason to believe that a gift enterprise is being operated in violation of this section or the department's rules and regulations, it may bring an action in the district court of Lancaster County in the name of and on behalf of the people of the State of Nebraska against the operator of the gift enterprise to enjoin the continued operation of such gift enterprise anywhere in the state.

(6)(a) Any person, firm, corporation, association, or agent or employee thereof who engages in any unlawful acts or practices pursuant to this section or violates any of the rules and regulations promulgated pursuant to this section shall be guilty of a Class II misdemeanor.

(b) Any person, firm, corporation, association, or agent or employee thereof who violates any provision of this section or any of the rules and regulations promulgated pursuant to this section shall be liable to pay a civil penalty of not more than one thousand dollars imposed by the district court of Lancaster County for each such violation which shall be remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska. Each day of continued violation shall constitute a separate offense or violation for purposes of this section.

(7) A financial institution or credit union may limit the number of chances that a participant in a savings promotion raffle may obtain for making the required deposits but shall not limit the number of deposits.

(8) In all proceedings initiated in any court or otherwise under this section, the Attorney General or appropriate county attorney shall prosecute and defend all such proceedings.

(9) This section shall not apply to any activity authorized and regulated under 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, or the State Lottery Act.

Source: Laws 1977, LB 38, § 230; Laws 1983, LB 259, § 39; R.S.1943, (1985), § 28-1114; Laws 1986, LB 1027, § 184; Laws 1991, LB

427, § 69; Laws 1993, LB 54, § 1; Laws 1994, LB 694, § 113; Laws 2004, LB 999, § 20; Laws 2011, LB524, § 1; Laws 2015, LB160, § 1.

Cross References

Nebraska Bingo Act, see section 9-201.

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.

State Lottery Act, see section 9-801.

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; Nebraska Education Improvement Fund; created; use; 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; Nebraska Education Improvement Fund; created; use; 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 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 designated purpose as of such date shall be transferred to the Nebraska Education Improvement Fund on or before August 1, 2016.

(c) 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.

(d) 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. The fund shall be allocated, after actual and necessary administrative expenses, as provided in this section for fiscal years 2016-17 through 2020-21. A portion of each allocation may be retained by the agency to which the allocation is made or the agency administering the fund to which the allocation is made for actual and necessary expenses incurred by such agency for administration, evaluation, and technical assistance related to the purposes of the allocation, except that no amount of the allocation to the Nebraska Opportunity Grant Fund may be used for such purposes. On or before December 31, 2019, the Education Committee of the Legislature shall electronically submit recommendations to the Clerk of the Legislature regarding how the fund should be allocated to best advance the educational priorities of the state for the five-year period beginning with fiscal year 2021-22. For fiscal year 2016-17, an amount equal to ten percent of the revenue allocated to the Education Innovation Fund and to the Nebraska Opportunity Grant Fund for fiscal year 2015-16 shall be retained in the Nebraska Education Improvement Fund. For fiscal years 2017-18 through 2020-21, an amount equal to ten percent of the revenue received by the Nebraska Education Improvement Fund in the prior fiscal year shall be retained in the fund. For fiscal years 2016-17 through 2020-21, the remainder of the fund, after payment of any learning community transition aid pursuant to section 79-10,145, shall be allocated as follows:

(a) One percent of the allocated funds to the Expanded Learning Opportunity Grant Fund to carry out the Expanded Learning Opportunity Grant Program Act;

(b) Seventeen percent of the allocated funds to the Department of Education Innovative Grant Fund to be used (i) for competitive innovation grants pursuant to section 79-1054 and (ii) for school fiscal year 2017-18, to carry out the purposes of section 79-759;

(c) Nine percent of the allocated funds to the Community College Gap Assistance Program Fund to carry out the community college gap assistance program;

(d) Eight percent of the allocated funds to the Excellence in Teaching Cash Fund to carry out the Excellence in Teaching Act;

(e) Sixty-two percent of the allocated funds to the Nebraska Opportunity Grant Fund to carry out the Nebraska Opportunity Grant Act in conjunction with appropriations from the General Fund; and

(f) Three percent of the allocated funds to fund distance education incentives pursuant to section 79-1337.

(6) Any money in the State Lottery Operation Trust Fund, the State Lottery Operation Cash Fund, the State Lottery Prize Trust Fund, the Nebraska Education Improvement 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; Laws 2015, LB519, § 1; Laws 2016, LB930, § 1; Laws 2016, LB1067, § 1.
Effective date July 21, 2016.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB930, section 1, with LB1067, section 1, to reflect all amendments.

Cross References

Excellence in Teaching Act, see section 79-8,132.

Expanded Learning Opportunity Grant Program Act, see section 79-2501.

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 Opportunity Grant Act, see section 85-1901.

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 education, 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.
11. Nebraska Governmental Unit Security Interest Act. 10-1103.

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 and at the minimum rate as described in subdivision (2)(d) of section 32-1203. 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; Laws 2015, LB575, § 1.

Cross References

Election Act, see section 32-101.

ARTICLE 11

NEBRASKA GOVERNMENTAL UNIT SECURITY INTEREST ACT

Section

10-1103. Terms, defined.

10-1103 Terms, defined.

For purposes of the Nebraska Governmental Unit Security Interest Act:

(1) Authorizing statute means any statute which authorizes the issuance of bonds;

(2) Bond means any bond, note, warrant, loan agreement, lease, lease-purchase agreement, pledge agreement, agreement authorized by the governing body of a generating power agency pursuant to section 70-682, or other evidence of indebtedness for which a security interest is granted or a pledge made upon revenue or other property, including any limited tax revenue, to provide for payment or security;

(3) Governmental unit means the State of Nebraska, any county, school district, city, village, public power district, sanitary and improvement district, educational service unit, community college area, natural resources district, airport authority, fire protection district, hospital authority, joint entity created under the Interlocal Cooperation Act, joint public agency, instrumentality, or any other district, authority, or political subdivision of the State of Nebraska and governmental units as defined in subdivision (a)(45) of section 9-102, Uniform Commercial Code;

(4) Measure means any ordinance, resolution, or other enactment authorizing the issuance of bonds or authorizing an indenture with respect to bonds pursuant to an authorizing statute; and

(5) Owner means any holder, registered owner, or beneficial owner of a bond.

Source: Laws 2000, LB 929, § 19; Laws 2016, LB897, § 1.
Effective date July 21, 2016.

Cross References

Interlocal Cooperation Act, see section 13-801.



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.

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.

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.

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.

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.

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.

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.

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.

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, improvement, 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.

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.

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.

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.

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.

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.

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.

CHAPTER 13

CITIES, COUNTIES, AND OTHER POLITICAL SUBDIVISIONS

Article.

2. Community Development. 13-208.
3. Political Subdivisions; Particular Classes and Projects.
 - (b) Ambulance Service. 13-303.
 - (i) Extraterritorial Jurisdiction. 13-327.
4. Political Subdivisions; Laws Applicable to All. 13-404.
5. Budgets.
 - (a) Nebraska Budget Act. 13-503 to 13-513.
 - (d) Budget Limitations. 13-518 to 13-520.
6. Finances. 13-607, 13-608.
12. Nebraska Public Transportation Act. 13-1205 to 13-1212.
19. Development Districts. 13-1905 to 13-1907.
21. Enterprise Zones. 13-2101.01 to 13-2114.
24. Retirement Benefits and Plans. 13-2402.
25. Joint Public Agency Act. 13-2507, 13-2525.
26. Convention Center Facility Financing Assistance Act. 13-2603 to 13-2610.
27. Civic and Community Center Financing Act. 13-2701 to 13-2709.
28. Municipal Counties. 13-2809.
31. Sports Arena Facility Financing Assistance Act. 13-3102 to 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 2016-17, the total amount of tax credit granted under this section shall be reduced by seventy-five thousand dollars.

Source: Laws 1984, LB 372, § 8; Laws 2005, LB 334, § 5; Laws 2011, LB345, § 9; Laws 2014, LB1114, § 1; Laws 2016, LB1083, § 7.
Effective date July 21, 2016.

ARTICLE 3

POLITICAL SUBDIVISIONS; PARTICULAR CLASSES AND PROJECTS

(b) AMBULANCE SERVICE

Section

13-303. Counties, cities, and villages; contract; agreement; hearing; notice; cost; levy; fee.

(i) EXTRATERRITORIAL JURISDICTION

13-327. County; cede jurisdiction; when; procedure.

(b) AMBULANCE SERVICE

13-303 Counties, cities, and villages; contract; agreement; hearing; notice; cost; levy; fee.

The county boards of counties and the governing bodies of cities and villages may establish an emergency medical service, including the provision of scheduled and unscheduled ambulance service, as a governmental service either within or without the county or municipality, as the case may be. The county board or governing body may contract with any city, person, firm, or corporation licensed as an emergency medical service for emergency medical care by out-of-hospital emergency care providers. Each may enter into an agreement with the other under the Interlocal Cooperation Act or Joint Public Agency Act for the purpose of establishing an emergency medical service or may provide a separate service for itself. Public funds may be expended therefor, and a reasonable service fee may be charged to the user. Before any such service is established under the authority of this section, the county board or the governing bodies of cities and villages shall hold a public hearing after giving at least ten days' notice thereof, which notice shall include a brief summary of the general plan for establishing such service, including an estimate of the initial cost and the possible continuing cost of operating such service. If the board or governing body after such hearing determines that an emergency medical service for emergency medical care by out-of-hospital emergency care providers is needed, it may proceed as authorized in this section. The authority granted in this section shall be cumulative and supplementary to any existing powers heretofore granted. Any county board of counties and the governing bodies of cities and villages may pay their cost for such service out of available general funds or may levy a tax for the purpose of providing the service, which levy shall be in addition to all other taxes and shall be in addition to restrictions on the levy of taxes provided by statute, except that when a rural or suburban fire protection district provides the service, the county shall pay the cost for the county service by levying a tax on that property not in the rural or suburban fire protection district providing the service. The levy shall be subject to subsection (10) of section 77-3442 or section 77-3443, as applicable.

Source: Laws 1967, c. 111, § 1, p. 359; Laws 1973, LB 239, § 1; Laws 1978, LB 560, § 2; R.S.1943, (1983), § 23-378; Laws 1996, LB 1114, § 25; Laws 1997, LB 138, § 31; Laws 1999, LB 87, § 51; Laws 2001, LB 808, § 1; Laws 2015, LB325, § 1.

Cross References

Interlocal Cooperation Act, see section 13-801.

Joint Public Agency Act, see section 13-2501.

(i) EXTRATERRITORIAL JURISDICTION

13-327 County; cede jurisdiction; when; procedure.

(1) The governing body of any city of the first or second class or village may, by majority vote of its members, request that the county board formally cede and transfer to the city or village extraterritorial zoning jurisdiction over land outside the area extending two miles from the corporate boundaries of a city of the first class and one mile from the corporate boundaries of a city of the second class or village. In making its request, the city or village shall describe the territory over which jurisdiction is being sought by metes and bounds or by

reference to an official map, except that a village shall not request jurisdiction over any territory that is more than one-quarter mile outside the area extending one mile from the corporate boundaries of a village.

(2) Unless prohibited pursuant to section 13-328, the county board may, by majority vote of its members, grant the request with regard to some or all of the requested territory if:

(a) The county has formally adopted a comprehensive development plan and zoning resolution pursuant to section 23-114 not less than two years immediately preceding the date of the city's or village's request;

(b) The city or village, on the date of the request, is exercising extraterritorial zoning jurisdiction over territory within the boundaries of the county;

(c) The requested territory is within the projected growth pattern of the city or village and would be within the city's or village's extraterritorial zoning jurisdiction by reason of annexation within a reasonable period of years;

(d) Not more than a total of twenty-five percent of the territory of the county located outside the corporate boundaries of any city or village within the county shall be ceded to the jurisdiction of one city or village within ten years after the date upon which the initial request for the cession of territory to the city or village was approved by the governing body of the city or village; and

(e) No portion of the territory ceded to the city's or village's jurisdiction by the county lies within an area extending one-half mile from the extraterritorial zoning jurisdiction of any other city of the first or second class or village on the date the request is approved by the governing body of the city or village unless such other city or village adopts a resolution in support of such request.

(3) If the county board approves the cession and transfer of extraterritorial zoning jurisdiction to a city or village pursuant to this section, such transfer shall take effect on the effective date of the ordinance as provided for in subsection (4) of section 16-902 in the case of a city of the first class or as provided for in subsection (5) of section 17-1002 in the case of a city of the second class or village. Upon the effective date of such transfer, the transferred jurisdiction shall be treated for all purposes as if such land were located within two miles of the corporate boundaries of a city of the first class or within one mile of the corporate boundaries of a city of the second class or village.

Source: Laws 2002, LB 729, § 1; Laws 2012, LB1126, § 1; Laws 2016, LB864, § 1.

Effective date July 21, 2016.

ARTICLE 4

POLITICAL SUBDIVISIONS; LAWS APPLICABLE TO ALL

Section
13-404. Civil offices; vacancy; how filled.

13-404 Civil offices; vacancy; how filled.

Every civil office in a political subdivision filled by appointment shall be vacant upon the happening of any one of the events listed in section 32-560 except as provided in section 32-561. The resignation of the incumbent of such a civil office may be made as provided in section 32-562. Vacancies in such a civil office shall be filled as provided in sections 32-567 and 32-574 and shall be subject to section 32-563.

Source: Laws 1994, LB 76, § 468; Laws 2015, LB575, § 2.

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.
- 13-511. Revision of adopted budget statement; when; supplemental funds; hearing; notice; warrants; issuance; correction.
- 13-513. Auditor; request information.

(d) BUDGET LIMITATIONS

- 13-518. Terms, defined.
- 13-519. Governmental unit; adoption of budget; limitations; additional increases authorized; procedure.
- 13-520. Limitations; not applicable to certain restricted funds.

(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, village, or natural resources district in determining and carrying on its financial and taxing affairs; and

(11) Biennial budget means (a) 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, (b) 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, or (c) a budget by a natural resources district that provides for a biennial period to determine and carry on the natural resources district'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; Laws 2015, LB164, § 2.

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, as the case may be, 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; Laws 2015, LB164, § 3.

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. For fiscal years prior to fiscal year 2017-18, 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) For fiscal years prior to fiscal year 2017-18, learning communities 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; Laws 2016, LB1067, § 2.
Effective date July 21, 2016.

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 appropriations 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.

13-511 Revision of adopted budget statement; when; supplemental funds; hearing; notice; warrants; issuance; correction.

(1) Unless otherwise provided by law, whenever during the current fiscal year or biennial period it becomes apparent to a governing body that (a) there are circumstances which could not reasonably have been anticipated at the time the budget for the current year or biennial period was adopted, (b) the budget adopted violated sections 13-518 to 13-522, such that the revenue of the current fiscal year or biennial period for any fund thereof will be insufficient, additional expenses will be necessarily incurred, or there is a need to reduce the budget requirements to comply with sections 13-518 to 13-522, or (c) the governing body has been notified by the auditor of a mathematical or accounting error or noncompliance with the Nebraska Budget Act, such governing body may propose to revise the previously adopted budget statement and shall conduct a

public hearing on such proposal. The public hearing requirement shall not apply to emergency expenditures pursuant to section 81-829.51.

(2) Notice of the time and place of the hearing 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. Such published notice shall set forth (a) the time and place of the hearing, (b) the amount in dollars of additional or reduced money required and for what purpose, (c) a statement setting forth the nature of the unanticipated circumstances and, if the budget requirements are to be increased, the reasons why the previously adopted budget of expenditures cannot be reduced during the remainder of the current year or biennial period to meet the need for additional money in that manner, (d) a copy of the summary of the originally adopted budget previously published, and (e) a copy of the summary of the proposed revised budget.

(3) At such hearing any taxpayer may appear or file a written statement protesting any application for additional money. A written record shall be kept of all such hearings.

(4) Upon conclusion of the public hearing on the proposed revised budget and approval of the proposed revised budget by the governing body, the governing body shall file with the county clerk of the county or counties in which such governing body is located, with the learning community coordinating council for fiscal years prior to fiscal year 2017-18 for school districts that are members of learning communities, and with the auditor, a copy of the revised budget, as adopted. The governing body may then issue warrants in payment for expenditures authorized by the adopted revised budget. Such warrants shall be referred to as registered warrants and shall be repaid during the next fiscal year or biennial period from funds derived from taxes levied therefor.

(5) Within thirty days after the adoption of the budget under section 13-506, a governing body may, or within thirty days after notification of an error by the auditor, a governing body shall, correct an adopted budget which contains a clerical, mathematical, or accounting error which does not affect the total amount budgeted by more than one percent or increase the amount required from property taxes. No public hearing shall be required for such a correction. After correction, the governing body shall file a copy of the corrected budget with the county clerk of the county or counties in which such governing body is located and with the auditor. The governing body may then issue warrants in payment for expenditures authorized by the budget.

Source: Laws 1969, c. 145, § 9, p. 673; R.S.1943, (1983), § 23-929; Laws 1993, LB 734, § 22; Laws 1996, LB 299, § 12; Laws 1999, LB 86, § 6; Laws 2000, LB 1116, § 8; Laws 2001, LB 797, § 2; Laws 2002, LB 568, § 5; Laws 2006, LB 1024, § 3; Laws 2015, LB283, § 1; Laws 2016, LB1067, § 3.
Effective date July 21, 2016.

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.

(d) BUDGET LIMITATIONS

13-518 Terms, defined.

For purposes of sections 13-518 to 13-522:

(1) Allowable growth means (a) for governmental units other than community colleges, the percentage increase in taxable valuation in excess of the base limitation established under section 77-3446, if any, due to improvements to real property as a result of new construction, additions to existing buildings, any improvements to real property which increase the value of such property, and any increase in valuation due to annexation and any personal property valuation over the prior year and (b) for community colleges, the percentage increase in excess of the base limitation, if any, in full-time equivalent students from the second year to the first year preceding the year for which the budget is being determined;

(2) Capital improvements means (a) acquisition of real property or (b) acquisition, construction, or extension of any improvements on real property;

(3) Governing body has the same meaning as in section 13-503;

(4) Governmental unit means every political subdivision which has authority to levy a property tax or authority to request levy authority under section 77-3443 except sanitary and improvement districts which have been in existence for five years or less and school districts;

(5) Qualified sinking fund means a fund or funds maintained separately from the general fund to pay for acquisition or replacement of tangible personal property with a useful life of five years or more which is to be undertaken in the future but is to be paid for in part or in total in advance using periodic payments into the fund. The term includes sinking funds under subdivision (13) of section 35-508 for firefighting and rescue equipment or apparatus;

(6) Restricted funds means (a) property tax, excluding any amounts refunded to taxpayers, (b) payments in lieu of property taxes, (c) local option sales taxes, (d) motor vehicle taxes, (e) state aid, (f) transfers of surpluses from any user fee, permit fee, or regulatory fee if the fee surplus is transferred to fund a service or function not directly related to the fee and the costs of the activity funded from the fee, (g) any funds excluded from restricted funds for the prior year because they were budgeted for capital improvements but which were not spent and are not expected to be spent for capital improvements, (h) the tax provided in sections 77-27,223 to 77-27,227 beginning in the second fiscal year in which the county will receive a full year of receipts, and (i) any excess tax collections returned to the county under section 77-1776. Funds received pursuant to the nameplate capacity tax levied under section 77-6203 for the first five years after a renewable energy generation facility has been commissioned are nonrestricted funds; and

(7) State aid means:

(a) For all governmental units, state aid paid pursuant to sections 60-3,202 and 77-3523 and reimbursement provided pursuant to section 77-1239;

(b) For municipalities, state aid to municipalities paid pursuant to sections 18-2605, 39-2501 to 39-2520, 60-3,190, and 77-27,139.04 and insurance premium tax paid to municipalities;

(c) For counties, state aid to counties paid pursuant to sections 39-2501 to 39-2520 and 60-3,184 to 60-3,190, insurance premium tax paid to counties, and reimbursements to counties from funds appropriated pursuant to section 29-3933;

(d) For community colleges, (i) for fiscal years 2010-11, 2011-12, and 2012-13, state aid to community colleges paid pursuant to section 90-517 and (ii) for fiscal year 2013-14 and each fiscal year thereafter, state aid to community colleges paid pursuant to the Community College Aid Act;

(e) For educational service units, state aid appropriated under sections 79-1241.01 and 79-1241.03; and

(f) For local public health departments as defined in section 71-1626, state aid as distributed under section 71-1628.08.

Source: Laws 1996, LB 299, § 1; Laws 1997, LB 269, § 11; Laws 1998, LB 989, § 1; Laws 1998, LB 1104, § 4; Laws 1999, LB 36, § 2; Laws 1999, LB 86, § 7; Laws 1999, LB 881, § 6; Laws 2001, LB 335, § 1; Laws 2002, LB 259, § 6; Laws 2002, LB 876, § 3; Laws 2003, LB 540, § 1; Laws 2003, LB 563, § 16; Laws 2004, LB 1005, § 1; Laws 2005, LB 274, § 222; Laws 2007, LB342, § 30; Laws 2009, LB218, § 1; Laws 2009, LB549, § 1; Laws 2010, LB1048, § 1; Laws 2010, LB1072, § 1; Laws 2011, LB59, § 1; Laws 2011, LB383, § 1; Laws 2012, LB946, § 8; Laws 2015, LB259, § 4; Laws 2015, LB424, § 1.

Cross References

Community College Aid Act, see section 85-2231.

13-519 Governmental unit; adoption of budget; limitations; additional increases authorized; procedure.

(1)(a) Subject to subdivision (1)(b) of this section, for all fiscal years beginning on or after July 1, 1998, no governmental unit shall adopt a budget containing a total of budgeted restricted funds more than the last prior year's total of budgeted restricted funds plus allowable growth plus the basic allowable growth percentage of the base limitation established under section 77-3446. For the second fiscal year in which a county will receive a full year of receipts from the tax imposed in sections 77-27,223 to 77-27,227, the prior year's total of restricted funds shall be the prior year's total of restricted funds plus the total receipts from the tax imposed in sections 77-27,223 to 77-27,227 in the prior year. If a governmental unit transfers the financial responsibility of providing a service financed in whole or in part with restricted funds to another governmental unit or the state, the amount of restricted funds associated with providing the service shall be subtracted from the last prior year's total of budgeted restricted funds for the previous provider and may be added to the last prior year's total of restricted funds for the new provider. For governmental units that have consolidated, the calculations made under this section for

consolidating units shall be made based on the combined total of restricted funds, population, or full-time equivalent students of each governmental unit.

(b) For all fiscal years beginning on or after July 1, 2008, educational service units may exceed the limitations of subdivision (1)(a) of this section to the extent that one hundred ten percent of the needs for the educational service unit calculated pursuant to section 79-1241.03 exceeds the budgeted restricted funds allowed pursuant to subdivision (1)(a) of this section.

(2) A governmental unit may exceed the limit provided in subdivision (1)(a) of this section for a fiscal year by up to an additional one percent upon the affirmative vote of at least seventy-five percent of the governing body.

(3) A governmental unit may exceed the applicable allowable growth percentage otherwise prescribed in this section by an amount approved by a majority of legal voters voting on the issue at a special election called for such purpose upon the recommendation of the governing body or upon the receipt by the county clerk or election commissioner of a petition requesting an election signed by at least five percent of the legal voters of the governmental unit. The recommendation of the governing body or the petition of the legal voters shall include the amount and percentage by which the governing body would increase its budgeted restricted funds for the ensuing year over and above the current year's budgeted restricted funds. The county clerk or election commissioner shall call for a special election on the issue within thirty days after the receipt of such governing body recommendation or legal voter petition. The election shall be held pursuant to the Election Act, and all costs shall be paid by the governing body. The issue may be approved on the same question as a vote to exceed the levy limits provided in section 77-3444.

(4) In lieu of the election procedures in subsection (3) of this section, any governmental unit may exceed the allowable growth percentage otherwise prescribed in this section by an amount approved by a majority of legal voters voting at a meeting of the residents of the governmental unit, called after notice is published in a newspaper of general circulation in the governmental unit at least twenty days prior to the meeting. At least ten percent of the registered voters residing in the governmental unit shall constitute a quorum for purposes of taking action to exceed the allowable growth percentage. If a majority of the registered voters present at the meeting vote in favor of exceeding the allowable growth percentage, a copy of the record of that action shall be forwarded to the Auditor of Public Accounts along with the budget documents. The issue to exceed the allowable growth percentage may be approved at the same meeting as a vote to exceed the limits or final levy allocation provided in section 77-3444.

Source: Laws 1996, LB 299, § 2; Laws 1998, LB 989, § 2; Laws 2001, LB 329, § 9; Laws 2002, LB 259, § 7; Laws 2003, LB 9, § 1; Laws 2005, LB 38, § 1; Laws 2008, LB1154, § 2; Laws 2009, LB121, § 1; Laws 2009, LB501, § 1; Laws 2010, LB1072, § 2; Laws 2015, LB261, § 1.

Cross References

Election Act, see section 32-101.

13-520 Limitations; not applicable to certain restricted funds.

The limitations in section 13-519 shall not apply to (1) restricted funds budgeted for capital improvements, (2) restricted funds expended from a

qualified sinking fund for acquisition or replacement of tangible personal property with a useful life of five years or more, (3) restricted funds pledged to retire bonded indebtedness, used by a public airport to retire interest-free loans from the Department of Aeronautics in lieu of bonded indebtedness at a lower cost to the public airport, or used to pay other financial instruments that are approved and agreed to before July 1, 1999, in the same manner as bonds by a governing body created under section 35-501, (4) restricted funds budgeted in support of a service which is the subject of an agreement or a modification of an existing agreement whether operated by one of the parties to the agreement or by an independent joint entity or joint public agency, (5) restricted funds budgeted to pay for repairs to infrastructure damaged by a natural disaster which is declared a disaster emergency pursuant to the Emergency Management Act, (6) restricted funds budgeted to pay for judgments, except judgments or orders from the Commission of Industrial Relations, obtained against a governmental unit which require or obligate a governmental unit to pay such judgment, to the extent such judgment is not paid by liability insurance coverage of a governmental unit, or (7) the dollar amount by which restricted funds budgeted by a natural resources district 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.

Source: Laws 1996, LB 299, § 3; Laws 1998, LB 989, § 3; Laws 1999, LB 86, § 8; Laws 1999, LB 87, § 54; Laws 1999, LB 141, § 1; Laws 2004, LB 962, § 4; Laws 2009, LB121, § 2; Laws 2015, LB261, § 2.

Cross References

Emergency Management Act, see section 81-829.36.

Nebraska Ground Water Management and Protection Act, see section 46-701.

ARTICLE 6

FINANCES

Section

13-607. Repealed. Laws 2016, LB843, § 9.

13-608. Repealed. Laws 2016, LB843, § 9.

13-607 Repealed. Laws 2016, LB843, § 9.

Operative date July 1, 2017.

13-608 Repealed. Laws 2016, LB843, § 9.

Operative date July 1, 2017.

ARTICLE 12

NEBRASKA PUBLIC TRANSPORTATION ACT

Section

13-1205. Department of Roads; powers, duties, and responsibilities; enumerated.

13-1209. Assistance program; established; state financial assistance; limitation.

13-1210. Assistance program; Department of Roads; certify funding; report.

13-1212. Department of Roads; rules and regulations; duties; public-purpose organization; denied financial assistance; petition; hearing.

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.

13-1209 Assistance program; established; state financial assistance; limitation.

(1) A public transportation assistance program is hereby established to provide state assistance for the capital acquisition and operating costs of public transportation systems.

(2) Any municipality, county, transit authority, or qualified public-purpose organization shall be eligible to receive financial assistance for the eligible capital acquisition and operating costs of a public transportation system, whether the applicant directly operates such system or contracts for its operation. A qualified public-purpose organization shall not be eligible for financial assistance under the Nebraska Public Transportation Act if such organization is currently receiving state funds for a program which includes transportation services and such funding and services would be duplicated by the act. Eligible operating costs include those expenses incurred in the operation of a public transportation system which exceed the amount of operating revenue and which are not otherwise eligible for reimbursement from any available federal

programs other than those administered by the United States Department of the Treasury. Eligible capital acquisition costs include investments in the purchase, replacement, and rebuilding of buses and other vehicles used for public transportation.

(3) The state grant to an applicant shall not exceed fifty percent of the eligible capital acquisition or operating costs of the public transportation system as provided for in subsection (2) of this section. The amount of state funds shall be matched by an equal amount of local funds in support of capital acquisition or operating costs.

Source: Laws 1975, LB 443, § 13; Laws 1981, LB 144, § 6; R.S.1943, (1983), § 19-3909; Laws 1993, LB 158, § 6; Laws 2016, LB977, § 1.

Operative date July 21, 2016.

13-1210 Assistance program; Department of Roads; certify funding; report.

(1) The Department of Roads shall annually certify the amount of capital acquisition and operating costs eligible for funding under the public transportation assistance program established under section 13-1209.

(2) The department shall submit an annual report to the chairperson of the Appropriations Committee of the Legislature on or before December 1 of each year regarding funds requested by each applicant for eligible capital acquisition and operating costs in the current fiscal year pursuant to subsection (2) of section 13-1209 and the total amount of state grants projected to be awarded in the current fiscal year pursuant to the public transportation assistance program. The report submitted to the committee shall be submitted electronically. The report shall separate into two categories the requests and grants awarded for handicapped vans, otherwise known as paratransit vehicles, and requests and grants awarded for handicapped-accessible fixed-route bus systems.

Source: Laws 1980, LB 722, § 12; Laws 1986, LB 599, § 3; R.S.Supp.,1986, § 19-3909.01; Laws 2004, LB 1144, § 1; Laws 2008, LB1068, § 1; Laws 2012, LB782, § 17; Laws 2016, LB977, § 2.

Operative date July 21, 2016.

13-1212 Department of Roads; rules and regulations; duties; public-purpose organization; denied financial assistance; petition; hearing.

(1) The Department of Roads shall administer sections 13-1209 to 13-1212, and shall adopt and promulgate such rules and regulations pursuant to the Administrative Procedure Act as are necessary, including but not limited to defining eligible capital acquisition and operating costs, establishing contractual and other requirements including standardized accounting and reporting requirements, which shall include the applicant's proposed service area, the type of service proposed, all routes and schedules, and any further information needed for recipients to ensure the maximum feasible coordination and use of state funds, establishing application procedures, and developing a policy for apportioning funds made available for this program should they be insufficient to cover all eligible projects. Priority on the allocation of all funds shall be given to those proposed projects best suited to serve the needs of the elderly and handicapped and to proposed projects with federal funding participation.

(2) Any public-purpose organization proposing to provide public transportation denied financial assistance as a result of a determination by the Department of Roads that an area is adequately served by existing transportation services may submit a petition to the department requesting the department to reclassify the proposed service area as not being adequately served by existing public transportation services. The petition submitted to the department by the public-purpose organization shall bear the signatures of at least fifty registered voters residing in the proposed service area. Upon receipt of the petition the department shall hold a public hearing in the proposed service area and after such hearing shall determine whether the proposed service area is already adequately served. In carrying out its duties under this section the department shall comply with the provisions of the Administrative Procedure Act. The department shall not be required to conduct a reevaluation hearing for an area more frequently than once a year.

Source: Laws 1975, LB 443, § 15; Laws 1981, LB 144, § 7; R.S.1943, (1983), § 19-3911; Laws 2016, LB977, § 3.
Operative date July 21, 2016.

Cross References

Administrative Procedure Act, see section 84-920.

ARTICLE 19

DEVELOPMENT DISTRICTS

Section

- 13-1905. Development districts; certification for funding.
- 13-1906. Distribution of financial assistance.
- 13-1907. Rules and regulations; annual reports; evaluation; Governor; powers.

13-1905 Development districts; certification for funding.

If state funding is available for distribution pursuant to section 13-1906, the Department of Economic Development shall certify development districts for funding eligibility. Certification shall be based on the following requirements:

- (1) The development district shall be formed as provided in section 13-1902;
- (2) The development district shall have a staff which shall at a minimum include a full-time director to provide assistance to the local governments which are members of the development district; and
- (3) The agreement creating the development district shall insure that all of the local governments within the Nebraska planning and development region may at any time join in the development district.

Source: Laws 1992, LB 573, § 5; Laws 2015, LB661, § 25.

13-1906 Distribution of financial assistance.

(1) The Department of Economic Development shall distribute financial assistance from the state, if available, to the various development districts as they are certified in the manner prescribed in subsection (2) of this section.

(2)(a) Fifty percent of the total sum allocated shall be divided equally among the certified development districts. In certified districts formed by regional councils, funds may be prorated among the cooperating regional councils based

upon a formula approved by the governing boards of each of the cooperating regional councils and accepted by the department.

(b) Twenty percent of the total sum allocated shall be divided among the certified development districts based upon their proportional share of the population of all certified development districts in the state. For purposes of this subdivision, population shall mean the number of residents as shown by the latest federal decennial census, except that the population of a county shall mean the number of residents in the unincorporated areas of the county.

(c) Thirty percent of the total sum allocated shall be divided among the certified development districts based upon their proportional share of the local governments located within all certified development districts.

(3) Distributions to newly certified development districts shall not reduce financial assistance to previously funded development districts. State financial assistance shall not exceed the total local dollars received by the development district as verified by the department. For purposes of this subsection, local dollars received shall mean the total local dues received by a development district from any local government as a condition of membership in a development district.

Source: Laws 1992, LB 573, § 6; Laws 2015, LB661, § 26.

13-1907 Rules and regulations; annual reports; evaluation; Governor; powers.

(1) The Department of Economic Development shall adopt and promulgate rules and regulations to carry out sections 13-1901 to 13-1907 which shall include standardized reporting and application procedures. Each development district shall submit annual performance and financial reports to the department which shall address the activities performed and services delivered.

(2) The Governor shall, from time to time, evaluate the effectiveness and activities of the development districts receiving assistance. If the Governor finds a development district to be ineffective, he or she may take action, including the withholding of assistance authorized under section 13-1906.

Source: Laws 1992, LB 573, § 7; Laws 2015, LB661, § 27.

Cross References

Administrative Procedure Act, see section 84-920.

**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.

(b) If the department has received fewer than five applications for the designation of enterprise zones after the end of the application period described in subdivision (1)(a) of this section, the department may establish a period of time within which to accept additional applications. Within sixty days after the end of such extended application period, the department may designate additional areas as enterprise zones based on additional eligible applications received, but not more than a total of five areas may be designated as enterprise zones pursuant to this section.

(c) 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.

(d) 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.

(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; Laws 2016, LB948, § 1.

Effective date July 21, 2016.

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.

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.

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.

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; actuarial experience study; valuation report; filing; report required; when; contents; failure to file; audit; costs.

13-2402 Political subdivision with defined benefit plan; notification required; actuarial experience study; 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 or after January 1, 2004, shall submit written notification to the Nebraska Retirement Systems Committee of the Legislature that it offers such a plan.

(2) Each political subdivision which offers such a defined benefit plan shall conduct an experience study at least once every four years to review the actuarial assumptions used to determine funding needs for its defined benefit plan. Each such political subdivision shall electronically file a copy of the most recent actuarial experience study with the committee by October 15, 2016, and shall electronically file a copy of each study completed pursuant to this subsection by the next October 15 after completion of the study.

(3) Beginning November 15, 2014, and each October 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.

(4)(a) Beginning November 15, 2014, and each October 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.

(5) If a governing entity does not file the reports required by subsection (2), (3), or (4) of this section with the committee by October 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.

(6) 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; Laws 2015, LB42, § 1; Laws 2016, LB447, § 1.

Operative date March 31, 2016.

ARTICLE 25

JOINT PUBLIC AGENCY ACT

Section

13-2507. Power to tax; election; when required.

13-2525. Biennial report; fee.

13-2507 Power to tax; election; when required.

(1) Subject to subsection (4) of this section, a joint public agency shall have only those powers of taxation as one or more of the participating public agencies has and only as specifically provided in the agreement proposing creation of the joint public agency, except that a joint public agency shall not levy a local option sales tax. Participating public agencies may agree to allow the joint public agency to levy a property tax rate not to exceed a limit as provided in the agreement if the agreement also limits the levy authority of the overlapping participating public agencies collectively to the same amount. The levy authority of a joint public agency shall be allocated by the city or county as provided in section 77-3443, and the agreement may require allocation of levy authority by the city or county.

(2) If one or more of the participating public agencies is a municipality, the agreement may allow any occupation or wheel tax to be extended over the area encompassed by the joint public agency at a rate uniform to that of the city or village for the purpose of providing revenue to finance the services to be

provided by the joint public agency. The tax shall not be extended until the procedures governing enactment by the municipality are followed by the joint public agency, including any requirement for a public vote.

(3) If the agreement calls for the allocation of property tax levy authority to the joint public agency, the amount of the allocation to the joint public agency and from each participating public agency shall be reported to the Property Tax Administrator.

(4)(a) Prior to the issuance of bonds and the pledge of property tax levy authority allocated to a joint public agency to pay the principal of and interest on bonds to be issued by the joint public agency, the joint public agency shall hold an election to present the question of issuing such bonds and levying such tax to the registered voters of the participating public agency which allocated such property tax levy authority. Such election shall be held at a special election called for such purpose or an election held in conjunction with a statewide or local primary or general election.

(b) If a ballot question is required to be submitted to the registered voters of more than one participating public agency pursuant to subdivision (a) of this subsection and if the participating public agencies have overlapping jurisdiction of any geographic area, the registered voters residing in the geographic area subject to overlapping jurisdiction shall only be entitled to one vote on the ballot question.

(c) A joint public agency may issue refunding bonds as authorized in section 13-2537 which are payable from the same security and tax levy authority as bonds being refunded without holding an election as required by this subsection if the issuance of the refunding bonds does not allow additional principal and does not allow extension of the final maturity date of the indebtedness.

Source: Laws 1999, LB 87, § 7; Laws 2015, LB132, § 1.

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.

ARTICLE 26

CONVENTION CENTER FACILITY FINANCING ASSISTANCE ACT

Section

13-2603. Terms, defined.

13-2604. State assistance.

13-2605. State assistance; application; contents.

13-2610. Convention Center Support Fund; created; use; investment; distribution to certain areas; development fund; committee.

13-2603 Terms, defined.

For purposes of the Convention Center Facility Financing Assistance Act:

(1) Associated hotel means any publicly or privately owned facility in which the public may, for a consideration, obtain sleeping accommodations and which is located, in whole or in part, within six hundred yards of an eligible facility, measured from any point of the exterior perimeter of the eligible facility but not from any parking facility or other structure;

(2) Board means a board consisting of the Governor, the State Treasurer, the chairperson of the Nebraska Investment Council, the chairperson of the Nebraska State Board of Public Accountancy, and a professor of economics on the faculty of a state postsecondary educational institution appointed to a two-year term on the board by the Coordinating Commission for Postsecondary Education. For administrative and budget purposes only, the board shall be considered part of the Department of Revenue;

(3) Bond means a general obligation bond, redevelopment bond, lease-purchase bond, revenue bond, or combination of any such bonds;

(4) Convention and meeting center facility means a temperature-controlled building and personal property primarily used as a convention and meeting center, including an auditorium, an exhibition hall, a facility for onsite food preparation and serving, an onsite, directly connected parking facility for the use of the convention and meeting center facility, and an onsite administrative office of the convention and meeting center facility;

(5)(a) Eligible facility means any publicly owned convention and meeting center facility approved for state assistance on or before June 1, 2007, any publicly owned sports arena facility attached to such convention and meeting center facility, or any publicly or privately owned convention and meeting

center facility or publicly or privately owned sports arena facility acquired, constructed, improved, or equipped after June 1, 2007; and

(b) Beginning with applications for financial assistance received on or after February 1, 2008, eligible facility does not include any publicly or privately owned sports arena facility with a seating capacity greater than sixteen thousand seats;

(6) General obligation bond means any bond or refunding bond issued by a political subdivision and which is payable from the proceeds of an ad valorem tax;

(7) 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 which has statutory authority to issue general obligation bonds;

(8) Revenue bond means any bond or refunding bond issued by a political subdivision which is limited or special rather than a general obligation bond of the political subdivision and which is not payable from the proceeds of an ad valorem tax; and

(9) Sports arena facility means any enclosed temperature-controlled building primarily used for competitive sports, including arenas, dressing and locker facilities, concession areas, parking facilities, and onsite administrative offices connected with operating the facilities.

Source: Laws 1999, LB 382, § 3; Laws 2007, LB551, § 2; Laws 2008, LB912, § 1; Laws 2016, LB884, § 1.
Operative date October 1, 2016.

Cross References

Limitation on applications, see section 13-2612.

13-2604 State assistance.

Any political subdivision that has acquired, constructed, improved, or equipped or has approved a general obligation bond issue to acquire, construct, improve, or equip eligible facilities may apply to the board for state assistance. The state assistance shall be used:

(1) To pay back amounts expended or borrowed through one or more issues of bonds to be expended by the political subdivision to acquire, construct, improve, and equip eligible facilities until repayment in full of the amounts expended or borrowed by the political subdivision, including the principal of and interest on bonds, for eligible facilities; and

(2) To pay for capital improvements to eligible facilities.

Source: Laws 1999, LB 382, § 4; Laws 2010, LB779, § 3; Laws 2016, LB884, § 2.
Operative date October 1, 2016.

Cross References

Limitation on applications, see section 13-2612.

13-2605 State assistance; application; contents.

(1) All applications for state assistance under the Convention Center Facility Financing Assistance Act shall be in writing and shall include a certified copy of

the approving action of the governing body of the applicant describing the proposed eligible facility and the anticipated financing.

(2) The application shall contain:

(a) A description of the proposed financing of the eligible facility, including the estimated principal and interest requirements for the bonds proposed to be issued in connection with the eligible facility or the amounts necessary to repay the original investment by the applicant in the eligible facility;

(b) Documentation of local financial commitment to support the project, including all public and private resources pledged or committed to the project; and

(c) Any other project information deemed appropriate by the board.

(3) Upon receiving an application for state assistance, the board shall review the application and notify the applicant of any additional information needed for a proper evaluation of the application.

(4) Any state assistance received pursuant to the act shall be used only for public purposes.

(5) Each political subdivision that had an application for state assistance approved prior to October 1, 2016, shall submit a map to the Department of Revenue showing the area that lies within six hundred yards of the eligible facility as such area is described in subdivision (1) of section 13-2603. The department shall approve such area if it satisfies the requirements of subdivision (1) of section 13-2603.

Source: Laws 1999, LB 382, § 5; Laws 2007, LB551, § 3; Laws 2016, LB884, § 3.

Operative date October 1, 2016.

Cross References

Limitation on applications, see section 13-2612.

13-2610 Convention Center Support Fund; created; use; investment; distribution to certain areas; development fund; committee.

(1) Upon the annual certification under section 13-2609, the State Treasurer shall transfer after the audit the amount certified to the Convention Center Support Fund. The Convention Center Support Fund is created. Transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Convention Center Support 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) It is the intent of the Legislature to appropriate from the fund to any political subdivision for which an application for state assistance under the Convention Center Facility Financing Assistance Act has been approved an amount not to exceed (a) seventy percent of the state sales tax revenue collected by retailers and operators doing business at such facilities on sales at such facilities, state sales tax revenue collected on primary and secondary box office sales of admissions to such facilities, and state sales tax revenue collected by associated hotels, (b) seventy-five million dollars for any one approved project, or (c) the total cost of acquiring, constructing, improving, or equipping the eligible facility. State assistance shall not be used for an operating subsidy or other ancillary facility.

(3)(a) Ten percent of such funds appropriated to a city of the metropolitan class under subsection (2) of this section shall be equally distributed to areas with a high concentration of poverty to (i) showcase important historical aspects of such areas or areas within close geographic proximity of the area with a high concentration of poverty or (ii) assist with the reduction of street and gang violence in such areas.

(b) Each area with a high concentration of poverty that has been distributed funds under subdivision (3)(a) of this section shall establish a development fund and form a committee which shall identify and research potential projects to be completed in the area with a high concentration of poverty or in an area within close geographic proximity of such area if the project would have a significant or demonstrable impact on such area and make final determinations on the use of state sales tax revenue received for such projects.

(c) A committee formed under subdivision (3)(b) of this section shall include the following three members:

(i) The member of the city council whose district includes a majority of the census tracts which each contain a percentage of persons below the poverty line of greater than thirty percent, as determined by the most recent federal decennial census, within the area with a high concentration of poverty;

(ii) The commissioner of the county whose district includes a majority of the census tracts which each contain a percentage of persons below the poverty line of greater than thirty percent, as determined by the most recent federal decennial census, within the area with a high concentration of poverty; and

(iii) A resident of the area with a high concentration of poverty, appointed by the other two members of the committee.

(d) A committee formed under subdivision (3)(b) of this section shall solicit project ideas from the public and shall hold a public hearing in the area with a high concentration of poverty. Notice of a proposed hearing shall be provided in accordance with the procedures for notice of a public hearing pursuant to section 18-2115. The committee shall research potential projects and make the final determination regarding the annual distribution of funding to such projects.

(e) For purposes of this subsection, an area with a high concentration of poverty means an area within the corporate limits of a city of the metropolitan class consisting of one or more contiguous census tracts, as determined by the most recent federal decennial census, which contain a percentage of persons below the poverty line of greater than thirty percent, and all census tracts contiguous to such tract or tracts, as determined by the most recent federal decennial census.

(4)(a) Ten percent of such funds appropriated to a city of the primary class under subsection (2) of this section may, if the city determines by consent of the city council that such funds are not currently needed for the purposes described in section 13-2604, be used as follows:

(i) For investment in the construction of qualified low-income housing projects as defined in 26 U.S.C. 42, including qualified projects receiving Nebraska affordable housing tax credits under the Affordable Housing Tax Credit Act; or

(ii) If there are no such qualified low-income housing projects as defined in 26 U.S.C. 42 being constructed or expected to be constructed within the

political subdivision, for investment in areas with a high concentration of poverty to assist with low-income housing needs.

(b) For purposes of this subsection, an area with a high concentration of poverty means an area within the corporate limits of a city of the primary class consisting of one or more contiguous census tracts, as determined by the most recent American Community Survey 5-Year Estimate, which contain a percentage of persons below the poverty line of greater than thirty percent, and all census tracts contiguous to such tract or tracts, as determined by the most recent American Community Survey 5-Year Estimate.

(5) 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 (2) of this section, whichever comes first.

(6) The remaining thirty percent of state sales tax revenue collected by retailers and operators doing business at such facilities on sales at such facilities, state sales tax revenue collected on primary and secondary box office sales of admissions to such facilities, and state sales tax revenue collected by associated hotels, shall be appropriated by the Legislature to the Civic and Community Center Financing Fund. Upon the annual certification required pursuant to section 13-2609 and following the transfer to the Convention Center Support Fund required pursuant to subsection (1) of this section, the State Treasurer shall transfer an amount equal to the remaining thirty percent from the Convention Center Support Fund to the Civic and Community Center Financing Fund.

(7) Any municipality that has applied for and received a grant of assistance under the Civic and Community Center Financing Act may not receive state assistance under the Convention Center Facility Financing Assistance Act.

Source: Laws 1999, LB 382, § 10; Laws 2007, LB551, § 6; Laws 2008, LB754, § 1; Laws 2009, LB63, § 1; Laws 2010, LB975, § 1; Laws 2011, LB297, § 1; Laws 2015, LB661, § 28; Laws 2016, LB884, § 4.

Operative date October 1, 2016.

Cross References

- Affordable Housing Tax Credit Act, see section 77-2501.
- Civic and Community Center Financing Act, see section 13-2701.
- Limitation on applications, see section 13-2612.
- Nebraska Capital Expansion Act, see section 72-1269.
- Nebraska State Funds Investment Act, see section 72-1260.

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.

Section

13-2707.01. Grant; engineering and technical studies; evaluation criteria.

13-2709. Information on grants; department; duties; Political Subdivision Recapture Cash Fund; created; use; investment.

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 three 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; Laws 2015, LB661, § 29.

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; Political Subdivision Recapture Cash Fund; created; use; investment.

(1) 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:

(a) Information documenting the grants conditionally approved for funding by the Legislature in the following fiscal year;

(b) Reasons why a full application was not sent to any municipality seeking assistance under the act;

(c) The amount of sales tax revenue generated for the fund pursuant to subsection (6) 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, the amount of the year-end fund balance which has not been committed to funding grants under the act, 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;

(d) The amount of appropriated funds actually expended by the department for the year;

(e) 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

(f) 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.

(2) If the amount of the year-end fund balance which has not been committed to funding grants under the act as reported under subdivision (1)(c) of this section, excluding any amount required to be transferred under subsection (3) of section 13-2704, is more than one million dollars, the department shall notify the State Treasurer of the amount in excess of one million dollars. The State Treasurer shall transfer the amount in excess of one million dollars from the Civic and Community Center Financing Fund to the Political Subdivision Recapture Cash Fund.

(3) The Political Subdivision Recapture Cash Fund is created and shall consist of money transferred under subsection (2) of this section. Any money in the Political Subdivision Recapture 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. By October 1 of each year, the State Treasurer shall distribute the money in the Political Subdivision Recapture Cash Fund to the political subdivisions which have an application for state assistance for an eligible facility or an eligible sports arena facility approved under the Convention Center Facility Financing Assistance Act or the Sports Arena Facility Financing Assistance Act. Each political subdivision shall receive a proportionate share of the amount to be distributed under this subsection, and such proportionate share shall be based on the amount of sales tax revenue generated for the Civic and Community Center Financing Fund during the most recently completed fiscal year by the political subdivision's facility. The Tax Commissioner shall supply the State Treasurer with any information needed to make the distributions required in this subsection.

Source: Laws 1999, LB 382, § 21; Laws 2011, LB404, § 2; Laws 2013, LB153, § 10; Laws 2014, LB867, § 1; Laws 2016, LB285, § 1; Laws 2016, LB884, § 5.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB285, section 1, with LB884, section 5, to reflect all amendments.

Note: Changes made by LB285 became effective July 21, 2016. Changes made by LB884 became operative October 1, 2016.

Cross References

Convention Center Facility Financing Assistance Act, see section 13-2601.

Nebraska Capital Expansion Act, see section 72-1269.

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

Sports Arena Facility Financing Assistance Act, see section 13-3101.

ARTICLE 28
MUNICIPAL COUNTIES

Section

13-2809. Municipalities and fire protection districts within municipal county; treatment.

13-2809 Municipalities and fire protection districts within municipal county; treatment.

(1) An area within the boundaries of a municipality which remains within the boundaries of a municipal county and is not consolidated into the municipal county at the time of the formation of the municipal county shall not be considered to be part of the municipal county for any purpose. Such a municipality shall not be annexed by the municipal county, and such a municipality shall not annex any territory, for at least four years after the date of creation of the municipal county. Such a municipality shall retain:

(a) The authority to levy property taxes, not to exceed ninety cents per one hundred dollars of taxable value except as provided in sections 77-3442 and 77-3444; and

(b) All the other powers and duties applicable to a municipality of the same population with the same form of government in effect on the date of creation of the municipal county, including, but not limited to, its zoning jurisdiction and the authority to impose a tax as provided in the Local Option Revenue Act.

(2) In order to provide economical and efficient services, a municipality within the boundaries of a municipal county may annex adjacent territory within the municipal county if the municipal county consents. Consent shall be granted if the services will be provided by the municipality within the annexed territory at less cost than similar services provided by the municipal county.

(3) All fire protection districts which are within the boundaries of a municipal county shall continue to exist after formation of the municipal county.

Source: Laws 2001, LB 142, § 9; Laws 2015, LB325, § 2.

Cross References

Local Option Revenue Act, see section 77-27,148.

ARTICLE 31

SPORTS ARENA FACILITY FINANCING ASSISTANCE ACT

Section

13-3102. Terms, defined.

13-3103. State assistance; limitation.

13-3104. Application; contents; board; duties.

13-3106. Application; approval; board; findings; temporary approval; when; board; quorum.

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.

13-3102 Terms, defined.

For purposes of the Sports Arena Facility Financing Assistance Act:

(1) Board means a board consisting of the Governor, the State Treasurer, the chairperson of the Nebraska Investment Council, the chairperson of the Ne-

braska State Board of Public Accountancy, and a professor of economics on the faculty of a state postsecondary educational institution appointed to a two-year term on the board by the Coordinating Commission for Postsecondary Education. For administrative and budget purposes only, the board shall be considered part of the Department of Revenue;

(2) Bond means a general obligation bond, redevelopment bond, lease-purchase bond, revenue bond, or combination of any such bonds;

(3) Eligible sports arena facility means:

(a) Any publicly owned, enclosed, and temperature-controlled building primarily used for sports that has a permanent seating capacity of at least three thousand but no more than seven thousand seats and in which initial occupancy occurs on or after July 1, 2010. Eligible sports arena facility includes stadiums, arenas, dressing and locker facilities, concession areas, parking facilities, and onsite administrative offices connected with operating the facilities; and

(b) Any racetrack enclosure licensed by the State Racing Commission in which initial occupancy occurs on or after July 1, 2010, including concession areas, parking facilities, and onsite administrative offices connected with operating the racetrack;

(4) General obligation bond means any bond or refunding bond issued by a political subdivision and which is payable from the proceeds of an ad valorem tax;

(5) Increase in state sales tax revenue means the amount of state sales tax revenue collected by a nearby retailer during the fiscal year for which state assistance is calculated minus the amount of state sales tax revenue collected by the nearby retailer in the fiscal year that ended immediately preceding the date of occupancy of the eligible sports arena facility, except that the amount of state sales tax revenue of a nearby retailer shall not be less than zero;

(6) Nearby retailer means a retailer as defined in section 77-2701.32 that is located within the program area. The term includes a subsequent owner of a nearby retailer operating at the same location;

(7) New state sales tax revenue means:

(a) For nearby retailers that commenced collecting state sales tax during the period of time beginning twenty-four months prior to occupancy of the eligible sports arena facility and ending forty-eight months after the occupancy of the eligible sports arena facility or, for applications for state assistance approved prior to October 1, 2016, forty-eight months after October 1, 2016, one hundred percent of the state sales tax revenue collected by the nearby retailer and sourced under sections 77-2703.01 to 77-2703.04 to the program area; and

(b) For nearby retailers that commenced collecting state sales tax prior to twenty-four months prior to occupancy of the eligible sports arena facility, the increase in state sales tax revenue collected by the nearby retailer and sourced under sections 77-2703.01 to 77-2703.04 to the program area;

(8) Political subdivision means any city, village, or county;

(9) Program area means:

(a) For applications for state assistance submitted prior to October 1, 2016, the area that is located within six hundred yards of an eligible sports arena

facility, measured from any point of the exterior perimeter of the facility but not from any parking facility or other structure; or

(b) For applications for state assistance submitted on or after October 1, 2016, the area that is located within six hundred yards of an eligible sports arena facility, measured from any point of the exterior perimeter of the facility but not from any parking facility or other structure, except that if twenty-five percent or more of such area is unbuildable property, then the program area shall be adjusted so that:

(i) It avoids as much of the unbuildable property as is practical; and

(ii) It contains contiguous property with the same total amount of square footage that the program area would have contained had no adjustment been necessary.

Approval of an application for state assistance by the board pursuant to section 13-3106 shall establish the program area as that area depicted in the map accompanying the application for state assistance as submitted pursuant to subdivision (2)(c) of section 13-3104.

(10) Revenue bond means any bond or refunding bond issued by a political subdivision which is limited or special rather than a general obligation bond of the political subdivision and which is not payable from the proceeds of an ad valorem tax; and

(11) Unbuildable property means any real property that is located in a floodway, an environmentally protected area, a right-of-way, or a brownfield site as defined in 42 U.S.C. 9601 that the political subdivision determines is not suitable for the construction or location of residential, commercial, or other buildings or facilities.

Source: Laws 2010, LB779, § 8; Laws 2016, LB884, § 6.
Operative date October 1, 2016.

13-3103 State assistance; limitation.

(1) Any political subdivision or its governing body that has (a) acquired, constructed, improved, or equipped, (b) approved a revenue bond issue or a general obligation bond issue to acquire, construct, improve, or equip, or (c) adopted a resolution authorizing the political subdivision to pursue a general obligation bond issue to acquire, construct, improve, or equip an eligible sports arena facility may apply to the board for state assistance. The state assistance shall only be used to pay back amounts expended or borrowed through one or more issues of bonds to be expended by the political subdivision to acquire, construct, improve, and equip the eligible sports arena facility.

(2) For applications for state assistance approved on or after October 1, 2016, no more than fifty percent of the final cost of the eligible sports arena facility shall be funded by state assistance received pursuant to section 13-3108.

Source: Laws 2010, LB779, § 9; Laws 2016, LB884, § 7.
Operative date October 1, 2016.

13-3104 Application; contents; board; duties.

(1) All applications for state assistance under the Sports Arena Facility Financing Assistance Act shall be in writing and shall include a certified copy of the approving action of the governing body of the applicant describing the proposed eligible sports arena facility and the anticipated financing.

(2) The application shall contain:

(a) A description of the proposed financing of the eligible sports arena facility, including the estimated principal and interest requirements for the bonds proposed to be issued in connection with the facility or the amounts necessary to repay the original investment by the applicant in the facility;

(b) Documentation of local financial commitment to support the project, including all public and private resources pledged or committed to the project and including a copy of any operating agreement or lease with substantial users of the facility;

(c) For applications submitted on or after October 1, 2016, a map identifying the program area, including any unbuildable property within the program area or taken into account in adjusting the program area as described in subdivision (9)(b) of section 13-3102; and

(d) Any other project information deemed appropriate by the board.

(3) Upon receiving an application for state assistance, the board shall review the application and notify the applicant of any additional information needed for a proper evaluation of the application.

(4) Any state assistance received pursuant to the act shall be used only for public purposes.

Source: Laws 2010, LB779, § 10; Laws 2016, LB884, § 8.
Operative date October 1, 2016.

13-3106 Application; approval; board; findings; temporary approval; when; board; quorum.

(1) After consideration of the application and the evidence, if the board finds that the facility described in the application is eligible and that state assistance is in the best interest of the state, the application shall be approved, except that an approval of an application submitted because of the requirement in subdivision (1)(c) of section 13-3103 is a temporary approval. If the general obligation bond issue is subsequently approved by the voters of the political subdivision, the approval by the board becomes permanent. If the general obligation bond issue is not approved by such voters, the temporary approval shall become void.

(2) In determining whether state assistance is in the best interest of the state, the board shall consider the fiscal and economic capacity of the applicant to finance the local share of the facility.

(3) A majority of the board members constitutes a quorum for the purpose of conducting business. All actions of the board shall be by a majority vote of all the board members, one of whom must be the Governor.

Source: Laws 2010, LB779, § 12; Laws 2016, LB884, § 9.
Operative date October 1, 2016.

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.

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 the program area.

(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 and associated transfers of state assistance shall be made. Such quarterly distributions and transfers 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 neither (a) exceed fifty million dollars nor (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 and transferred quarterly beginning in 2014 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; Laws 2015, LB170, § 1; Laws 2016, LB884, § 10.

Operative date October 1, 2016.

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. 14-102 to 14-109.
3. Public Improvements.
 - (c) Sewerage, Drainage, Sprinkling, Paving Repair, and Contractors' Bonds. 14-363, 14-364.
 - (g) Streets, Sidewalks, and Highways. 14-392 to 14-3,107.
4. City Planning, Zoning. 14-407 to 14-420.
5. Fiscal Management, Revenue, and Finances.
 - (c) Street Improvement; Bonds; Grading; Assessments. 14-537.
 - (g) Pension Board. 14-567.
6. Police Department.
 - (a) General Provisions. 14-607.
17. Parking Facilities.
 - (c) Offstreet Parking. 14-1733.
18. Metropolitan Transit Authority. 14-1805.01.
21. Public Utilities. 14-2102 to 14-2139.

ARTICLE 1

GENERAL POWERS

Section

- 14-102. Additional powers.
- 14-103. City council; powers; health regulation; jurisdiction.
- 14-105. City council; powers; drainage of lots; duty of owner; special assessment.
- 14-109. City council; powers; occupation and license taxes; motor vehicle fee; conditions; limitations.

14-102 Additional powers.

In addition to the powers granted in section 14-101, cities of the metropolitan class shall have power by ordinance:

Taxes, special assessments.

- (1) To levy any tax or special assessment authorized by law;

Corporate seal.

- (2) To provide a corporate seal for the use of the city, and also any official seal for the use of any officer, board, or agent of the city, whose duties require an official seal to be used. Such corporate seal shall be used in the execution of municipal bonds, warrants, conveyances, and other instruments and proceedings as required by law;

Regulation of public health.

- (3) To provide all needful rules and regulations for the protection and preservation of health within the city; and for this purpose they may provide for the enforcement of the use of water from public water supplies when the use of water from other sources shall be deemed unsafe;

Appropriations for debts and expenses.

- (4) To appropriate money and provide for the payment of debts and expenses of the city;

Protection of strangers and travelers.

(5) To adopt all such measures as they may deem necessary for the accommodation and protection of strangers and the traveling public in person and property;

Concealed weapons, firearms, fireworks, explosives.

(6) To punish and prevent the carrying of concealed weapons, except the carrying of a concealed handgun in compliance with the Concealed Handgun Permit Act, and the discharge of firearms, fireworks, or explosives of any description within the city, other than the discharge of firearms at a shooting range pursuant to the Nebraska Shooting Range Protection Act;

Sale of foodstuffs.

(7) To regulate the inspection and sale of meats, flour, poultry, fish, milk, vegetables, and all other provisions or articles of food exposed or offered for sale in the city;

Official bonds.

(8) To require all officers or servants elected or appointed to give bond and security for the faithful performance of their duties; but no officer shall become security upon the official bond of another or upon any bond executed to the city;

Official reports of city officers.

(9) To require from any officer of the city at any time a report, in detail, of the transactions of his or her office or any matter connected therewith;

Cruelty to children and animals.

(10) To provide for the prevention of cruelty to children and animals;

Dogs; taxes and restrictions.

(11) To regulate, license, or prohibit the running at large of dogs and other animals within the city as well as in areas within three miles of the corporate limits of the city, to guard against injuries or annoyance from such dogs and other animals, and to authorize the destruction of the dogs and other animals when running at large contrary to the provisions of any ordinance. Any licensing provision shall comply with subsection (2) of section 54-603 for service animals;

Cleaning sidewalks.

(12) To provide for keeping sidewalks clean and free from obstructions and accumulations, to provide for the assessment and collection of taxes on real estate and for the sale and conveyance thereof, and to pay the expenses of keeping the sidewalk adjacent to such real estate clean and free from obstructions and accumulations as herein provided;

Planting and trimming of trees; protection of birds.

(13) To provide for the planting and protection of shade or ornamental and useful trees upon the streets or boulevards, to assess the cost thereof to the extent of benefits upon the abutting property as a special assessment, and to provide for the protection of birds and animals and their nests; to provide for the trimming of trees located upon the streets and boulevards or when the branches of trees overhang the streets and boulevards when in the judgment of the mayor and council such trimming is made necessary to properly light such

street or boulevard or to furnish proper police protection and to assess the cost thereof upon the abutting property as a special assessment;

Naming and numbering streets and houses.

(14) To provide for, regulate, and require the numbering or renumbering of houses along public streets or avenues; to care for and control and to name and rename streets, avenues, parks, and squares within the city;

Weeds.

(15) To require weeds and worthless vegetation growing upon any lot or piece of ground within the city or its three-mile zoning jurisdiction to be cut and destroyed so as to abate any nuisance occasioned thereby, to prohibit and control the throwing, depositing, or accumulation of litter on any lot or piece of ground within the city or its three-mile zoning jurisdiction and to require the removal thereof so as to abate any nuisance occasioned thereby, and if the owner fails to cut and destroy weeds and worthless vegetation or remove litter, or both, after notice as required by ordinance, to assess the cost thereof upon the lots or lands as a special assessment. The notice required to be given may be by publication in the official newspaper of the city and may be directed in general terms to the owners of lots and lands affected without naming such owners;

Animals running at large.

(16) To prohibit and regulate the running at large or the herding or driving of domestic animals, such as hogs, cattle, horses, sheep, goats, fowls, or animals of any kind or description within the corporate limits and provide for the impounding of all animals running at large, herded, or driven contrary to such prohibition; and to provide for the forfeiture and sale of animals impounded to pay the expense of taking up, caring for, and selling such impounded animals, including the cost of advertising and fees of officers;

Use of streets.

(17) To regulate the transportation of articles through the streets, to prevent injuries to the streets from overloaded vehicles, and to regulate the width of wagon tires and tires of other vehicles;

Playing on streets and sidewalks.

(18) To prevent or regulate the rolling of hoops, playing of ball, flying of kites, the riding of bicycles or tricycles, or any other amusement or practice having a tendency to annoy persons passing in the streets or on the sidewalks or to frighten teams or horses; to regulate the use of vehicles propelled by steam, gas, electricity, or other motive power, operated on the streets of the city;

Combustibles and explosives.

(19) To regulate or prohibit the transportation and keeping of gunpowder, oils, and other combustible and explosive articles;

Public sale of chattels on streets.

(20) To regulate, license, or prohibit the sale of domestic animals or of goods, wares, and merchandise at public auction on the streets, alleys, highways, or any public ground within the city;

Signs and obstruction in streets.

(21) To regulate and prevent the use of streets, sidewalks, and public grounds for signs, posts, awnings, awning posts, scales, or other like purposes; to regulate and prohibit the exhibition or carrying or conveying of banners,

placards, advertisements, or the distribution or posting of advertisements or handbills in the streets or public grounds or upon the sidewalks;

Disorderly conduct.

(22) To provide for the punishment of persons disturbing the peace and good order of the city by clamor and noise, intoxication, drunkenness, fighting, or using obscene or profane language in the streets or other public places or otherwise violating the public peace by indecent or disorderly conduct or by lewd and lascivious behavior;

Vagrants and tramps.

(23) To provide for the punishment of vagrants, tramps, common street beggars, common prostitutes, habitual disturbers of the peace, pickpockets, gamblers, burglars, thieves, or persons who practice any game, trick, or device with intent to swindle, persons who abuse their families, and suspicious persons who can give no reasonable account of themselves; and to punish trespassers upon private property;

Disorderly houses, gambling, offenses against public morals.

(24) To prohibit, restrain, and suppress tippling shops, houses of prostitution, opium joints, gambling houses, prize fighting, dog fighting, cock fighting, and other disorderly houses and practices, all games and gambling and desecration of the Sabbath, commonly called Sunday, and all kinds of indecencies; to regulate and license or prohibit the keeping and use of billiard tables, ten pins or ball alleys, shooting galleries except as provided in the Nebraska Shooting Range Protection Act, and other similar places of amusement; and to prohibit and suppress all lotteries and gift enterprises of all kinds under whatsoever name carried on, except that nothing in this subdivision shall be construed to apply to bingo, lotteries, lotteries by the sale of pickle cards, or raffles conducted in accordance with the Nebraska Bingo Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, or the State Lottery Act;

Police regulation in general.

(25) To make and enforce all police regulations for the good government, general welfare, health, safety, and security of the city and the citizens thereof in addition to the police powers expressly granted herein; and in the exercise of the police power, to pass all needful and proper ordinances and impose fines, forfeitures, penalties, and imprisonment at hard labor for the violation of any ordinance, and to provide for the recovery, collection, and enforcement thereof; and in default of payment to provide for confinement in the city or county prison, workhouse, or other place of confinement with or without hard labor as may be provided by ordinance;

Fast driving on streets.

(26) To prevent horseracing and immoderate driving or riding on the street and to compel persons to fasten their horses or other animals attached to vehicles while standing in the streets;

Libraries, art galleries, and museums.

(27) To establish and maintain public libraries, reading rooms, art galleries, and museums and to provide the necessary grounds or buildings therefor; to purchase books, papers, maps, manuscripts, works of art, and objects of natural or of scientific curiosity, and instruction therefor; to receive donations and bequests of money or property for the same in trust or otherwise and to pass

necessary bylaws and regulations for the protection and government of the same;

Hospitals, workhouses, jails, firehouses, etc.; garbage disposal.

(28) To erect, designate, establish, maintain, and regulate hospitals or workhouses, houses of correction, jails, station houses, fire engine houses, asphalt repair plants, and other necessary buildings; and to erect, designate, establish, maintain, and regulate plants for the removal, disposal, or recycling of garbage and refuse or to make contracts for garbage and refuse removal, disposal, or recycling, or all of the same, and to charge equitable fees for such removal, disposal, or recycling, or all of the same, except as hereinafter provided. The fees collected pursuant to this subdivision shall be credited to a single fund to be used exclusively by the city for the removal, disposal, or recycling of garbage and refuse, or all of the same, including any costs incurred for collecting the fee. Before any contract for such removal, disposal, or recycling is let, the city council shall make specifications therefor, bids shall be advertised for as now provided by law, and the contract shall be let to the lowest and best bidder, who shall furnish bond to the city conditioned upon his or her carrying out the terms of the contract, the bond to be approved by the city council. Nothing in this section, and no contract or regulation made by the city council, shall be so construed as to prohibit any person, firm, or corporation engaged in any business in which garbage or refuse accumulates as a byproduct from selling, recycling, or otherwise disposing of his, her, or its garbage or refuse or hauling such garbage or refuse through the streets and alleys under such uniform and reasonable regulations as the city council may by ordinance prescribe for the removal and hauling of garbage or refuse;

Market places.

(29) To erect and establish market houses and market places and to provide for the erection of all other useful and necessary buildings for the use of the city and for the protection and safety of all property owned by the city; and such market houses and market places and buildings aforesaid may be located on any street, alley, or public ground or on land purchased for such purpose;

Cemeteries, registers of births and deaths.

(30) To prohibit the establishment of additional cemeteries within the limits of the city, to regulate the registration of births and deaths, to direct the keeping and returning of bills of mortality, and to impose penalties on physicians, sextons, and others for any default in the premises;

Plumbing, etc., inspection.

(31) To provide for the inspection of steam boilers, electric light appliances, pipefittings, and plumbings, to regulate their erection and construction, to appoint inspectors, and to declare their powers and duties, except as herein otherwise provided;

Fire limits and fire protection.

(32) To prescribe fire limits and regulate the erection of all buildings and other structures within the corporate limits; to provide for the removal of any buildings or structures or additions thereto erected contrary to such regulations, to provide for the removal of dangerous buildings, and to provide that wooden buildings shall not be erected or placed or repaired in the fire limits; but such ordinance shall not be suspended or modified by resolution nor shall exceptions be made by ordinance or resolution in favor of any person, firm, or

corporation or concerning any particular lot or building; to direct that all and any building within such fire limits, when the same shall have been damaged by fire, decay, or otherwise, to the extent of fifty percent of the value of a similar new building above the foundation, shall be torn down or removed; and to prescribe the manner of ascertaining such damages and to assess the cost of removal of any building erected or existing contrary to such regulations or provisions, against the lot or real estate upon which such building or structure is located or shall be erected, or to collect such costs from the owner of any such building or structure and enforce such collection by civil action in any court of competent jurisdiction;

Building regulations.

(33) To regulate the construction, use, and maintenance of party walls, to prescribe and regulate the thickness, strength, and manner of constructing stone, brick, wood, or other buildings and the size and shape of brick and other material placed therein, to prescribe and regulate the construction and arrangement of fire escapes and the placing of iron and metallic shutters and doors therein and thereon, and to provide for the inspection of elevators and hoist-way openings to avoid accidents; to prescribe, regulate, and provide for the inspection of all plumbing, pipefitting, or sewer connections in all houses or buildings now or hereafter erected; to regulate the size, number, and manner of construction of halls, doors, stairways, seats, aisles, and passageways of theaters, tenement houses, audience rooms, and all buildings of a public character, whether now built or hereafter to be built, so that there may be convenient, safe, and speedy exit in case of fire; to prevent the dangerous construction and condition of chimneys, fireplaces, hearths, stoves, stovepipes, ovens, boilers, and heating appliances used in or about any building or a manufactory and to cause the same to be removed or placed in safe condition when they are considered dangerous; to regulate and prevent the carrying on of manufactures dangerous in causing and promoting fires; to prevent the deposit of ashes in unsafe places and to cause such buildings and enclosures as may be in a dangerous state to be put in a safe condition; to prevent the disposing of and delivery or use in any building or other structure, of soft, shelly, or imperfectly burned brick or other unsuitable building material within the city limits and provide for the inspection of the same; to provide for the abatement of dense volumes of smoke; to regulate the construction of areaways, stairways, and vaults and to regulate partition fences; to enforce proper heating and ventilation of buildings used for schools, workhouses, or shops of every class in which labor is employed or large numbers of persons are liable to congregate;

Warehouses and street railways.

(34) To regulate levees, depots and depot grounds, and places for storing freight and goods and to provide for and regulate the laying of tracks and the passage of steam or other railways through the streets, alleys, and public grounds of the city;

Lighting railroad property.

(35) To require the lighting of any railway within the city, the cars of which are propelled by steam, and to fix and determine the number, size, and style of lampposts, burners, lamps, and all other fixtures and apparatus necessary for such lighting and the points of location for such lampposts; and in case any company owning or operating such railways shall fail to comply with such requirements, the council may cause the same to be done and may assess the

expense thereof against such company, and the same shall constitute a lien upon any real estate belonging to such company and lying within such city and may be collected in the same manner as taxes for general purposes;

City publicity.

(36) To provide for necessary publicity and to appropriate money for the purpose of advertising the resources and advantages of the city;

Offstreet parking.

(37) To erect, establish, and maintain offstreet parking areas on publicly owned property located beneath any elevated segment of the National System of Interstate and Defense Highways or portion thereof, or public property title to which is in the city on May 12, 1971, or property owned by the city and used in conjunction with and incidental to city-operated facilities, and to regulate parking thereon by time limitation devises or by lease;

Public passenger transportation systems.

(38) To acquire, by the exercise of the power of eminent domain or otherwise, lease, purchase, construct, own, maintain, operate, or contract for the operation of public passenger transportation systems, excluding taxicabs and railroad systems, including all property and facilities required therefor, within and without the limits of the city, to redeem such property from prior encumbrance in order to protect or preserve the interest of the city therein, to exercise all powers granted by the Constitution of Nebraska and laws of the State of Nebraska or exercised by or pursuant to a home rule charter adopted pursuant thereto, including, but not limited to, receiving and accepting from the government of the United States or any agency thereof, from the State of Nebraska or any subdivision thereof, and from any person or corporation donations, devises, gifts, bequests, loans, or grants for or in aid of the acquisition, operation, and maintenance of such public passenger transportation systems and to administer, hold, use, and apply the same for the purposes for which such donations, devises, gifts, bequests, loans, or grants may have been made, to negotiate with employees and enter into contracts of employment, to employ by contract or otherwise individuals singularly or collectively, to enter into agreements authorized under the Interlocal Cooperation Act or the Joint Public Agency Act, to contract with an operating and management company for the purpose of operating, servicing, and maintaining any public passenger transportation systems any city of the metropolitan class shall acquire, and to exercise such other and further powers as may be necessary, incident, or appropriate to the powers of such city; and

Regulation of air quality.

(39) In addition to powers conferred elsewhere in the laws of the state and notwithstanding any other law of the state, to implement and enforce an air pollution control program within the corporate limits of the city under subdivision (23) of section 81-1504 or subsection (1) of section 81-1528, which program shall be consistent with the federal Clean Air Act, as amended, 42 U.S.C. 7401 et seq. Such powers shall include without limitation those involving injunctive relief, civil penalties, criminal fines, and burden of proof. Nothing in this section shall preclude the control of air pollution by resolution,

ordinance, or regulation not in actual conflict with the state air pollution control regulations.

Source: Laws 1921, c. 116, art. I, § 2, p. 398; C.S.1922, § 3489; C.S.1929, § 14-102; R.S.1943, § 14-102; Laws 1963, c. 314, § 1, p. 945; Laws 1971, LB 237, § 1; Laws 1972, LB 1274, § 1; Laws 1974, LB 768, § 1; Laws 1981, LB 501, § 1; Laws 1986, LB 1027, § 186; Laws 1991, LB 356, § 1; Laws 1991, LB 849, § 59; Laws 1992, LB 1257, § 63; Laws 1993, LB 138, § 61; Laws 1993, LB 623, § 1; Laws 1997, LB 814, § 2; Laws 1999, LB 87, § 59; Laws 2008, LB806, § 1; Laws 2009, LB430, § 1; Laws 2009, LB503, § 11; Laws 2015, LB266, § 1.

Cross References

Concealed Handgun Permit Act, see section 69-2427.

Interlocal Cooperation Act, see section 13-801.

Joint Public Agency Act, see section 13-2501.

Nebraska Bingo Act, see section 9-201.

Nebraska Lottery and Raffle Act, see section 9-401.

Nebraska Pickle Card Lottery Act, see section 9-301.

Nebraska Shooting Range Protection Act, see section 37-1301.

Nebraska Small Lottery and Raffle Act, see section 9-501.

State Lottery Act, see section 9-801.

14-103 City council; powers; health regulation; jurisdiction.

The council shall have power to define, regulate, suppress and prevent nuisances. The council may create a board of health in cases of a general epidemic or may cooperate with the boards of health provided by the laws of this state. The council may provide rules and regulations for the care, treatment, regulation, and prevention of all contagious and infectious diseases, for the regulation of all hospitals, dispensaries, and places for the treatment of the sick, for the sale of dangerous drugs, for the regulation of cemeteries, and the burial of the dead. The jurisdiction of the council in enforcing the foregoing regulations shall extend over such city and within its three-mile zoning jurisdiction.

Source: Laws 1921, c. 116, art. I, § 3, p. 406; C.S.1922, § 3490; C.S.1929, § 14-103; R.S.1943, § 14-103; Laws 2015, LB266, § 2.

14-105 City council; powers; drainage of lots; duty of owner; special assessment.

The city council may require any and all lots or pieces of ground within the city to be drained, filled, or graded, and upon the failure of the owners of such lots or pieces of ground to comply with such requirements, after thirty days' notice in writing, the council may cause the lots or pieces of ground to be drained, filled, or graded, and the cost and expense thereof shall be levied upon the property so filled, drained, or graded and shall be equalized, assessed, and collected as a special assessment.

Source: Laws 1921, c. 116, art. I, § 5, p. 407; C.S.1922, § 3492; C.S.1929, § 14-105; R.S.1943, § 14-105; Laws 2015, LB361, § 1.

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.

Cross References

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

ARTICLE 3

PUBLIC IMPROVEMENTS

(c) SEWERAGE, DRAINAGE, SPRINKLING, PAVING REPAIR, AND CONTRACTORS' BONDS

Section

- 14-363. Street sprinkling or armor-coating districts; creation; contracts; bids; special assessments; collection.
- 14-364. Paving repair plant; establishment; cost of operation; payment.
- (g) STREETS, SIDEWALKS, AND HIGHWAYS
- 14-392. Streets; improvements; assessment of cost.
- 14-398. Streets; change of grade; special assessment; how determined.
- 14-3,102. Streets; improvements; notice; service; protest; effect; special assessment.
- 14-3,103. Sidewalks; construction or repair; required, when; assessment of cost; equalization.
- 14-3,106. Sidewalks; construction or repair; special assessment; failure of owner; effect.
- 14-3,107. Streets; vacation; narrow; reversion to abutting owners; improvements; assessment of benefits; vacation of minimal secondary right-of-way; procedure.

(c) SEWERAGE, DRAINAGE, SPRINKLING, PAVING REPAIR, AND CONTRACTORS' BONDS

14-363 Street sprinkling or armor-coating districts; creation; contracts; bids; special assessments; collection.

The city council may provide for the sprinkling or armor coating of the streets of the city and, for the purpose of accomplishing such work, may by ordinance create suitable districts to be designated sprinkling or armor-coating districts and may order and direct the work, including preparatory grading, to be done upon any or all of the streets in the districts. The work shall be done upon contract in writing let upon advertisement to the lowest responsible bidder. Such advertisement shall specify the district or districts proposed to be so worked, especially describing such district or districts, and bids shall be made and contracts let with reference to such district or districts so specified. For the purpose of paying the cost of the work contemplated and contracted for, the city council may levy and assess the cost upon all lots, lands, and real estate in the district, such tax or assessment to be equal and uniform upon all front footage or property within or abutting upon the streets within the district so created. The assessment shall be a lien upon all such lots, lands, and real estate and shall be enforced and collected as a special assessment.

Source: Laws 1921, c. 116, art. III, § 54, p. 456; C.S.1922, § 3607; C.S.1929, § 14-355; R.S.1943, § 14-363; Laws 1991, LB 745, § 1; Laws 2015, LB361, § 2.

14-364 Paving repair plant; establishment; cost of operation; payment.

The city council may establish and maintain a paving repair plant and may pave or repair paving. The cost of such repairs may be paid from the funds of the city or may be assessed upon the abutting property, except that the cost may be assessed against abutting property only following the creation of a paving repair or repaving district established and assessed as a special assessment in the same manner provided for a sprinkling or armor-coating district by section 14-363. The assessable paving repairs shall be only those made with asphaltic concrete on streets in previously developed areas which were not constructed to city permanent design standards.

Source: Laws 1921, c. 116, art. III, § 55, p. 456; C.S.1922, § 3608; C.S.1929, § 14-356; R.S.1943, § 14-364; Laws 1991, LB 745, § 2; Laws 2015, LB361, § 3.

(g) STREETS, SIDEWALKS, AND HIGHWAYS**14-392 Streets; improvements; assessment of cost.**

For the purpose of covering in whole or in part the costs of any of the improvements and costs incident thereto, authorized in sections 14-384 to 14-3,127, including grading done in combination with any other improvements, the city may assess the property within the improvement district or the property benefited by change of grade or grading when not made in combination with other improvements, to the full extent of the special benefits thereby conferred upon the respective lots, tracts, and parcels of land, or if the city council finds that there are common benefits enjoyed by the public at large without reference to the ownership of property abutting or adjacent to the improvement or improvements, or that there is a common benefit to the property embraced within the district or districts, the city may assess the costs of such improvement or improvements against all the property included in such district or districts, according to such rules as the city council sitting as a board of equalization, shall adopt for the distribution or adjustment of the costs of the improvement or improvements. All such assessments shall be equalized, levied, and collected as special assessments.

Source: Laws 1959, c. 36, § 9, p. 199; Laws 1969, c. 60, § 5, p. 367; Laws 2015, LB361, § 4.

14-398 Streets; change of grade; special assessment; how determined.

Under the methods provided in sections 14-384 to 14-3,127 to grade streets, boulevards, highways, main thoroughfares, controlled-access facilities, connecting links, major traffic streets, alleys, and parts thereof, any number of intersecting and connecting streets reasonably required and proper and necessary to the better and improved use of the streets may be authorized to be graded in one and the same proceeding. The cost thereof as provided in sections 14-384 to 14-3,127 may be assessed upon property specially benefited as a special assessment. In such instances, in determining the sufficiency of either an authorized protest or petition, the total frontage of taxable property on all sides on all of the streets to be graded shall be taken into consideration.

Source: Laws 1959, c. 36, § 15, p. 201; Laws 2015, LB361, § 5.

14-3,102 Streets; improvements; notice; service; protest; effect; special assessment.

Whenever it is desired to make any improvement or improvements authorized in section 14-385, where the costs of such improvement or improvements are to be assessed against the adjacent and abutting property benefited thereby, and no petition has been filed therefor in accordance with section 14-391, the city for that purpose may propose such improvement or improvements stating the specific character of the improvement or improvements thus to be made. The city shall cause to be published in the official newspaper a brief notice of such proposal stating the character of the improvement or improvements proposed thereby, and shall give additional notice to the property owners in the district or districts, or proposed district or districts, as required by section 25-520.01. If within thirty days thereafter the owners of fifty-one percent of the taxable property abutting upon the street or streets, or part or parts thereof proposed to be improved protest against such project, such work shall not be done. In the absence of such protest, the city shall be authorized to proceed with the work as proposed. The cost and expense thereof, as provided by law, may be assessed against the property within the district or districts specially benefited to the extent of such benefits as a special assessment. Where assessment against the property within the district or districts specially benefited is not made, or where the improvement or improvements are on a main thoroughfare, major traffic street, or connecting link, or made pursuant to sections 14-3,103 to 14-3,106, this section shall not apply.

Source: Laws 1959, c. 36, § 19, p. 202; Laws 1963, c. 46, § 1, p. 222; Laws 1969, c. 60, § 7, p. 369; Laws 2015, LB361, § 6.

14-3,103 Sidewalks; construction or repair; required, when; assessment of cost; equalization.

The city may construct or repair sidewalks along any street or part thereof, or any boulevard or part thereof, of such material and in such manner as it deems necessary and assess the cost thereof upon abutting property. Such assessments except for temporary sidewalks and sidewalk repairs shall be equalized and levied as special assessments. The city shall cause the construction of sidewalks on at least one side of every major traffic street and main thoroughfare in the city, excluding freeways, expressways, controlled-access facilities, and other streets deemed by the city to demonstrate no or very limited demand for pedestrian use, and may assess the cost thereof upon abutting property. Such construction shall be completed within a reasonable time, based upon an annual review of construction program priorities and available funding sources.

Source: Laws 1959, c. 36, § 20, p. 203; Laws 1971, LB 237, § 2; Laws 1984, LB 992, § 1; Laws 2015, LB361, § 7.

14-3,106 Sidewalks; construction or repair; special assessment; failure of owner; effect.

In case the owner or owners shall fail to construct or repair such sidewalk as directed, the city may construct or repair such sidewalk or cause the same to be done and assess the cost thereof upon the abutting property as special assessments. Where the owner or owners of abutting property fail to keep in repair the sidewalk adjacent thereto, they shall be liable for all damages or injuries

occasioned or recovered by reason of the defective or dangerous condition of such sidewalk.

Source: Laws 1959, c. 36, § 23, p. 204; Laws 2015, LB361, § 8.

14-3,107 Streets; vacation; narrow; reversion to abutting owners; improvements; assessment of benefits; vacation of minimal secondary right-of-way; procedure.

(1) Except as provided in subsection (2) of this section, the city may vacate or narrow any street, highway, main thoroughfare, controlled-access facility, connecting link, boulevard, major traffic street, or alley upon petition of the owners of seventy-five percent of the taxable frontage feet abutting upon such street or alley proposed to be vacated and asking for such vacation, or the city, for purposes of construction of a controlled-access highway or to conform to a master plan of the city, may, without petition having been filed therefor, vacate any street or alley or any part thereof in the city. Whenever a street is vacated or narrowed, the part so vacated shall revert to the abutting owners on the respective sides thereof, except that if part or all of the vacated street lies within the State of Nebraska but one side or any part of the street is adjacent to the boundary of the State of Nebraska, all of the street lying within the State of Nebraska or that part lying within the State of Nebraska shall revert to the owner of the abutting property lying wholly within the State of Nebraska. The city may open, improve, and make passable any street, highway, boulevard, main thoroughfare, controlled-access facility, connecting link, major traffic street, or alley. For purposes of this subsection, open refers to the adaptation of the surface of the street to the needs of ordinary travel but does not necessarily require the grading to an established grade. The costs of any of the improvements mentioned in this subsection, except as otherwise provided in sections 14-384 to 14-3,127, to the extent of special benefits thereby conferred, may be assessed against the property specially benefited thereby as special assessments. When the city vacates all or any portion of a street, highway, main thoroughfare, controlled-access facility, connecting link, boulevard, major traffic street, or alley pursuant to this subsection, the city shall, within thirty days after the effective date of the vacation, file a certified copy of the vacating ordinance or resolution with the register of deeds for the county in which the vacated property is located to be indexed against all affected lots.

(2) The city may vacate any minimal secondary right-of-way in the manner described in this subsection. The city may vacate any segment of such right-of-way by ordinance without petition and without convening any committee for the purpose of determining any damages if all affected abutting properties have primary access to an otherwise open and passable public street right-of-way. An abutting property shall not be determined to have primary access if such abutting property has an existing garage and such garage is not accessible without altering or relocating such garage. Title to such vacated rights-of-way shall vest in the owners of abutting property and become a part of such property, each owner taking title to the center line of such vacated street or alley adjacent to such owner's property subject to the following: (a) There is reserved to the city the right to maintain, operate, repair, and renew sewers now existing there and (b) there is reserved to the public utilities and cable television systems the right to maintain, repair, renew, and operate installed water mains, gas mains, pole lines, conduits, electrical transmission lines, sound and signal transmission lines, and other similar services and equipment

and appurtenances above, on, and below the surface of the ground for the purpose of serving the general public or abutting properties, including such lateral connection or branch lines as may be ordered or permitted by the city or such other utility or cable television system and to enter upon the premises to accomplish such purposes at any and all reasonable times. The city shall, within thirty days after the effective date of the vacation, file a certified copy of the vacating ordinance or resolution with the register of deeds for the county in which the vacated property is located to be indexed against all affected lots. For purposes of this subsection, minimal secondary right-of-way means any street or alley which either is unpaved, has substandard paving, or has pavement narrower than sixteen feet and which is a secondary means of access to or from any property abutting the portion to be vacated.

Source: Laws 1959, c. 36, § 24, p. 204; Laws 1967, c. 43, § 1, p. 173; Laws 2001, LB 483, § 2; Laws 2003, LB 97, § 1; Laws 2015, LB361, § 9.

ARTICLE 4 CITY PLANNING, ZONING

Section

- 14-407. Zoning; exercise of powers; planning board or official; notice to military installation; notice to neighborhood association.
- 14-415. Building ordinance or regulations; enforcement; inspection; violations; penalty.
- 14-419. Building regulations; within three miles of corporate limits; jurisdiction of city council; powers granted.
- 14-420. Request for change in zoning; notice; requirements; failure to give; effect.

14-407 Zoning; exercise of powers; planning board or official; notice to military installation; notice to neighborhood association.

(1) A city of the metropolitan class shall exercise the powers conferred by sections 14-401 to 14-418 through such appropriate planning board or official as exists in such city.

(2) When the city is considering the adoption or amendment of a zoning ordinance or the approval of the platting or replatting of any development of real estate, the city shall notify any military installation which is located within the corporate boundary limits or the extraterritorial zoning jurisdiction of the city if the city has received a written request for such notification from the military installation. The planning board shall deliver the notification to the military installation at least ten days prior to the meeting of the planning board at which the proposal is to be considered.

(3) When the city is considering the adoption or amendment of a zoning ordinance, except for an amendment that serves only to correct a misspelling or other typographical error, the city shall notify any registered neighborhood association whose area of concern is located in whole or in part within the area that will be included in such zoning ordinance. 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. The planning board shall deliver the notification to the neighborhood association (a) in the manner requested by the neighborhood

association and (b) at least ten days prior to the meeting of the planning board at which the proposal is to be considered.

Source: Laws 1925, c. 45, § 7, p. 181; C.S.1929, § 14-410; R.S.1943, § 14-407; Laws 1959, c. 37, § 2, p. 212; Laws 2010, LB279, § 1; Laws 2016, LB700, § 1.
Effective date July 21, 2016.

Cross References

Planning board, extraterritorial member, see sections 14-373.01 and 14-373.02.

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 regulations 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.

14-419 Building regulations; within three miles of corporate limits; jurisdiction of city council; powers granted.

The city council, in cities of the metropolitan class, shall have the power by ordinance to regulate, within the corporate limits of the city or within three miles of the corporate limits, 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, and as to electric wiring, heating, plumbing, pipefitting, sewer connections, ventilation, size of habitable rooms, and the method of constructing buildings, and to provide for inspection thereof and building permits, (2) the removal and tearing down of buildings, dwellings, and other structures in such areas which constitute nuisances because of the dilapidated, unsafe, or rundown condition or conditions, and (3) except as to the United States of America, the State of Nebraska, any county of the state, or any city or village in the state, the nature,

kind, and manner of constructing streets, alleys, sidewalks, curbing or abridging curbs, driveway approaches constructed on public right-of-way, and sewers. Any building or construction code implemented under this section shall be adopted and enforced as provided in section 71-6406.

Source: Laws 1955, c. 21, § 1, p. 99; Laws 1965, c. 40, § 1, p. 233; Laws 2016, LB704, § 1.

Effective date July 21, 2016.

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.

ARTICLE 5

FISCAL MANAGEMENT, REVENUE, AND FINANCES

(c) STREET IMPROVEMENT; BONDS; GRADING; ASSESSMENTS

Section

14-537. Special assessments; when payable; rate of interest; collection and enforcement.

(g) PENSION BOARD

14-567. Pension board; duties; retirement plan reports.

(c) STREET IMPROVEMENT; BONDS; GRADING; ASSESSMENTS

14-537 Special assessments; when payable; rate of interest; collection and enforcement.

Special assessments for improving the streets, alleys, sewers, and sidewalks within any improvement district, except where otherwise provided, shall be made in accordance with this section. The total cost of improvements shall be levied at one time upon the property and become delinquent as provided in this

section. The city may require that the total amount of such assessment be paid in less than ten years if, in each year of the payment schedule, the maximum amount payable, excluding interest, is five hundred dollars. If the total amount is more than five thousand dollars, then it shall become delinquent as follows: One-tenth of the total amount shall be delinquent in fifty days after such levy; one-tenth in one year; one-tenth in two years; one-tenth in three years; one-tenth in four years; one-tenth in five years; one-tenth in six years; one-tenth in seven years; one-tenth in eight years; and one-tenth in nine years. Each of the installments except the first shall draw interest at a rate not to exceed the rate of interest specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, from the time of levy until the installment becomes delinquent and, after the installment becomes delinquent, shall draw interest at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, payable in advance, as in other cases of special assessments. Such special assessments shall also be collected and enforced as in other cases of special assessments.

Source: Laws 1921, c. 116, art. IV, § 25, p. 482; C.S.1922, § 3651; C.S.1929, § 14-528; Laws 1933, c. 136, § 12, p. 523; C.S.Supp.,1941, § 14-528; R.S.1943, § 14-537; Laws 1959, c. 38, § 1, p. 214; Laws 1963, c. 48, § 1, p. 224; Laws 1980, LB 933, § 4; Laws 1981, LB 167, § 5; Laws 1991, LB 745, § 5; Laws 2015, LB361, § 10.

(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.

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.

ARTICLE 17

PARKING FACILITIES

(c) OFFSTREET PARKING

Section

14-1733. Offstreet parking; cost; revenue bonds; parking district assessments; gifts, leases, devises, grants, funds, agreements; conditions; procedure.

(c) OFFSTREET PARKING

14-1733 Offstreet parking; cost; revenue bonds; parking district assessments; gifts, leases, devises, grants, funds, agreements; conditions; procedure.

In order to pay the cost required by any purchase, construction, or lease of property and equipping of such facilities, or the enlargement of presently owned facilities, the city may: (1) Issue revenue bonds to provide the funds for such improvements. Such revenue bonds shall be a lien only upon the revenue and earnings of parking facilities and onstreet parking meters. Such revenue bonds shall mature in no more than forty years and shall be sold at public or private sale. Any such revenue bonds which may be issued shall not be included in computing the maximum amount of bonds which the issuing city of the metropolitan class may be authorized to issue under its charter or any statute of this state. Such revenue bonds may be issued and sold or delivered to the contractor at par and accrued interest for the amount of work performed. The city may pledge the revenue from any facility or parking meters as security for the bonds; (2) upon an initiative petition of the majority of the record owners of taxable property included in a proposed parking district, create, by ordinance, parking districts and delineate the boundaries thereof. If the city council finds that there are common benefits enjoyed by the public at large without reference to the ownership of property, or that there is a common benefit to the property encompassed within a parking district or districts, the city may assess the costs of such improvement or improvements as special assessments against all the property included in such district or districts, according to such rules as the city council, sitting as a board of equalization, shall adopt for the distribution or adjustment of the costs of such improvement or improvements. All such special assessments shall be equalized, levied, and collected as special assessments. Special assessments levied pursuant to this section shall be due, payable, and bear interest as the city council shall determine by ordinance. Installment payments shall not be allowed for any period in excess of twenty years; or (3) use, independently or together with revenue derived pursuant to subdivision (1) or (2) of this section, gifts, leases, devises, grants, federal or state funds, or agreements with other public entities.

No real property shall be included in any parking district created pursuant to this section when the zoning district in which such property is located is a residential zoning district or a district where the predominant type of land use authorized is residential in nature.

Source: Laws 1971, LB 238, § 3; Laws 1977, LB 238, § 2; Laws 1979, LB 181, § 1; Laws 1980, LB 703, § 1; Laws 2015, LB361, § 11.

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.

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.
- 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.

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.

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.

(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. 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.

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; Laws 2015, LB40, § 1.

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.

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.



CHAPTER 15

CITIES OF THE PRIMARY CLASS

Article.

2. General Powers. 15-202 to 15-268.
7. Public Improvements. 15-709 to 15-718.
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.
- 15-211. Lots; drainage; costs; special assessment.
- 15-241. Cemeteries; conveyance of lots.
- 15-268. Weeds; destruction and removal; procedure; special assessment.

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.

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.

15-211 Lots; drainage; costs; special assessment.

A city of the primary class may, by ordinance, require any and all lots or pieces of ground within the city or within its three-mile zoning jurisdiction to be drained or filled so as to prevent stagnant water or any other nuisance accumulating thereon. Upon the failure of the owners of such lots or pieces of ground to fill or drain the lots or pieces when so required, the council may cause such lots or pieces of ground to be drained or filled, and the cost and expenses thereof shall be levied upon the property so filled or drained and collected as a special assessment.

Source: Laws 1901, c. 16, § 129, XII, p. 130; R.S.1913, § 4424; C.S.1922, § 3808; C.S.1929, § 15-211; R.S.1943, § 15-211; Laws 2015, LB266, § 3; Laws 2015, LB361, § 12.

15-241 Cemeteries; conveyance of lots.

A city of the primary class may convey cemetery lots owned by such city by certificates signed by the mayor and countersigned by the clerk under seal of the city, specifying that the person to whom the same is issued is owner of the lot or lots described therein by number as laid down on such plat or map, for the purpose of interment. Such certificate shall vest in the proprietor, his or her heirs and assigns, a right in fee simple to such lot or lots for the sole purpose of interment under the regulations of the city council.

Source: Laws 1901, c. 16, § 129, XLI, p. 137; R.S.1913, § 4451; C.S.1922, § 3836; C.S.1929, § 15-239; R.S.1943, § 15-241; Laws 2015, LB241, § 1.

15-268 Weeds; destruction and removal; procedure; special assessment.

A city of the primary class may provide for the destruction and removal of weeds and worthless vegetation growing upon any lot or lots or lands within the corporate limits of such city or within its three-mile zoning jurisdiction or upon the streets and alleys abutting upon any lot or lots or lands, and such city may require the owner or owners of such lot or lots or lands to destroy and remove such weeds and worthless vegetation therefrom and from the streets and alleys abutting thereon. If, after five days' notice by publication, by certified United States mail, or by the conspicuous posting of the notice on the lot or

land upon which the nuisance exists, the owner or owners fail, neglect, or refuse to destroy or remove the nuisance, the city, through its proper officers, shall destroy and remove the nuisance, or cause the nuisance to be destroyed or removed, from the lot or lots or lands and streets and alleys abutting thereon and shall assess the cost thereof against such lot or lots or lands as a special assessment.

Source: Laws 1915, c. 215, § 1, p. 484; C.S.1922, § 3863; C.S.1929, § 15-266; R.S.1943, § 15-268; Laws 1988, LB 973, § 1; Laws 2009, LB495, § 2; Laws 2015, LB266, § 4; Laws 2015, LB361, § 13.

ARTICLE 7 PUBLIC IMPROVEMENTS

Section

- 15-709. Streets; improvements; utility service connections; duty of landowner; special assessment.
 15-713. Curbing gutter bonds; special assessment.
 15-718. Sewers and drains; construction; assessment of benefits; collection.

15-709 Streets; improvements; utility service connections; duty of landowner; special assessment.

The city council may order the owner of lots abutting on a street that is to be paved to lay sewer, gas, and water service pipes to connect mains. If the owner fails to lay such pipes, after five days' notice by publication in a newspaper of general circulation in the city, or in place thereof by personal service of such notice, as the council in its discretion may direct, the council may cause the sewer, gas, and water service pipes to be laid as part of the work of the improvement district and assess the cost thereof on the property of such owner as a special assessment. Such assessment to pay the cost of the pavement or improvements in the improvement district shall be collected and enforced as a special assessment.

Source: Laws 1901, c. 16, § 97, p. 106; Laws 1905, c. 16, § 9, p. 209; Laws 1913, c. 5, p 4, p. 61; R.S.1913, § 4524; Laws 1915, c. 82, § 1, p. 209; Laws 1917, c. 94, § 1, p. 250; C.S.1922, § 3910; C.S.1929, § 15-703; R.S.1943, § 15-709; Laws 2015, LB361, § 14.

15-713 Curbing gutter bonds; special assessment.

To pay the cost of curbing and guttering public ways the city council may issue bonds called curbing gutter bonds, district No., payable in not more than twenty years or at the option of the city at any interest-paying date, and assess the cost, not exceeding the special benefits, on abutting property as special assessments. Such assessments shall become due, delinquent, draw interest, and be subject to like penalty and collected as special assessments and shall constitute a sinking fund for the payment of such bonds. No paving bonds and no curbing gutter bonds shall be sold or delivered until necessary to make payments for work done on such improvements.

Source: Laws 1901, c. 16, § 97, p. 107; Laws 1905, c. 16, § 9, p. 210; Laws 1913, c. 5, § 4, p. 60; R.S.1913, § 4524; Laws 1915, c. 82,

§ 1, p. 210; Laws 1917, c. 94, § 1, p. 251; C.S.1922, § 3910; C.S.1929, § 15-703; R.S.1943, § 15-713; Laws 1969, c. 51, § 24, p. 287; Laws 2015, LB361, § 15.

15-718 Sewers and drains; construction; assessment of benefits; collection.

Special assessments may be levied by the city council for the purpose of paying the cost of constructing such sewers and drains within the city. Such assessments shall be levied upon the real estate within the sewerage districts in which such sewer or drain may be, to the extent of benefits to such property by reason of such improvements. The benefits to such property shall be determined by the city council as in other cases of special assessments. All assessments made for sewerage or drainage purposes shall be levied and collected as special assessments.

Source: Laws 1901, c. 16, § 101, p. 108; Laws 1907, c. 9, § 10, p. 81; R.S.1913, § 4528; C.S.1922, § 3914; C.S.1929, § 15-707; R.S. 1943, § 15-718; Laws 1969, c. 66, § 7, p. 381; Laws 2015, LB361, § 16.

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 for such permits, (2) the removal and tearing down of buildings, dwellings, and other structures in such areas which constitute nuisances because of the dilapidated, unsafe, or rundown 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. Any building or construction code implemented under this section shall be adopted and enforced as provided in section 71-6406.

Source: Laws 1963, c. 57, § 3, p. 240; Laws 1965, c. 40, § 2, p. 233; Laws 2013, LB88, § 1; Laws 2016, LB704, § 2.
Effective date July 21, 2016.

**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.

CHAPTER 16

CITIES OF THE FIRST CLASS

Article.

1. Incorporation, Extensions, Additions, Wards. 16-102 to 16-129.
2. General Powers. 16-202 to 16-253.
3. Officers, Elections, Employees. 16-302.01 to 16-327.
4. Council and Proceedings. 16-401 to 16-406.
5. Contracts and Franchises. 16-501 to 16-503.
6. Public Improvements.
 - (a) Condemnation Proceedings. 16-606, 16-607.
 - (b) Streets. 16-609 to 16-655.
 - (d) Sidewalks. 16-661 to 16-666.
 - (e) Water, Sewer, and Drainage Districts. 16-667 to 16-672.
 - (f) Storm Sewer Districts. 16-672.01 to 16-672.11.
 - (g) Public Utilities. 16-676 to 16-694.
 - (h) Parks. 16-695 to 16-697.02.
 - (i) Markets. 16-698, 16-699.
 - (j) Public Buildings. 16-6,100 to 16-6,100.05.
 - (k) Waterworks; Gas Plant. 16-6,101.
 - (l) Sanitary Sewer and Water Main Connection District. 16-6,102 to 16-6,105.
 - (m) Flood Control. 16-6,107 to 16-6,109.
7. Fiscal Management, Revenue, and Finances. 16-701 to 16-729.
8. Offstreet Parking. 16-801 to 16-810.
9. Suburban Development. 16-901 to 16-905.
10. Retirement Systems.
 - (a) Police Officers Retirement Act. 16-1002 to 16-1019.
 - (b) Firefighters Retirement. 16-1021 to 16-1038.

ARTICLE 1

INCORPORATION, EXTENSIONS, ADDITIONS, WARDS

Section

- 16-102. City of the second class; attainment of required population; incorporation as city of the first class.
- 16-103. Reorganization as city of the first class; transitional provisions.
- 16-104. Wards; election districts; staggering of terms; procedure.
- 16-105. Wards; election precincts.
- 16-117. Annexation; powers; procedure; hearing.
- 16-119. Annexation; extraterritorial property use; continuation.
- 16-120. Annexation; inhabitants; services; when.
- 16-122. Annexation of city of the second class or village; conditions.
- 16-124. Annexation; succession to property, contracts, obligations, and choses in action.
- 16-125. Annexation; taxes, assessments, fines, licenses, fees, claims, demands; paid to and collection by city of the first class.
- 16-126. Taxes and special assessments; annexation; effect.
- 16-127. Annexation; pending actions at law or in equity; prosecution and defense by city of the first class.
- 16-128. Annexation; records, books, bonds, funds, and property; property of city of the first class; officers; termination.
- 16-129. Disconnection of property from corporate limits of city; procedure.

16-102 City of the second class; attainment of required population; incorporation as city of the first class.

Whenever any city of the second class attains a population of more than five thousand inhabitants as provided by section 16-101, the mayor of such city shall certify such fact to the Secretary of State who upon the filing of such certificate shall by proclamation declare such city to be a city of the first class. Upon such proclamation being made by the Secretary of State, every officer of such city shall, within thirty days thereafter, qualify and give bond as provided by sections 16-219, 16-304, and 16-318.

Source: Laws 1901, c. 18, § 2, p. 227; R.S.1913, § 4805; C.S.1922, § 3973; C.S.1929, § 16-102; R.S.1943, § 16-102; Laws 1984, LB 1119, § 1; Laws 2016, LB704, § 3.
Effective date July 21, 2016.

16-103 Reorganization as city of the first class; transitional provisions.

(1) After the proclamation under section 16-102, the city shall be governed by the laws of this state applicable to cities of the first class, except that the government of such city shall continue as organized at the date of such proclamation until the reorganization as a city of the first class.

(2) The mayor and city council members of the city of the second class shall be deemed to be the mayor and city council members of the city of the first class on the date the proclamation is issued. All ordinances, bylaws, acts, rules, regulations, obligations, and proclamations existing and in force in or with respect to the city of the second class at the time of its incorporation as a city of the first class shall remain in full force and effect after such incorporation until repealed or modified by the city within one year after the date of the filing of the certificate pursuant to section 16-102.

(3) For the purpose of electing city officials under the provisions of law relating to cities of the first class, the terms of office for such officials shall be established by the city council so as to conform with the intent and purpose of section 32-534.

Source: Laws 1901, c. 18, § 3, p. 227; R.S.1913, § 4806; C.S.1922, § 3974; C.S.1929, § 16-103; R.S.1943, § 16-103; Laws 1984, LB 1119, § 2; Laws 1990, LB 957, § 1; Laws 1994, LB 76, § 482; Laws 2016, LB704, § 4.
Effective date July 21, 2016.

16-104 Wards; election districts; staggering of terms; procedure.

If a city of the second class becomes a city of the first class, the mayor and city council shall divide the city into not less than three wards, as compact in form and equal in population as may be, the boundaries of which shall be defined by ordinance, to take effect at the next annual city election after reorganization except as provided in section 32-553. Each ward shall constitute an election district, except that when any ward has over five hundred legal voters, the mayor and city council may divide such ward into two or more election districts. If it is necessary to establish the staggering of terms by nominating and electing council members for terms of different durations at the same elections, the candidates receiving the greatest number of votes shall be nominated and have their names placed on the general election ballot.

Source: Laws 1901, c. 18, § 9, p. 231; R.S.1913, § 4807; C.S.1922, § 3975; C.S.1929, § 16-104; R.S.1943, § 16-104; Laws 1980, LB 629, § 1; Laws 1983, LB 308, § 1; Laws 1990, LB 957, § 2; Laws

1994, LB 76, § 483; Laws 2002, LB 970, § 1; Laws 2016, LB704, § 5.

Effective date July 21, 2016.

16-105 Wards; election precincts.

Precinct lines in any part of any county not under township organization, embraced within the corporate limits of a city of the first class, shall correspond with the ward lines of the city, and such precinct shall correspond in number with the ward of the city and be coextensive with the ward. When a ward is divided into election districts, the precinct corresponding with such ward shall be divided so as to correspond with the election districts.

Source: Laws 1901, c. 18, § 10, p. 231; R.S.1913, § 4808; C.S.1922, § 3976; C.S.1929, § 16-105; R.S.1943, § 16-105; Laws 1972, LB 1032, § 101; Laws 2016, LB704, § 6.

Effective date July 21, 2016.

16-117 Annexation; powers; procedure; hearing.

(1) Except as provided in sections 13-1111 to 13-1120 and 16-130 and subject to this section, the mayor and city council of a city of the first class may by ordinance at any time include within the corporate limits of such city any contiguous or adjacent lands, lots, tracts, streets, or highways as are urban or suburban in character and in such direction as may be deemed proper. Such grant of power shall not be construed as conferring power upon the mayor and city council to extend the limits of a city of the first class over any agricultural lands which are rural in character.

(2) The invalidity of the annexation of any tract of land in one ordinance shall not affect the validity of the remaining tracts of land which are annexed by the ordinance and which otherwise conform to state law.

(3) The city council proposing to annex land under the authority of this section shall first adopt both a resolution stating that the city is proposing the annexation of the land and a plan for extending city services to the land. The resolution shall state:

(a) The time, date, and location of the public hearing required by subsection (5) of this section;

(b) A description of the boundaries of the land proposed for annexation; and

(c) That the plan of the city for the extension of city services to the land proposed for annexation is available for inspection during regular business hours in the office of the city clerk.

(4) The plan adopted by the city council shall contain sufficient detail to provide a reasonable person with a full and complete understanding of the proposal for extending city services to the land proposed for annexation. The plan shall (a) state the estimated cost impact of providing the services to such land, (b) state the method by which the city plans to finance the extension of services to the land and how any services already provided to the land will be maintained, (c) include a timetable for extending services to the land proposed for annexation, and (d) include a map drawn to scale clearly delineating the land proposed for annexation, the current boundaries of the city, the proposed boundaries of the city after the annexation, and the general land-use pattern in the land proposed for annexation.

(5) A public hearing on the proposed annexation shall be held within sixty days following the adoption of the resolution proposing to annex land to allow the city council to receive testimony from interested persons. The city council may recess the hearing, for good cause, to a time and date specified at the hearing.

(6) A copy of the resolution providing for the public hearing shall be published in a legal newspaper in or of general circulation in the city at least once not less than ten days preceding the date of the public hearing. A map drawn to scale delineating the land proposed for annexation shall be published with the resolution. A copy of the resolution providing for the public hearing shall be sent by first-class mail following its passage to the school board of any school district in the land proposed for annexation.

(7) Any owner of property contiguous or adjacent to a city of the first class may by petition request that such property be included within the corporate limits of such city. The mayor and city council may include such property within the corporate limits of the city without complying with subsections (3) through (6) of this section.

(8) Notwithstanding the requirements of this section, the mayor and city council are not required to approve any petition requesting annexation or any resolution or ordinance proposing to annex land pursuant to this section.

Source: Laws 1967, c. 64, § 1, p. 213; Laws 1989, LB 421, § 1; Laws 2007, LB11, § 1; Laws 2009, LB495, § 3; Laws 2016, LB704, § 7.

Effective date July 21, 2016.

16-119 Annexation; extraterritorial property use; continuation.

Any extraterritorial zoning regulations, property use regulations, or other laws, codes, rules, or regulations imposed upon any annexed lands by the city before such annexation shall continue in full force and effect until otherwise changed.

Source: Laws 1967, c. 64, § 3, p. 214; Laws 2016, LB704, § 8.

Effective date July 21, 2016.

16-120 Annexation; inhabitants; services; when.

The inhabitants of territories annexed by a city of the first class shall receive substantially the services of other inhabitants of such city as soon as practicable. Adequate plans and necessary city council action to furnish such services shall be adopted not later than one year after the date of annexation, and such inhabitants shall be subject to the ordinances and regulations of such city, except that the one-year period shall be tolled pending final court decision in any court action to contest such annexation.

Source: Laws 1967, c. 64, § 4, p. 214; Laws 1989, LB 421, § 2; Laws 2016, LB704, § 9.

Effective date July 21, 2016.

16-122 Annexation of city of the second class or village; conditions.

In addition to existing annexation powers, the mayor and city council of any city of the first class may by ordinance annex any village or city of the second

class which is entirely surrounded by such city of the first class, if the following conditions exist:

(1) The city has water mains adjacent to the village or city of the second class which are available for extension into and have capacity to serve the village or city of the second class;

(2) The city has sanitary sewer lines adjacent to the village or city of the second class which are available for extension into and have capacity to serve the village or city of the second class;

(3) The city has water and sewer treatment facilities which have the capacity to serve the village or city of the second class; and

(4) The city has police, fire, and snow removal facilities which have the capacity to serve the village or city of the second class.

In determining whether a village or city of the second class is entirely surrounded by a city for annexation purposes, any land adjacent to the village or city of the second class which is legally immune from annexation by either the city or the village, or city of the second class, shall not be considered if the village or city of the second class is otherwise surrounded by the city.

Source: Laws 1969, c. 72, § 1, p. 394; Laws 2016, LB704, § 10.
Effective date July 21, 2016.

16-124 Annexation; succession to property, contracts, obligations, and choses in action.

Whenever any city of the first class extends its boundaries so as to annex any village or city of the second class, the charter, laws, ordinances, powers, and government of such city of the first class shall at once extend over the territory within any village or city of the second class so annexed. Such city of the first class shall succeed to all the property and property rights of every kind, contracts, obligations, and choses in action of every kind held by or belonging to the village or city of the second class so annexed, and it shall be liable for and assume and carry out all valid contracts, obligations, franchises, and licenses of any such village or city of the second class so annexed. Any obligations incurred by such village or city of the second class for water, paving, sewer, or sewer treatment purposes shall remain the obligation of the real property in such village or city of the second class as its boundaries existed immediately prior to such annexation. Such village or city of the second class so annexed shall be deemed fully compensated by virtue of such annexation and the assumption of its obligations and contracts for all its property and property rights of every kind so acquired.

Source: Laws 1969, c. 72, § 3, p. 395; Laws 2016, LB704, § 11.
Effective date July 21, 2016.

16-125 Annexation; taxes, assessments, fines, licenses, fees, claims, demands; paid to and collection by city of the first class.

All taxes, assessments, fines, licenses, fees, claims, and demands of every kind assessed or levied against persons or property within any village or city of the second class annexed under section 16-122 shall be paid to and collected by the city of the first class.

Source: Laws 1969, c. 72, § 4, p. 395; Laws 2016, LB704, § 12.
Effective date July 21, 2016.

16-126 Taxes and special assessments; annexation; effect.

All taxes and special assessments which a village or city of the second class annexed under section 16-122 was authorized to levy or assess and which are not levied or assessed at the time of such annexation for any kind of public improvements made or in process of construction or contracted for, may be levied or assessed by the city of the first class. Such city of the first class shall have power to reassess or relevy all special assessments or taxes levied or assessed by any such village or city of the second class so annexed where such village or city of the second class is authorized to make reassessments or relevies of such taxes and assessments.

Source: Laws 1969, c. 72, § 5, p. 395; Laws 2016, LB704, § 13.
Effective date July 21, 2016.

16-127 Annexation; pending actions at law or in equity; prosecution and defense by city of the first class.

All actions at law or in equity pending in any court in favor of or against any village or city of the second class annexed under section 16-122 at the time such annexation takes effect shall be prosecuted by or defended by the city of the first class. All rights of action existing against any village or city of the second class annexed under section 16-122 at the time of such annexation or accruing thereafter on account of any transaction had with or under any law or ordinance of such village or city of the second class may be prosecuted against the city of the first class.

Source: Laws 1969, c. 72, § 6, p. 396; Laws 2016, LB704, § 14.
Effective date July 21, 2016.

16-128 Annexation; records, books, bonds, funds, and property; property of city of the first class; officers; termination.

All officers of any village or city of the second class annexed under section 16-122 having books, papers, records, bonds, funds, effects, or property of any kind under their control belonging to any such village or city of the second class, shall upon taking effect of such annexation deliver the books, papers, records, bonds, funds, effects, or property to the respective officers of the city of the first class as may be by law or ordinance or limitation of such city entitled or authorized to receive such items. Upon such annexation taking effect, the terms and tenure of all offices and officers of any such village or city of the second class shall terminate and entirely cease.

Source: Laws 1969, c. 72, § 7, p. 396; Laws 2016, LB704, § 15.
Effective date July 21, 2016.

16-129 Disconnection of property from corporate limits of city; procedure.

Whenever any person or persons owning any real property within and adjacent to the corporate limits of any city of the first class desire to have such property disconnected from the city, they may file a request with the city council asking that such territory be detached. The request shall contain the legal description of the property sought to be detached. If the city council determines that the property meets the requirements of this section and that part or all thereof ought to be detached, it shall by a majority vote of its

members order such property detached from the city. A certified copy of such order shall be filed by the city clerk in the office of the register of deeds.

Source: Laws 1971, LB 478, § 2; Laws 2016, LB704, § 16.
Effective date July 21, 2016.

ARTICLE 2 GENERAL POWERS

Section	
16-202.	Real estate; conveyance; how effected; remonstrance; procedure; hearing.
16-205.	License or occupation tax; power to levy; exceptions.
16-206.	Dogs and other animals; regulation; license tax; enforcement.
16-207.	Streets and sidewalks; removal of obstructions; trees; declaration of nuisance; procedure; special assessment.
16-212.	Railroads; safety regulations; power to prescribe.
16-213.	Money; power to borrow.
16-214.	Bonds; refunding indebtedness.
16-217.	Officers; removal; vacancies; how filled.
16-218.	Officers; regulation.
16-219.	Officers; bonds or insurance; restrictions upon officers as sureties.
16-220.	Officers; reports; required; when.
16-221.	Watercourses; surface waters; regulation.
16-222.	Fire department; establishment authorized; fire prevention; regulations.
16-222.02.	Employment of full-time fire chief; appointment; duties.
16-225.	Police; regulation; penalties; power to prescribe.
16-226.	Billiard halls; bowling alleys; disorderly houses; gambling; regulation.
16-227.	Riots; disorderly conduct; use of explosives; weapons; vagabonds; lights; bonfires; regulation.
16-229.	Vagrants; pickpockets; other offenders; punishment.
16-230.	Drainage; nuisance; weeds; litter; removal; notice; action by city council; hearing; violation; penalty; civil action; special assessment.
16-231.	Health; nuisances; regulation.
16-232.	Excavations; regulation.
16-233.	Public buildings; safety regulations; licensing; violations; penalty.
16-236.	Pounds; erection; keepers.
16-238.	Spread of disease; regulation; board of health; creation; powers; duties.
16-239.	Hospitals; jails; other institutions; erection; regulation.
16-240.	Health; sanitary regulations.
16-241.	Cemeteries; hospital grounds; waterworks; acquisition; control.
16-243.	Cemeteries; lots; how conveyed; title.
16-246.	General ordinances; authorized; jurisdiction.
16-247.	Ordinances; revision; publication.
16-249.	Streets, alleys, bridges, and sewers; construction and maintenance.
16-250.	Sidewalks; sewers; drains; construction and repair; special assessments.
16-251.	Libraries and museums; establishment; maintenance; powers and duties of mayor and city council.
16-253.	Mayor and city council; supplemental powers; authorized.

16-202 Real estate; conveyance; how effected; remonstrance; procedure; hearing.

The power to sell and convey any real estate owned by a city of the first class, including park land, except real estate used in the operation of public utilities and except real estate for state armory sites for the use of the State of Nebraska as expressly provided in section 16-201, shall be exercised by ordinance directing the conveyance of such real estate and the manner and terms thereof. Notice of such sale and the terms thereof shall be published for three consecutive weeks in a legal newspaper in or of general circulation in such city immediately after the passage and publication of such ordinance.

If within thirty days after the passage and publication of such ordinance a remonstrance petition against such sale is signed by registered voters of the city equal in number to thirty percent of the registered voters of the city voting at the last regular city election held therein and is filed with the city council, the property shall not then, nor within one year thereafter, be sold. If the date for filing the petition falls upon a Saturday, Sunday, or legal holiday, the signatures shall be collected within the thirty-day period, but the filing shall be considered timely if filed or postmarked on or before the next business day. Upon the receipt of the petition, the city council, with the aid and assistance of the election commissioner or county clerk, shall determine the validity and sufficiency of signatures on the petition. The city council shall deliver the petition to the election commissioner or county clerk by hand carrier, by use of law enforcement officials, or by certified mail, return receipt requested. Upon receipt of the petition, the election commissioner or county clerk shall issue to the city council a written receipt that the petition is in the custody of the election commissioner or county clerk. The election commissioner or county clerk shall compare the signature of each person signing the petition with the voter registration records to determine if each signer was a registered voter on or before the date on which the petition was filed with the city council. The election commissioner or county clerk shall also compare the signer's printed name, street and number or voting precinct, and city, village, or post office address with the voter registration records to determine whether the signer was a registered voter. The signature and address shall be presumed to be valid only if the election commissioner or county clerk determines that the printed name, street and number or voting precinct, and city, village, or post office address matches the registration records and that the registration was received on or before the date on which the petition was filed with the city council. The determinations of the election commissioner or county clerk may be rebutted by any credible evidence which the city council finds sufficient. The express purpose of the comparison of names and addresses with the voter registration records, in addition to helping to determine the validity of the petition, the sufficiency of the petition, and the qualifications of the signer, shall be to prevent fraud, deception, and misrepresentation in the petition process. Upon completion of the comparison of names and addresses with the voter registration records, the election commissioner or county clerk shall prepare in writing a certification under seal setting forth the name and address of each signer found not to be a registered voter and the signature page number and line number where the name is found, and if the reason for the invalidity of the signature or address is other than the nonregistration of the signer, the election commissioner or county clerk shall set forth the reason for the invalidity of the signature. If the election commissioner or county clerk determines that a signer has affixed his or her signature more than once to the petition and that only one person is registered by that name, the election commissioner or county clerk shall prepare in writing a certification under seal setting forth the name of the duplicate signature and shall count only the earliest dated signature. The election commissioner or county clerk shall certify to the city council the number of valid signatures necessary to constitute a valid petition. The election commissioner or county clerk shall deliver the petition and the certifications to the city council within forty days after the receipt of the petition from the city council. The delivery shall be by hand carrier, by use of law enforcement officials, or by certified mail, return receipt requested. Not more than twenty signatures on one signature page shall be counted.

The city council shall, within thirty days after the receipt of the petition and certifications from the election commissioner or county clerk, hold a public hearing to review the petition and certifications and receive testimony regarding them. The city council shall, following the hearing, vote on whether or not the petition is valid and shall uphold the petition if sufficient valid signatures have been received.

Source: Laws 1901, c. 18, § 8, p. 230; R.S.1913, § 4817; C.S.1922, § 3985; C.S.1929, § 16-202; Laws 1935, Spec. Sess., c. 10, § 7, p. 75; Laws 1937, c. 27, § 1, p. 148; Laws 1941, c. 130, § 13, p. 497; C.S.Supp.,1941, § 16-202; R.S.1943, § 16-202; Laws 1963, c. 60, § 2, p. 252; Laws 1988, LB 793, § 4; Laws 1993, LB 59, § 1; Laws 1997, LB 230, § 1; Laws 2016, LB704, § 17.
Effective date July 21, 2016.

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.

16-206 Dogs and other animals; regulation; license tax; enforcement.

A city of the first class may collect a license tax from the owners and harborers of dogs and other animals in an amount which shall be determined by the city council and enforce the license tax by appropriate penalties. Any licensing provision shall comply with subsection (2) of section 54-603 for service animals. The city may cause the destruction of any dog or other animal for which the owner or harborer shall refuse or neglect to pay such license tax. The city may regulate, license, or prohibit the running at large of dogs and other animals and guard against injuries or annoyances therefrom and authorize the destruction of such dogs and other animals when running at large contrary to any ordinance.

Source: Laws 1901, c. 18, § 48, X, p. 247; R.S.1913, § 4822; C.S.1922, § 3990; C.S.1929, § 16-207; R.S.1943, § 16-206; Laws 1959, c. 59, § 1, p. 253; Laws 1971, LB 478, § 1; Laws 1981, LB 501, § 3;

Laws 1997, LB 814, § 4; Laws 2008, LB806, § 3; Laws 2016, LB704, § 18.

Effective date July 21, 2016.

16-207 Streets and sidewalks; removal of obstructions; trees; declaration of nuisance; procedure; special assessment.

(1) A city of the first class may by ordinance provide for the removal of all obstructions from the sidewalks, curbstones, gutters, and crosswalks at the expense of the owners or occupants of the grounds fronting thereon or at the expense of the person placing the obstruction and may require and regulate the planting and protection of shade trees in and along the streets and the trimming and removing of the trees.

(2) A city of the first class may by ordinance declare it to be a nuisance for a property owner to permit, allow, or maintain any dead or diseased trees within the right-of-way of streets within the corporate limits of the city or within its extraterritorial zoning jurisdiction. Notice to abate and remove such nuisance and notice of the right to a hearing and the manner in which it may be requested 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 the 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 the work done to abate and remove the dead or diseased trees. If the owner or occupant of the lot or piece of ground does not request a hearing with the city within five days after receipt of such notice or fails to comply with the order to abate and remove the nuisance, the city may have such work done. The city may levy and assess all or any portion of the costs and expenses of the work upon the lot or piece of ground so benefited as a special assessment.

(3) The city may also regulate the building of bulkheads, cellars, basements, ways, stairways, railways, windows, doorways, awnings, hitching posts and rails, lampposts, awning posts, and all other structures projecting upon or over any adjoining excavation through and under the sidewalks in the city.

Source: Laws 1901, c. 18, § 48, XI, p. 247; R.S.1913, § 4823; C.S.1922, § 3991; C.S.1929, § 16-208; R.S.1943, § 16-207; Laws 1994, LB 695, § 5; Laws 2015, LB266, § 5; Laws 2015, LB361, § 17; Laws 2016, LB703, § 1; Laws 2016, LB704, § 19.

Effective date July 21, 2016.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB703, section 1, with LB704, section 19, to reflect all amendments.

16-212 Railroads; safety regulations; power to prescribe.

A city of the first class by ordinance may regulate the crossing of railway tracks and provide precautions and prescribe rules regulating the same, regulate the running of railway engines, cars, and trucks within the limits of such city, and prescribe rules relating thereto, and govern the speed thereof, and

make other and further provisions, rules, and restrictions to prevent accidents at the crossings and on the tracks of railways, and to prevent fires from engines. A city of the first class may regulate and prescribe the manner of running street cars, require the heating and cleaning of such cars, and fix and determine the fare charged, require the lighting of any railways within the city in such manner as the city shall prescribe, and fix and determine the number, style, and size of the lampposts, burners, lamps, and all other fixtures and apparatus necessary for such lighting, and the points of location for such lampposts. If the company owning or operating such railways shall fail to comply with such requirements, the city council may cause such requirements to be complied with by giving notice of such action and may assess the expense of complying with such requirements against such company, and the expense shall constitute a lien on any real estate belonging to such company, and lying within such city, and may be collected in the same manner as taxes for general purposes. The city may (1) require railroad companies to keep flagmen at all railroad crossings of streets, and provide protection against injury to persons and property in the use of such railroads, (2) compel any railroad to raise or lower their railroad tracks to conform to the general grade, which may at any time be established by such city, and where such tracks run lengthwise through or over any street, alley, or highway, to keep the tracks level with the street surface, and (3) compel and require railroad companies to keep open the streets, and to construct and keep in repair ditches, drains, sewers, and culverts, along and under their railroad tracks, and to pave their whole right-of-way on all paved streets, and keep the right-of-way and tracks in repair.

Source: Laws 1901, c. 18, § 48, XVI, p. 249; R.S.1913, § 4828; C.S.1922, § 3996; C.S.1929, § 16-213; R.S.1943, § 16-212; Laws 2016, LB704, § 20.

Effective date July 21, 2016.

16-213 Money; power to borrow.

A city of the first class may borrow money on the credit of the city and pledge the credit, revenue, and public property of the city for the payment thereof when authorized in the manner provided by law.

Source: Laws 1901, c. 18, § 48, XVII, p. 249; R.S.1913, § 4829; C.S.1922, § 3997; C.S.1929, § 16-214; R.S.1943, § 16-213; Laws 2016, LB704, § 21.

Effective date July 21, 2016.

16-214 Bonds; refunding indebtedness.

A city of the first class by ordinance may provide for issuing bonds, for the purpose of funding any and all indebtedness of the city, due or to become due. Floating indebtedness shall be funded only by authority of a vote of the people, but the mayor and city council may by a two-thirds vote issue bonds to pay off any bonded debt without a vote of the people.

Source: Laws 1901, c. 18, § 48, XVIII, p. 250; R.S.1913, § 4830; Laws 1919, c. 34, § 1, p. 112; C.S.1922, § 3998; C.S.1929, § 16-215; R.S.1943, § 16-214; Laws 1969, c. 51, § 26, p. 288; Laws 2016, LB704, § 22.

Effective date July 21, 2016.

16-217 Officers; removal; vacancies; how filled.

A city of the first class by ordinance may provide for the removal of elective officers of the city for misconduct. The city may create any office that it deems necessary for the good government and interest of the city. The city may provide for filling vacancies which occur in any elective office, except the mayor or member of the city council, by appointment by the mayor with the consent of the city council to hold his or her office for the unexpired term. Whenever the city council fails to consent to any appointment made under this section by the mayor by the close of the second regular city council meeting following the announcement of the appointment, the vacancy shall be filled by a special election to be held as prescribed by ordinance in the ward in which such vacancy exists. A vacancy in the office of the mayor or on the city council shall be filled as provided in section 32-568.

Source: Laws 1901, c. 18, § 48, XXII, p. 250; R.S.1913, § 4833; C.S.1922, § 4001; C.S.1929, § 16-218; R.S.1943, § 16-217; Laws 1957, c. 55, § 1, p. 266; Laws 1972, LB 1145, § 1; Laws 1980, LB 601, § 1; Laws 1990, LB 853, § 1; Laws 1994, LB 76, § 484; Laws 2016, LB704, § 23.

Effective date July 21, 2016.

16-218 Officers; regulation.

Except as otherwise provided by law, a city of the first class by ordinance may regulate and prescribe the powers, duties, and compensation of the officers of the city and classify such offices, on the basis of merit as the city council shall provide for that purpose.

Source: Laws 1901, c. 18, § 48, XXIII, p. 250; R.S.1913, § 4834; C.S. 1922, § 4002; C.S.1929, § 16-219; Laws 1939, c. 11, § 1, p. 78; C.S.Supp.,1941, § 16-219; R.S.1943, § 16-218; Laws 2016, LB704, § 24.

Effective date July 21, 2016.

16-219 Officers; bonds or insurance; restrictions upon officers as sureties.

A city of the first class by ordinance may require all officers, elected or appointed, to give bond and security or evidence of equivalent insurance for the faithful performance of their duties. No officer shall become surety upon the official bond of another, or upon any contractor's bond, license, or appeal bond given to the city, or under any ordinance thereof, or from conviction in the county court for violation of any ordinance of such city.

Source: Laws 1901, c. 18, § 48, XXIV, p. 250; R.S.1913, § 4835; C.S.1922, § 4003; C.S.1929, § 16-220; R.S.1943, § 16-219; Laws 1972, LB 1032, § 102; Laws 2007, LB347, § 8; Laws 2016, LB704, § 25.

Effective date July 21, 2016.

16-220 Officers; reports; required; when.

A city of the first class may require from any officer of the city at any time a report in detail of the transactions in his or her office or of any matters connected therewith.

Source: Laws 1901, c. 18, § 48, XXV, p. 251; R.S.1913, § 4836; C.S.1922, § 4004; C.S.1929, § 16-221; R.S.1943, § 16-220; Laws 2016, LB704, § 26.

Effective date July 21, 2016.

16-221 Watercourses; surface waters; regulation.

A city of the first class may establish, alter, and change the channel of watercourses, and wall and cover them over. No city shall be liable in damages on account of the accumulations of surface waters which fall upon its site, or any portion thereof, unless such accumulations be caused by the act of a city officer while employed in his or her official capacity and by authorization of the mayor and city council first entered of record.

Source: Laws 1901, c. 18, § 48, XXVIII, p. 253; Laws 1907, c. 13, § 1, p. 110; R.S.1913, § 4837; C.S.1922, § 4005; C.S.1929, § 16-222; R.S.1943, § 16-221; Laws 2016, LB704, § 27.
Effective date July 21, 2016.

16-222 Fire department; establishment authorized; fire prevention; regulations.

A city of the first class may provide for the organization and support of a fire department; procure fire engines, hooks, ladders, buckets, and other apparatus; organize fire engine, hook and ladder, and bucket companies, and prescribe rules for duty and the government of the fire department, with such penalties as the city council may deem proper, not exceeding one hundred dollars; make all necessary appropriations for the fire department; and establish regulations for the prevention and extinguishment of fires. The city may prescribe limits within which no building shall be constructed except of brick, stone, or other incombustible material, with fireproof roof, and impose a penalty for the violation of such ordinance. The city may cause the destruction or removal of any building constructed or repaired in violation of such ordinance, and after such limits are established, no special permits shall be given for the erection or repairing of buildings of combustible material. The city may regulate the construction and inspection of, and order the suppression of and cleaning of, fireplaces, chimneys, stoves, stovepipes, ovens, boilers, kettles, forges, or any apparatus used in any building, business, or enterprise which may be dangerous in causing or promoting fires, and prescribe limits within which dangerous or obnoxious and offensive businesses or enterprises may be conducted.

Source: Laws 1901, c. 18, § 48, XXIX, p. 253; R.S.1913, § 4838; C.S.1922, § 4006; C.S.1929, § 16-223; R.S.1943, § 16-222; Laws 2016, LB704, § 28.
Effective date July 21, 2016.

16-222.02 Employment of full-time fire chief; appointment; duties.

Each city of the first class with a population in excess of forty-one thousand inhabitants shall employ a full-time fire chief with appropriate training, credentials, and experience and for whom firefighting or emergency medical first response is a full-time career. The fire chief shall be appointed under the Civil Service Act by the mayor with the approval of the city council or by the city manager in cities that have adopted the city manager plan of government. The fire chief shall have the immediate superintendence of the fire prevention, fire suppression, and emergency medical first response services and the facilities and equipment related to such services of the city. The fire chief shall promulgate, implement, and enforce rules governing the actions and conduct of

volunteer members of the department so as to be in conformity with the personnel policies of the city.

Source: Laws 2008, LB1096, § 2; Laws 2015, LB455, § 1; Laws 2016, LB857, § 1.

Effective date July 21, 2016.

Cross References

Civil Service Act, see section 19-1825.

16-225 Police; regulation; penalties; power to prescribe.

A city of the first class may regulate its police force, establish and support a night watch, impose fines, forfeitures, confinement, and penalties for the breach of any ordinance, and for recovery and collection of such fines, forfeitures, and penalties. In default of payment, it may provide for confinement in the city or county jail or other place of confinement as may be provided by ordinance or as provided under section 16-252.

Source: Laws 1901, c. 18, § 48, XXXII, p. 254; R.S.1913, § 4841; C.S. 1922, § 4009; C.S.1929, § 16-226; R.S.1943, § 16-225; Laws 1965, c. 47, § 1, p. 247; Laws 2016, LB704, § 29.

Effective date July 21, 2016.

16-226 Billiard halls; bowling alleys; disorderly houses; gambling; regulation.

A city of the first class by ordinance may regulate, prohibit, and suppress unlicensed billiard tables and bowling alleys, may restrain houses of prostitution, opium joints, dens, and other disorderly houses and practices, games, and gambling houses, may regulate all public amusements, shows, or exhibitions, and may prohibit all lotteries, all fraudulent devices and practices for the purpose of obtaining money or property, all shooting galleries except as provided in the Nebraska Shooting Range Protection Act, and all kinds of public indecencies, except that nothing in this section shall be construed to apply to bingo, lotteries, lotteries by the sale of pickle cards, or raffles conducted in accordance with the Nebraska Bingo Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, or the State Lottery Act.

Source: Laws 1901, c. 18, § 48, XXXIII, p. 254; R.S.1913, § 4842; C.S. 1922, § 4010; C.S.1929, § 16-227; R.S.1943, § 16-226; Laws 1986, LB 1027, § 188; Laws 1991, LB 849, § 61; Laws 1993, LB 138, § 63; Laws 2009, LB503, § 13; Laws 2016, LB704, § 30.

Effective date July 21, 2016.

Cross References

Nebraska Bingo Act, see section 9-201.

Nebraska Lottery and Raffle Act, see section 9-401.

Nebraska Pickle Card Lottery Act, see section 9-301.

Nebraska Shooting Range Protection Act, see section 37-1301.

Nebraska Small Lottery and Raffle Act, see section 9-501.

State Lottery Act, see section 9-801.

16-227 Riots; disorderly conduct; use of explosives; weapons; vagabonds; lights; bonfires; regulation.

A city of the first class may (1) prevent and restrain riots, routs, noises, disturbances, breach of the peace, or disorderly assemblies in any street, house,

or place in the city, (2) regulate, punish, and prevent the discharge of firearms, rockets, powder, fireworks, or any other dangerous combustible material in the streets, lots, grounds, and alleys or about or in the vicinity of any buildings, (3) regulate, prevent, and punish the carrying of concealed weapons, except the carrying of a concealed handgun in compliance with the Concealed Handgun Permit Act, (4) arrest, regulate, punish, or fine vagabonds, (5) regulate and prevent the transportation or storage of gunpowder or other explosive or combustible articles, tar, pitch, resin, coal oil, benzine, turpentine, hemp, cotton, nitroglycerine, dynamite, petroleum or any other productions thereof, and other materials of like nature, the use of lights in stables, shops, or other places, and the building of bonfires, and (6) regulate and prohibit the piling of building material or any excavation or obstruction in the street.

Source: Laws 1901, c. 18, § 48, XXXIV, p. 255; R.S.1913, § 4843; C.S. 1922, § 4011; C.S.1929, § 16-228; R.S.1943, § 16-227; Laws 2009, LB430, § 3; Laws 2016, LB704, § 31.
Effective date July 21, 2016.

Cross References

Concealed Handgun Permit Act, see section 69-2427.

16-229 Vagrants; pickpockets; other offenders; punishment.

A city of the first class by ordinance may provide for the punishment of vagrants, tramps or street beggars, prostitutes, disturbers of the peace, pickpockets, gamblers, burglars, thieves, and persons who practice any game, trick, or device with intent to swindle.

Source: Laws 1901, c. 18, § 48, XXXVI, p. 255; R.S.1913, § 4845; C.S. 1922, § 4013; C.S.1929, § 16-230; R.S.1943, § 16-229; Laws 2016, LB704, § 32.
Effective date July 21, 2016.

16-230 Drainage; nuisance; weeds; litter; removal; notice; action by city council; hearing; violation; penalty; civil action; special assessment.

(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 may prohibit and control the throwing, depositing, or accumulation of litter on any lot or piece of ground within the city or within the city's extraterritorial zoning jurisdiction.

(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 as a special assessment 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.*) (tourn), 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; Laws 2015, LB266, § 6; Laws 2015, LB361, § 18; Laws 2016, LB704, § 33.

Effective date July 21, 2016.

16-231 Health; nuisances; regulation.

A city of the first class may prevent any person from bringing, depositing, having, or leaving upon or near his or her premises or elsewhere in the city or within the extraterritorial zoning jurisdiction of the city any carcass or putrid beef, pork, fish, hides, or skins of any kind or any unwholesome substance and may compel the removal of the same.

Source: Laws 1901, c. 18, § 48, XXXVIII, p. 256; Laws 1907, c. 13, § 1, p. 111; R.S.1913, § 4847; C.S.1922, § 4015; C.S.1929, § 16-232; R.S.1943, § 16-231; Laws 1988, LB 934, § 3; Laws 2016, LB704, § 34.

Effective date July 21, 2016.

16-232 Excavations; regulation.

A city of the first class by ordinance may prevent the digging of holes, pits, or excavations within the city, except for the purpose of building where such excavations are made, prevent the leaving of any holes, pits, or excavations within such city in an exposed condition, and require the filling of same.

Source: Laws 1907, c. 13, § 1, p. 111; R.S.1913, § 4848; C.S.1922, § 4016; C.S.1929, § 16-233; R.S.1943, § 16-232; Laws 2016, LB704, § 35.

Effective date July 21, 2016.

16-233 Public buildings; safety regulations; licensing; violations; penalty.

A city of the first class may regulate, license, or suppress halls, opera houses, places of amusement, entertainment, or instruction, or other buildings except churches and schools used for the assembly of citizens, and cause them to be provided with sufficient and ample means of exit and entrance, and to be supplied with necessary and appropriate appliances for the extinguishment of fire and for escape from such places in case of fire, and prevent overcrowding and regulate the placing and use of seats, chairs, benches, scenery, curtains, blinds, screens, or other appliances therein. A city of the first class may provide that for any violation of any such regulation a penalty of two hundred dollars shall be imposed, and upon conviction of any such licensees of any violation of any ordinance regulating such places, the license of any such place shall be revoked by the mayor and city council. Whenever the mayor and city council shall by resolution declare any such place to be unsafe, the license thereof shall be deemed revoked by adoption of such resolution. The city council may provide that in any case where it has so revoked a license, any owner, proprietor, manager, lessee or person opening, using, or permitting such place to be opened or used for any purpose involving the assemblage of more than twelve persons shall upon conviction thereof be deemed guilty of a misdemeanor and fined in any sum not exceeding two hundred dollars.

Source: Laws 1901, c. 18, § 48, XXXIX, p. 256; R.S.1913, § 4849; C.S. 1922, § 4017; C.S.1929, § 16-234; R.S.1943, § 16-233; Laws 2016, LB704, § 36.

Effective date July 21, 2016.

16-236 Pounds; erection; keepers.

A city of the first class may provide for the erection of all necessary pens, pounds, and buildings for the use of the city, within the city limits or within its extraterritorial zoning jurisdiction, appoint and compensate keepers thereof, and establish and enforce rules governing the same.

Source: Laws 1901, c. 18, § 48, XLII, p. 257; R.S.1913, § 4852; C.S.1922, § 4020; C.S.1929, § 16-237; R.S.1943, § 16-236; Laws 2016, LB704, § 37.

Effective date July 21, 2016.

16-238 Spread of disease; regulation; board of health; creation; powers; duties.

A city of the first class may make regulations to prevent the introduction and spread of contagious, infectious, or malignant diseases into the city. In cities with a commission form of government as provided in Chapter 19, article 4, and cities with a city manager plan of government as provided in Chapter 19, article 6, a board of health shall be created consisting of five members: The mayor, who shall be chairperson, a physician, who shall be medical adviser, the chief of police, who shall be secretary and quarantine officer, and two other members. In all other cities, a board of health shall be created consisting of five members: The mayor, who shall be chairperson, a physician, who shall be medical adviser, the chief of police, who shall be secretary and quarantine officer, the president of the city council, and one other member. A majority of such board shall constitute a quorum and shall enact rules and regulations, having the force and effect of law, to safeguard the health of the people of such city and prevent nuisances and unsanitary conditions, enforce the same, and provide fines and punishments for the violation of such rules and regulations.

Source: Laws 1901, c. 18, § 48, XLIV, p. 257; R.S.1913, § 4854; Laws 1919, c. 37, § 1, p. 118; C.S.1922, § 4022; C.S.1929, § 16-239; R.S.1943, § 16-238; Laws 1977, LB 190, § 1; Laws 1993, LB 119, § 1; Laws 1994, LB 1019, § 1; Laws 2016, LB704, § 38.

Effective date July 21, 2016.

16-239 Hospitals; jails; other institutions; erection; regulation.

A city of the first class may erect, establish, and regulate hospitals, multiunit housing, houses of correction, jails, station houses, and other necessary buildings and provide for the support and government of such buildings and facilities.

Source: Laws 1901, c. 18, § 48, XLV, p. 257; R.S.1913, § 4855; C.S.1922, § 4023; C.S.1929, § 16-240; R.S.1943, § 16-239; Laws 1992, LB 1240, § 13; Laws 2016, LB704, § 39.

Effective date July 21, 2016.

16-240 Health; sanitary regulations.

A city of the first class by ordinance may make regulations to secure the general health of the city, prescribe rules for the prevention, abatement, and removal of nuisances, make and prescribe regulations for the construction, location, and keeping in order of all slaughterhouses, stockyards, warehouses, sheds, stables, barns, dairies, or other places where offensive matter is kept, or is likely to accumulate, within the city or within its extraterritorial zoning

jurisdiction, and to limit or fix the maximum number of swine or neat cattle that may be kept in sheds, stables, barns, feedlots, or other enclosures.

Source: Laws 1901, c. 18, § 48, XLVI, p. 257; Laws 1907, c. 13, § 1, p. 111; R.S.1913, § 4856; Laws 1919, c. 37, § 1, p. 119; C.S.1922, § 4024; C.S.1929, § 16-241; R.S.1943, § 16-240; Laws 2015, LB266, § 7; Laws 2016, LB704, § 40.
Effective date July 21, 2016.

16-241 Cemeteries; hospital grounds; waterworks; acquisition; control.

A city of the first class may purchase, hold, and pay for, as provided in sections 16-241 to 16-245, lands for the purpose of the burial of the dead, and all necessary grounds for hospital grounds and waterworks, and have and exercise police jurisdiction over such lands, grounds, and waterworks, and over any cemetery lying near such city and used by the inhabitants thereof.

Source: Laws 1901, c. 18, § 48, XLVII, p. 258; R.S.1913, § 4857; C.S. 1922, § 4025; C.S.1929, § 16-242; R.S.1943, § 16-241; Laws 1973, LB 276, § 1; Laws 2016, LB704, § 41.
Effective date July 21, 2016.

Cross References

For additional provisions relating to cemeteries, see Chapter 12.

16-243 Cemeteries; lots; how conveyed; title.

A city of the first class may convey cemetery lots owned by such city, by certificates signed by the mayor and countersigned by the city clerk under the seal of the city specifying that the person to whom the certificate is issued is the owner of the lot or lots described therein by number as laid down on such plat or map, for the purpose of interment. Such certificate shall vest in the proprietor, his or her heirs and assigns, a right in fee simple of such lot for the sole purpose of interment, under the regulations of the city council.

Source: Laws 1901, c. 18, § 48, XLIX, p. 258; R.S.1913, § 4859; C.S.1922, § 4027; C.S.1929, § 16-244; R.S.1943, § 16-243; Laws 2015, LB241, § 2; Laws 2016, LB704, § 42.
Effective date July 21, 2016.

16-246 General ordinances; authorized; jurisdiction.

A city of the first class may make all such ordinances, bylaws, rules, regulations, and resolutions not inconsistent with the general laws of the state as may be necessary or expedient, in addition to the special powers otherwise granted by law, for maintaining the peace, good government, and welfare of the city and its trade, commerce, and manufactures, for preserving order and securing persons or property from violence, danger, and destruction, for protecting public and private property, and for promoting the public health, safety, convenience, comfort, and morals and the general interests and welfare of the inhabitants of the city. It may (1) impose fines, forfeitures, and penalties for the violation of any ordinance, (2) provide for the recovery, collection, and enforcement of such fines, forfeitures, or penalties, and (3) in default of payment, provide for confinement in the city or county jail or other place of confinement as may be provided by ordinance. The jurisdiction of the city to enforce such ordinances, bylaws, rules, regulations, and resolutions shall ex-

tend over the city and over all places within the extraterritorial zoning jurisdiction of the city.

Source: Laws 1901, c. 18, § 48, LII, p. 259; R.S.1913, § 4862; C.S.1922, § 4030; C.S.1929, § 16-247; R.S.1943, § 16-246; Laws 1965, c. 47, § 2, p. 247; Laws 1965, c. 48, § 2, p. 249; Laws 1988, LB 934, § 4; Laws 2016, LB704, § 43.
Effective date July 21, 2016.

16-247 Ordinances; revision; publication.

A city of the first class may revise the ordinances of the city from time to time and publish the same in pamphlet or book form. Such revision shall be by one ordinance, embracing all ordinances preserved as changed or added to and perfected by revision, and shall embrace all the ordinances of every nature preserved, and be a repeal of all ordinances in conflict with such revision; but all ordinances then in force shall continue in force after such revision for the purpose of all rights acquired, fines, penalties, forfeitures, and liabilities incurred, and actions therefor. The only title necessary for such revision and repeal shall be An ordinance to revise all the ordinances of the city of, and sections and chapters may be used instead of numbers, and original titles need not be preserved, nor signature of the mayor required.

Source: Laws 1901, c. 18, § 48, LIV, p. 259; Laws 1903, c. 19, § 9, p. 240; R.S.1913, § 4863; C.S.1922, § 4031; C.S.1929, § 16-248; R.S. 1943, § 16-247; Laws 2016, LB704, § 44.
Effective date July 21, 2016.

Cross References

For procedure generally in revision of ordinances, see sections 16-403 to 16-405.

16-249 Streets, alleys, bridges, and sewers; construction and maintenance.

A city of the first class may provide for the grading, repairing, and sprinkling of any street, avenue, or alley, and the construction of bridges, culverts, and sewers, and shall defray the repairs of the street, avenue, alley, bridge, culvert, or sewer out of the proper fund of such city, but no street shall be graded except the street ordered to be done by the affirmative vote of two-thirds of the city council. On written petition of not less than one-half the owners of street front of the land fronting on any street or any specified part thereof, the mayor and city council may order such street or any specified part thereof to be sprinkled with water at such time or times as the city council may deem proper. Such sprinkling shall be done by contract awarded to the lowest responsible bidder in each case, and for the entire city or specified district thereof. To pay the expenses of such sprinkling the city council may make special assessments upon the lands abutting upon such street or specified part thereof either on the valuation thereof, as listed for taxation, or by foot front. Such assessment shall be collected by special taxation.

Source: Laws 1901, c. 18, § 48, III, p. 245; Laws 1909, c. 19, § 1, p. 183; R.S.1913, § 4865; C.S.1922, § 4033; C.S.1929, § 16-250; R.S. 1943, § 16-249; Laws 2016, LB704, § 45.
Effective date July 21, 2016.

16-250 Sidewalks; sewers; drains; construction and repair; special assessments.

A city of the first class may construct or repair sidewalks, sewers, and drains on any highway in the city, construct or repair iron railings or gratings for areaways, cellars, or entrances to basements of buildings, and levy a special assessment on lots or parcels of land fronting on such sidewalk, waterway, highway, or alley to pay the expense of such improvements, to be assessed as a special assessment. Unless a majority of the owners of the property subject to assessment for such improvements petition the city council to make the improvements, such improvements shall not be made until three-fourths of all the members of the city council, by vote, assent to the making of the improvements, which vote, by yeas and nays, shall be entered of record.

Source: Laws 1901, c. 18, § 48, VI, p. 246; Laws 1907, c. 13, § 1, p. 110; R.S.1913, § 4866; C.S.1922, § 4034; C.S.1929, § 16-251; R.S. 1943, § 16-250; Laws 2015, LB361, § 19; Laws 2016, LB704, § 46.

Effective date July 21, 2016.

Cross References

Manner of assessment, see section 16-666.

16-251 Libraries and museums; establishment; maintenance; powers and duties of mayor and city council.

The mayor and city council of any city of the first class may (1) establish and maintain public libraries, reading rooms, art galleries, and museums and provide the necessary grounds or buildings therefor, (2) purchase the papers, books, maps, manuscripts, and works of art and objects of natural or scientific curiosity and instruction therefor, and (3) receive donations and bequests of money or property for the public libraries, reading rooms, art galleries, and museums in trust or otherwise. The mayor and city council may also pass necessary bylaws and regulations for the protection and government of the public libraries, reading rooms, art galleries, and museums. The ownership of the real and personal property of a public library shall be in the city. The mayor and city council shall approve any personnel administrative or compensation policy or procedure applying to a director or employee of a public library, reading room, art gallery, or museum before such policy or procedure is implemented.

Source: Laws 1901, c. 18, § 49, p. 268; Laws 1903, c. 19, § 10, p. 241; R.S.1913, § 4867; C.S.1922, § 4035; C.S.1929, § 16-252; R.S. 1943, § 16-251; Laws 2012, LB470, § 1; Laws 2016, LB704, § 47.

Effective date July 21, 2016.

16-253 Mayor and city council; supplemental powers; authorized.

When the power is conferred upon the mayor and city council of any city of the first class to do and perform any act or thing, and the manner of exercising such power is not specially pointed out, the mayor and city council may provide by ordinance the details necessary for the full exercise of such power.

Source: Laws 1901, c. 18, § 120, p. 303; R.S.1913, § 4870; C.S.1922, § 4038; C.S.1929, § 16-255; R.S.1943, § 16-253; Laws 2016, LB704, § 48.

Effective date July 21, 2016.

ARTICLE 3
OFFICERS, ELECTIONS, EMPLOYEES

Section

- 16-302.01. Officers; election; qualifications; term.
 16-304. City council; members; bond or insurance; payment of premium; amount; conditions.
 16-305. Officers and employees; merger of offices or employment; salaries.
 16-306. City of the second class; reorganization as city of the first class; city council member; continuance in office.
 16-308. Administrator, departments, and other appointed officers; enumerated; appointment and removal.
 16-309. Appointed officers; terms.
 16-310. Officers and employees; compensation fixed by ordinance.
 16-312. Mayor; powers and duties.
 16-313. Mayor; veto power; passage over veto.
 16-314. Mayor; legislative recommendations; jurisdiction.
 16-317. City clerk; duties.
 16-318. City treasurer; bond or insurance; premium; duties; reports.
 16-319. City attorney; duties; compensation; additional legal assistance.
 16-320. City engineer; duties.
 16-321. City engineer; public works; prepare estimate of cost; board of public works; powers; contracts; procedure; city council; powers and duties; public emergency.
 16-322. Special engineer; when employed.
 16-323. Chief of police; police officers; powers and duties.
 16-324. Street commissioner; duties.
 16-325. Board of public works; appointment; oath; terms; duties; removal from office.
 16-326. Elective officers; compensation; change during term prohibited; exception.
 16-327. Officers; reports required.

16-302.01 Officers; election; qualifications; term.

In any city of the first class except any city having adopted the commissioner or city manager plan of government, the mayor and city council members shall be registered voters of the city and the city council members shall be residents of the ward from which elected if elected by ward and residents of the city if elected at large. The city council may also, by a two-thirds vote of its members, provide by ordinance for the election of the treasurer and clerk. All nominations and elections of such officers shall be held as provided in the Election Act. The terms of office of all such members shall commence on the first regular meeting of the city council in December following their election.

Source: Laws 1969, c. 257, § 3, p. 933; Laws 1973, LB 558, § 1; Laws 1975, LB 323, § 1; Laws 1976, LB 688, § 1; Laws 1977, LB 201, § 4; Laws 1979, LB 421, § 2; Laws 1979, LB 80, § 22; Laws 1981, LB 446, § 1; Laws 1982, LB 807, § 41; Laws 1983, LB 308, § 2; Laws 1990, LB 957, § 3; Laws 1990, LB 853, § 2; Laws 1994, LB 76, § 485; Laws 2001, LB 730, § 1; Laws 2016, LB704, § 49.

Effective date July 21, 2016.

Cross References

City council, election, see section 32-534.

Election Act, see section 32-101.

Vacancies, see sections 32-568 and 32-569.

16-304 City council; members; bond or insurance; payment of premium; amount; conditions.

Each city council member, before entering upon the duties of his or her office, shall be required to give bond or evidence of equivalent insurance to the city. The bond shall be with two or more good and sufficient sureties or some responsible surety company. If by two sureties, they shall each justify that he or she is worth at least two thousand dollars over and above all debts and exemptions. Such bonds or evidence of equivalent insurance shall be in the sum of one thousand dollars, shall be conditioned for the faithful discharge of the duties of the city council member giving such bond or insurance, and shall be further conditioned that if the city council member shall vote for any expenditure or appropriation of money or creation of any liability in excess of the amount allowed by law, such city council member, and the sureties signing such bond, shall be liable thereon. The bond shall be filed with the city clerk and approved by the mayor, and upon the approval, the city may pay the premium for such bond. Any liability sought to be incurred, or debt created in excess of the amount limited or authorized by law, shall be taken and held by every court of the state as the joint and several liability and obligation of the city council member voting for and the mayor approving such liability, obligation, or debt, and not the debt, liability, or obligation of the city. Voting for or approving of such liability, obligation, or debt shall be conclusive evidence of malfeasance in office for which such city council member or mayor may be removed from office.

Source: Laws 1901, c. 18, § 12, p. 232; Laws 1903, c. 19, § 1, p. 232; Laws 1907, c. 13, § 1, p. 106; R.S.1913, § 4872; Laws 1915, c. 85, § 1, p. 223; C.S.1922, § 4040; Laws 1923, c. 67, § 2, p. 202; C.S.1929, § 16-302; R.S.1943, § 16-304; Laws 1965, c. 49, § 1, p. 250; Laws 1979, LB 80, § 23; Laws 2007, LB347, § 9; Laws 2016, LB704, § 50.
Effective date July 21, 2016.

16-305 Officers and employees; merger of offices or employment; salaries.

All officers and employees of the city shall receive such compensation as the mayor and city council may fix at the time of their appointment or employment, subject to the limitations set forth in this section. The city council may at its discretion by ordinance combine and merge any elective or appointive office or employment or any combination of duties of any such offices or employments, except mayor and city council member, with any other elective or appointive office or employment so that one or more of such offices or employments or any combination of duties of any such offices or employments may be held by the same officer or employee at the same time. The city manager in a city under the city manager plan of government as provided in Chapter 19, article 6, may in his or her discretion combine and merge any elective or appointive office or employment or any combination of duties of any such offices or employments, except mayor and city council member, with any other elective or appointive office or employment so that one or more of such offices or employments or any combination of duties of any such offices or employments may be held by the same officer or employee at the same time. The offices or employments so merged and combined shall always be construed to be separate, and the effect of the combination or merger shall be limited to a consolidation of official duties only. The salary or compensation of the officer or employee holding the

merged and combined offices or employments or offices and employments shall not be in excess of the maximum amount provided by law for the salary or compensation of the office, offices, employment, or employments so merged and combined.

Source: Laws 1907, c. 13, § 1, p. 107; R.S.1913, § 4872; Laws 1915, c. 85, § 1, p. 224; C.S.1922, § 4040; Laws 1923, c. 67, § 2, p. 203; C.S.1929, § 16-302; R.S.1943, § 16-305; Laws 1984, LB 368, § 1; Laws 1990, LB 756, § 1; Laws 1990, LB 931, § 2; Laws 1991, LB 12, § 1; Laws 1994, LB 76, § 486; Laws 2016, LB704, § 51.
Effective date July 21, 2016.

16-306 City of the second class; reorganization as city of the first class; city council member; continuance in office.

In any city which becomes a city of the first class, any city council member whose term extends through another year or years by reason of his or her prior election under the provisions governing cities of the second class shall hold his or her office as a city council member from the ward in which he or she is a resident as if he or she were elected for the same term under the provisions of the Election Act governing cities of the first class.

Source: Laws 1915, c. 85, § 1, p. 224; C.S.1922, § 4040; Laws 1923, c. 67, § 2, p. 203; C.S.1929, § 16-302; R.S.1943, § 16-306; Laws 1969, c. 257, § 4, p. 934; Laws 1979, LB 80, § 24; Laws 1990, LB 957, § 4; Laws 1994, LB 76, § 487; Laws 2016, LB704, § 52.
Effective date July 21, 2016.

Cross References

Election Act, see section 32-101.

For reorganization as city of the first class, see sections 16-102 and 16-103.

16-308 Administrator, departments, and other appointed officers; enumerated; appointment and removal.

Each city of the first class shall have such departments and appointed officers as shall be established by ordinance passed by the city council, which shall include a city clerk, treasurer, engineer, and attorney, and such officers as may otherwise be required by law. Except as provided in Chapter 19, article 6, the mayor may, with the approval of the city council, appoint the necessary officers, as well as an administrator, who shall perform such duties as prescribed by ordinance. Except as provided in Chapter 19, article 6, the appointed officers may be removed at any time by the mayor with approval of a majority of the city council. The office of administrator may not be held by the mayor. The appointed administrator may concurrently hold any other appointive office provided for in this section and section 16-325.

Source: Laws 1901, c. 18, § 14, p. 233; Laws 1903, c. 19, § 2, p. 233; Laws 1907, c. 13, § 1, p. 107; R.S.1913, § 4874; Laws 1917, c. 95, § 1, p. 252; Laws 1921, c. 164, § 1, p. 657; C.S.1922, § 4042; C.S.1929, § 16-304; R.S.1943, § 16-308; Laws 1953, c. 26, § 1, p. 110; Laws 1961, c. 41, § 1, p. 171; Laws 1963, c. 61, § 2, p. 254; Laws 1974, LB 1024, § 1; Laws 1975, LB 93, § 1; Laws 1976, LB 782, § 12; Laws 2016, LB704, § 53.
Effective date July 21, 2016.

16-309 Appointed officers; terms.

All officers appointed by the mayor and confirmed by the city council shall hold the office to which they may be appointed until the end of the mayor's term of office and until their successors are appointed and qualified, unless sooner removed or the ordinance creating the office is repealed, or as otherwise provided by law.

Source: Laws 1901, c. 18, § 15, p. 233; Laws 1903, c. 19, § 3, p. 234; R.S.1913, § 4875; C.S.1922, § 4043; C.S.1929, § 16-305; R.S. 1943, § 16-309; Laws 1997, LB 734, § 1; Laws 2016, LB704, § 54.

Effective date July 21, 2016.

16-310 Officers and employees; compensation fixed by ordinance.

The officers and employees in cities of the first class shall receive such compensation as the mayor and city council shall fix by ordinance.

Source: Laws 1901, c. 18, § 17, p. 234; Laws 1901, c. 19, § 1, p. 306; Laws 1903, c. 19, § 4, p. 234; Laws 1907, c. 13, § 1, p. 108; R.S.1913, § 4876; Laws 1915, c. 85, § 2, p. 224; Laws 1917, c. 95, § 1, p. 253; Laws 1919, c. 36, § 1, p. 117; C.S.1922, § 4044; C.S.1929, § 16-306; Laws 1943, c. 30, § 1, p. 139; R.S. 1943, § 16-310; Laws 1947, c. 25, § 1, p. 126; Laws 1955, c. 29, § 1, p. 134; Laws 1963, c. 62, § 1, p. 255; Laws 1965, c. 50, § 1, p. 251; Laws 1969, c. 75, § 1, p. 404; Laws 2016, LB704, § 55.

Effective date July 21, 2016.

16-312 Mayor; powers and duties.

The mayor shall preside at all the meetings of the city council and shall have the right to vote when his or her vote will provide the additional vote required to create a number of votes equal to a majority of the number of members elected to the city council. He or she shall have the superintending control of all the officers and affairs of the city and shall take care that the ordinances of the city and the provisions of law relating to cities of the first class are complied with. He or she may administer oaths and shall sign the commissions and appointments of all the officers appointed in the city.

Source: Laws 1901, c. 18, § 19, p. 234; R.S.1913, § 4878; C.S.1922, § 4046; C.S.1929, § 16-308; R.S.1943, § 16-312; Laws 1957, c. 55, § 2, p. 266; Laws 1980, LB 662, § 1; Laws 1989, LB 790, § 1; Laws 2016, LB704, § 56.

Effective date July 21, 2016.

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 city 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 city 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 city 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; Laws 2016, LB704, § 57.
Effective date July 21, 2016.

16-314 Mayor; legislative recommendations; jurisdiction.

The mayor shall, from time to time, communicate to the city council such information and recommend such measures as in his or her opinion may tend to the improvement of the finances of the city, the police, health, comfort, and general prosperity of the city, and may have such jurisdiction as may be invested in him or her by ordinance over all places within the extraterritorial zoning jurisdiction of the city, for the enforcement of health or quarantine ordinances and the regulation thereof.

Source: Laws 1901, c. 18, § 21, p. 235; Laws 1901, c. 19, § 2, p. 307; R.S.1913, § 4880; C.S.1922, § 4048; C.S.1929, § 16-310; R.S. 1943, § 16-314; Laws 2016, LB704, § 58.
Effective date July 21, 2016.

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 city 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 city 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; Laws 2016, LB704, § 59.
Effective date July 21, 2016.

Cross References

Records Management Act, see section 84-1220.

16-318 City treasurer; bond or insurance; premium; duties; reports.

(1) The city 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 city treasurer shall be the custodian of all money belonging to the city. The city council shall pay the actual premium of the bond or insurance coverage of such treasurer.

(2) The city 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 city 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 city clerk's office. He or she shall produce and show all funds shown by such report to be on hand, or satisfy the city council or its committee that he or she has such funds in his or her custody or under his or her control. If the city 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 city council, the mayor with the consent of the city council may consider this failure as cause to remove the city treasurer from office.

(3) The city 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 city 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 city 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 city treasurer shall receive no fees.

(5) The city 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; Laws 2016, LB704, § 60.

Effective date July 21, 2016.

16-319 City attorney; duties; compensation; additional legal assistance.

The city attorney shall be the legal advisor of the city council and other city officers. The city attorney shall commence, prosecute, and defend all suits and actions necessary to be commenced, prosecuted, or defended on behalf of the city, or that may be ordered by the city council. He or she shall attend meetings of the city council and give them his or her opinion upon any matters submitted to him or her, either orally or in writing as may be required. The mayor and

city council shall have the right to pay the city attorney additional compensation for legal services performed by him or her for the city or to employ additional legal assistance and to pay for such legal assistance out of the funds of the city. Whenever the mayor and city council have by ordinance so authorized, the board of public works shall have the right to pay the city attorney additional compensation for legal services performed by him or her for it or to employ additional legal assistance other than the city attorney and pay such legal assistance out of funds disbursed under the orders of the board of public works.

Source: Laws 1901, c. 18, § 27, p. 237; R.S.1913, § 4885; C.S.1922, § 4053; C.S.1929, § 16-315; R.S.1943, § 16-319; Laws 1947, c. 26, § 1, p. 127; Laws 1955, c. 30, § 1, p. 136; Laws 2016, LB704, § 61.

Effective date July 21, 2016.

16-320 City engineer; duties.

The city engineer shall make a record of the minutes of his or her surveys and of all work done for the city, including sewers, extension of water systems and heating systems, electric light and sewerage systems, and power plants, and accurately make such plats, sections, profiles, and maps as may be necessary in the prosecution of any public work, which shall be public records and belong to the city and be turned over to his or her successor.

Source: Laws 1901, c. 18, § 28, p. 237; R.S.1913, § 4886; C.S.1922, § 4054; C.S.1929, § 16-316; R.S.1943, § 16-320; Laws 2016, LB704, § 62.

Effective date July 21, 2016.

16-321 City engineer; public works; prepare estimate of cost; board of public works; powers; contracts; procedure; city council; powers and duties; public emergency.

(1) The city engineer shall, when requested by the mayor or city council, make estimates of the cost of labor and material which may be done or furnished by contract with the city and make all surveys, estimates, and calculations necessary to be made for the establishment of grades, the building of culverts, sewers, electric light systems, waterworks, power plants, public heating systems, bridges, curbing, and gutters, the improvement of streets, and the erection and repair of buildings and shall perform such other duties as the city council may require. When the city has appointed a board of public works, and the mayor and city council have by ordinance so authorized, such board may utilize its own engineering staff and may hire consulting engineers for the design and installation of extensions and improvements of the works under the jurisdiction of the board of public works. Whenever the mayor and city council have authorized the same, the board of public works may purchase material and employ labor for the enlargement or improvement of the systems and works under the jurisdiction of the board.

(2) Except as provided in section 18-412.01, no contract for enlargement or general improvements, such as water extensions, sewers, public heating systems, bridges, work on streets, or any other work or improvement when the cost of such improvement is assessed to the property, costing over thirty thousand dollars shall be made unless it is first approved by the city council.

(3) Except as provided in section 18-412.01, before the city council makes any contract in excess of thirty thousand dollars for enlargement or general improvements, such as water extensions, sewers, public heating systems, bridges, work on streets, or any other work or improvement when the cost of such enlargement or improvement is assessed to the property, an estimate of the cost shall be made by the city engineer and submitted to the city council. In advertising for bids as provided in subsections (4) and (6) of this section, the city council may publish the amount of the estimate.

(4) Advertisements for bids shall be required for any contract costing over thirty thousand dollars entered into (a) for enlargement or general improvements, such as water extensions, sewers, public heating systems, bridges, work on streets, or any other work or improvement when the cost of such enlargement or improvement is assessed to the property, or (b) for the purchase of equipment used in the construction of such enlargement or general improvements.

(5) A municipal electric utility may enter into a contract for the enlargement or improvement of the electric system or for the purchase of equipment used for such enlargement or improvement without advertising for bids if the price is: (a) Thirty thousand dollars or less; (b) sixty thousand dollars or less and the municipal electric utility has gross annual revenue from retail sales in excess of one million dollars; (c) ninety thousand dollars or less and the municipal electric utility has gross annual revenue from retail sales in excess of five million dollars; or (d) one hundred twenty thousand dollars or less and the municipal electric utility has gross annual revenue from retail sales in excess of ten million dollars.

(6) The advertisement provided for in subsections (3) and (4) of this section shall be published at least seven days prior to the bid closing in a legal newspaper in or of general circulation in the city. In case of a public emergency resulting from infectious or contagious diseases, destructive windstorms, floods, snow, war, or an exigency or pressing necessity or unforeseen need calling for immediate action or remedy to prevent a serious loss of, or serious injury or damage to, life, health, or property, estimates of costs and advertising for bids may be waived in the emergency ordinance authorized by section 16-405 when adopted by a three-fourths vote of the city council and entered of record.

(7) If, after advertising for bids as provided in subsections (3), (4), and (6) of this section, the city council receives fewer than two bids on a contract or if the bids received by the city council contain a price which exceeds the estimated cost, the mayor and the city council may negotiate a contract in an attempt to complete the proposed enlargement or general improvements at a cost commensurate with the estimate given.

(8) If the materials are of such a nature that, in the opinion of the manufacturer and with the concurrence of the city council or board of public works, no cost can be estimated until the materials have been manufactured or assembled to the specific qualifications of the city, the city council or board of public works may authorize the manufacture and assemblage of such materials and may thereafter approve the estimated cost expenditure when it is provided by the manufacturer.

Source: Laws 1901, c. 18, § 29, p. 237; R.S.1913, § 4887; C.S.1922, § 4055; Laws 1925, c. 44, § 1, p. 174; C.S.1929, § 16-317; R.S.1943, § 16-321; Laws 1947, c. 26, § 2, p. 128; Laws 1951, c.

25, § 1, p. 115; Laws 1959, c. 61, § 1, p. 276; Laws 1969, c. 78, § 1, p. 407; Laws 1971, LB 85, § 1; Laws 1975, LB 171, § 1; Laws 1979, LB 356, § 1; Laws 1983, LB 304, § 1; Laws 1984, LB 540, § 7; Laws 1997, LB 238, § 1; Laws 2008, LB947, § 1; Laws 2016, LB704, § 63.

Effective date July 21, 2016.

16-322 Special engineer; when employed.

The mayor and city council may, whenever they deem it expedient, employ a special engineer to make or assist in making any particular estimate or survey, and any estimate or survey made by such special engineer shall have the same validity and serve in all respects as though the same had been made by the city engineer.

Source: Laws 1901, c. 18, § 98, p. 297; R.S.1913, § 4888; C.S.1922, § 4056; C.S.1929, § 16-318; R.S.1943, § 16-322; Laws 2016, LB704, § 64.

Effective date July 21, 2016.

16-323 Chief of police; police officers; powers and duties.

The chief of police shall have the immediate superintendence of the police. He or she and the police officers shall have the power and the duty to arrest all offenders against the laws of the state or of the city, by day or by night, in the same manner as a county sheriff and to keep such offenders in the city prison or other place to prevent their escape until a trial or examination may be had before the proper officer. The chief of police and police officers shall have the same power as the county sheriff in relation to all criminal matters arising out of a violation of a city ordinance and all process issued by the county court in connection with a violation of a city ordinance.

Source: Laws 1901, c. 18, § 30, p. 238; R.S.1913, § 4889; C.S.1922, § 4057; C.S.1929, § 16-319; R.S.1943, § 16-323; Laws 1972, LB 1032, § 103; Laws 1979, LB 80, § 26; Laws 1988, LB 1030, § 4; Laws 2016, LB704, § 65.

Effective date July 21, 2016.

Cross References

Ticket quota requirements, prohibited, see section 48-235.

16-324 Street commissioner; duties.

The street commissioner shall be subject to the orders of the mayor and city council by resolution, have general charge, direction, and control of all work in the streets, sidewalks, culverts, and bridges of the city, except matters in charge of the board of public works, and shall perform such other duties as the city council may require.

Source: Laws 1901, c. 18, § 31, p. 238; R.S.1913, § 4890; C.S.1922, § 4058; C.S.1929, § 16-320; R.S.1943, § 16-324; Laws 1961, c. 42, § 1, p. 173; Laws 2016, LB704, § 66.

Effective date July 21, 2016.

16-325 Board of public works; appointment; oath; terms; duties; removal from office.

(1) There may be in each city of the first class a board of public works which shall consist of three members, each having a three-year term of office, or five members, each having a five-year term of office, the number to be set by ordinance, which members shall be residents of such city and be appointed by the mayor with the assent of the city council. When such board is first established, one member shall be appointed for a term of one year, one for two years, and one for three years and, in the case of a five-member board, an additional member shall be so appointed for four years and another for five years. Thereafter, as their terms expire, all members shall be appointed for a full term of three or five years as the case may be. The mayor, with the assent of the city council, shall designate one of the members of such board to be the chairperson thereof.

(2) Each of the members of the board of public works shall, before entering upon the discharge of his or her duties, take an oath to discharge faithfully the duties of the office.

(3) It shall be the duty of the board of public works to (a) make contracts on behalf of the city for the performance of all such work and erection of all such improvements in the manner provided in section 16-321, (b) superintend the performance of all such work and the erection of all such improvements, (c) approve the estimates of the city engineer, which may be made from time to time, of the value of the work as the same may progress, (d) accept any work done or improvements made when the same shall be fully completed according to contract, subject to the approval of the mayor and city council, and (e) perform such other duties as may be conferred upon such board by ordinance.

(4) Any member of the board of public works may at any time be removed from office by the mayor and a majority of the city council, and the proceedings in regard thereto shall be entered in the journal of the city council.

Source: Laws 1901, c. 18, § 70, p. 283; R.S.1913, § 4891; C.S.1922, § 4059; Laws 1925, c. 44, § 2, p. 175; C.S.1929, § 16-321; R.S.1943, § 16-325; Laws 1947, c. 26, § 3, p. 129; Laws 1953, c. 26, § 2, p. 111; Laws 1965, c. 52, § 1, p. 255; Laws 1971, LB 494, § 2; Laws 1973, LB 24, § 1; Laws 1984, LB 682, § 6; Laws 2016, LB704, § 67.

Effective date July 21, 2016.

16-326 Elective officers; compensation; change during term prohibited; exception.

The salary of any elective officer shall not be increased or diminished during the term for which he or she was elected, except that when there are officers elected to the city council, or to a board or commission having more than one member and the terms of one or more members commence and end at different times, the compensation of all members of such city council, board, or commission may be increased or diminished at the beginning of the full term of any member thereof. No person who shall have resigned or vacated any office shall be eligible to the same during the time for which he or she was elected when, during the same time, the salary has been increased.

Source: Laws 1901, c. 18, § 32, p. 238; R.S.1913, § 4892; C.S.1922, § 4060; C.S.1929, § 16-322; R.S.1943, § 16-326; Laws 1969, c.

75, § 2, p. 404; Laws 1972, LB 943, § 1; Laws 2016, LB704, § 68.

Effective date July 21, 2016.

16-327 Officers; reports required.

The mayor or city council shall have power, when he, she, or it deems it necessary, to require any officer of the city to exhibit his or her accounts or other papers and make reports to the city council, in writing, touching any subject or matter it may require pertaining to the office.

Source: Laws 1901, c. 18, § 33, p. 239; R.S.1913, § 4893; C.S.1922, § 4061; C.S.1929, § 16-323; R.S.1943, § 16-327; Laws 1979, LB 80, § 27; Laws 2016, LB704, § 69.

Effective date July 21, 2016.

ARTICLE 4

COUNCIL AND PROCEEDINGS

Section

16-401. City council; meetings, regular and special; quorum.

16-402. City council; president; acting president; duties.

16-403. City council; ordinances; passage; proof; publication.

16-404. City council; ordinances, resolutions, or orders; procedure for passage; vote of mayor, when; amendments; revision ordinances.

16-405. City council; ordinances; style; publication; emergency ordinances.

16-406. City council; testimony; power to compel; oaths.

16-401 City council; meetings, regular and special; quorum.

Regular meetings of the city council shall be held at such times as may be fixed by ordinance and special meetings whenever called by the mayor or any four city council members. A majority of all the members elected to the city council shall constitute a quorum for the transaction of any business, except as otherwise required by law, but a less number may adjourn, from time to time, and compel the attendance of absent members. An affirmative vote of not less than one-half of the elected members shall be required for the transaction of any business.

Source: Laws 1901, c. 18, § 16, p. 233; R.S.1913, § 4894; C.S.1922, § 4062; C.S.1929, § 16-401; R.S.1943, § 16-401; Laws 1975, LB 118, § 1; Laws 1987, LB 652, § 1; Laws 2016, LB704, § 70.

Effective date July 21, 2016.

16-402 City council; president; acting president; duties.

The city council shall elect one of the city council members as president of the city council, and he or she shall preside at all meetings of the city council in the absence of the mayor. In the absence of the president, the city council members shall elect one of their own body to occupy the place temporarily, who shall be styled acting president of the city council. The president and acting president, when occupying the place of mayor, shall have the same privileges as other members of the city council, and all acts of the president or

acting president while so acting shall be as binding upon the city council and upon the city as if done by the mayor.

Source: Laws 1901, c. 18, § 53, p. 259; R.S.1913, § 4895; C.S.1922, § 4063; C.S.1929, § 16-402; R.S.1943, § 16-402; Laws 1987, LB 652, § 2; Laws 2016, LB704, § 71.
Effective date July 21, 2016.

16-403 City council; ordinances; passage; proof; publication.

All ordinances shall be passed pursuant to such rules and regulations as the city council may provide, and all such ordinances may be proved by the certificate of the city clerk under the seal of the city. When printed or published in book or pamphlet form and purporting to be published by authority of the city, such ordinances shall be read and received in evidence in all courts and places without further proof. The passage, approval, and publication or posting of such ordinance shall be sufficiently proved by a certificate under the seal of the city from the city clerk showing that such ordinance was passed and approved, and when and in what paper the same was published, and when and by whom and where the same was posted. When ordinances are published in book or pamphlet form, purporting to be published by authority of the city council, the same need not be otherwise published and such book or pamphlet shall be received as evidence of the passage and legal publication of such ordinances, as of the dates mentioned in such book or pamphlet, in all courts without further proof.

Source: Laws 1901, c. 18, § 46, p. 244; R.S.1913, § 4896; C.S.1922, § 4064; C.S.1929, § 16-403; R.S.1943, § 16-403; Laws 2016, LB704, § 72.
Effective date July 21, 2016.

16-404 City council; ordinances, resolutions, or orders; procedure for passage; vote of mayor, when; amendments; revision ordinances.

(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 city council. The mayor may vote on any such matter when his or her vote will provide the additional vote required to create a number of votes equal to a majority of the number of members elected to the city council, and the mayor shall, for the purpose of such vote, be deemed to be a member of the city council.

(2) Ordinances of a general or permanent nature shall be read by title on three different days unless three-fourths of the city council members vote to suspend this requirement, except that in a city having a commission form of government such requirement may be suspended by a three-fifths majority vote. Regardless of the form of government, 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 or number and then moved for final passage. Three-fourths of the city council members may require a reading of any such ordinance in full before enactment under either procedure set out in this section, except that in a city having a commission form of government, such reading may be required by a three-fifths majority vote.

(3) 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, the only title necessary shall be An ordinance of the city of, revising all the ordinances of the city. 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 1901, c. 18, § 37, p. 240; Laws 1903, c. 19, § 5, p. 235; R.S.1913, § 4897; C.S.1922, § 4065; C.S.1929, § 16-404; R.S. 1943, § 16-404; Laws 1961, c. 43, § 1, p. 174; Laws 1969, c. 108, § 2, p. 510; Laws 1972, LB 1235, § 1; Laws 1975, LB 172, § 1; Laws 1980, LB 662, § 2; Laws 1989, LB 790, § 2; Laws 1990, LB 966, § 1; Laws 1994, LB 630, § 2; Laws 2003, LB 365, § 1; Laws 2016, LB704, § 73.
Effective date July 21, 2016.

Cross References

For other provisions for revision of ordinances, see section 16-247.

16-405 City council; ordinances; style; publication; emergency ordinances.

The style of ordinances shall be: “Be it ordained by the mayor and city council of the city of,” and all ordinances of a general nature shall, within fifteen days after they are passed, be published in a legal newspaper in or of general circulation within the city, or in pamphlet form, to be distributed or sold, as may be provided by ordinance. Every ordinance fixing a penalty or forfeiture for its violation shall, before the ordinance takes effect, be published for at least one week in the manner prescribed in this section. In cases of riots, infectious diseases, or other impending danger, or any other emergency requiring its immediate operation, such ordinance shall take effect upon the proclamation of the mayor immediately upon its first publication as provided in this section.

Source: Laws 1901, c. 18, § 47, p. 245; R.S.1913, § 4898; C.S.1922, § 4066; C.S.1929, § 16-405; R.S.1943, § 16-405; Laws 1971, LB 282, § 1; Laws 2016, LB704, § 74.
Effective date July 21, 2016.

16-406 City council; testimony; power to compel; oaths.

The city council or any committee of the members thereof shall have power to compel the attendance of witnesses for the investigation of matters that may

come before them. The president or acting president of the city council, or chairperson of such committee for the time being, may administer such requisite oaths. Such city council or committee shall have the same authority to compel the giving of testimony as is conferred on courts of justice.

Source: Laws 1901, c. 18, § 94, p. 296; R.S.1913, § 4899; C.S.1922, § 4067; C.S.1929, § 16-406; R.S.1943, § 16-406; Laws 2016, LB704, § 75.

Effective date July 21, 2016.

ARTICLE 5

CONTRACTS AND FRANCHISES

Section

16-501. Contracts; appropriation a condition precedent.

16-502. Officer; extra compensation prohibited; exception.

16-503. Contracts; concurrence of majority of city council required; vote of mayor; record.

16-501 Contracts; appropriation a condition precedent.

No contract shall be made by the city council or any committee or member thereof and no expense shall be incurred by any of the officers or departments of the city, whether the object of the expenditure shall have been ordered by the city council or not, unless an appropriation shall have been previously made concerning such expense, except as otherwise expressly provided by law.

Source: Laws 1901, c. 18, § 44, p. 243; R.S.1913, § 4900; C.S.1922, § 4068; C.S.1929, § 16-501; R.S.1943, § 16-501; Laws 2016, LB704, § 76.

Effective date July 21, 2016.

16-502 Officer; extra compensation prohibited; exception.

No officer shall receive any pay or perquisites from the city other than his or her salary, as provided by ordinance and the law relating to cities of the first class, and the city council shall not pay or appropriate any money or any valuable thing to any person not an officer for the performance of any act, service, or duty, the doing or performance of which shall come within the proper scope of the duties of any officer of such city, unless the money or valuable thing is specifically appropriated and ordered by a vote of three-fourths of all the members elected to the city council.

Source: Laws 1901, c. 18, § 45, p. 244; R.S.1913, § 4901; C.S.1922, § 4069; C.S.1929, § 16-502; R.S.1943, § 16-502; Laws 1957, c. 38, § 2, p. 207; Laws 1959, c. 62, § 1, p. 279; Laws 1961, c. 283, § 2, p. 830; Laws 1971, LB 491, § 3; Laws 1972, LB 1209, § 1; Laws 1973, LB 24, § 2; Laws 1983, LB 370, § 7; Laws 2016, LB704, § 77.

Effective date July 21, 2016.

Cross References

For other provisions of officers interested in public contracts, see sections 49-14,103.01 to 49-14,103.07.

16-503 Contracts; concurrence of majority of city council required; vote of mayor; record.

On the passage or adoption of every resolution or order to enter into a contract, or accepting of work done under contract, by the mayor or city council, the yeas and nays shall be called and entered upon the record. To pass or adopt any bylaw or ordinance or any such resolution or order, a concurrence of a majority of the whole number of the members elected to the city council shall be required. The mayor may vote on any such matter when his or her vote will provide the additional vote required to create a number of votes equal to a majority of the number of members elected to the city council, and the mayor shall, for the purpose of such vote, be deemed to be a member of the city council. The requirements of a roll call or viva voce vote shall be satisfied by a city which utilizes an electronic voting device which allows the yeas and nays of each city council member to be readily seen by the public.

Source: Laws 1901, c. 18, § 34, p. 239; R.S.1913, § 4903; C.S.1922, § 4071; C.S.1929, § 16-503; R.S.1943, § 16-503; Laws 1961, c. 43, § 2, p. 174; Laws 1975, LB 172, § 2; Laws 1978, LB 609, § 1; Laws 1980, LB 662, § 3; Laws 1988, LB 625, § 1; Laws 2016, LB704, § 78.

Effective date July 21, 2016.

ARTICLE 6

PUBLIC IMPROVEMENTS

(a) CONDEMNATION PROCEEDINGS

Section

- 16-606. Property; condemnation for streets; assessments; levy; collection.
- 16-607. Property; condemnation for other public purposes; bonds; issuance; approval by electors.

(b) STREETS

- 16-609. Improvements; power of city council.
- 16-613. Bridges; repair; duty of county; aid by city, when.
- 16-615. Grade or change of grade; procedure; damages; how ascertained; special assessments.
- 16-617. Improvement districts; power to establish.
- 16-618. Improvement districts; property included.
- 16-619. Improvement districts; creation; notice.
- 16-620. Improvement districts; objections of property owners; effect.
- 16-621. Improvement districts; materials; kind; petition of landowners; bids; advertisement.
- 16-622. Improvement districts; assessments; how levied; when delinquent; interest; collection; procedure.
- 16-623. Improvement districts; bonds; interest.
- 16-624. Improvement districts; creation upon petition; denial; assessments; bonds.
- 16-625. Intersections; improvements; railways; duty to pave right-of-way.
- 16-626. Intersection improvement bonds; amount; interest; warrants; partial payments; final payment; interest; restrictions on work.
- 16-627. Intersections; improvement; cost; tax levy.
- 16-628. Improvements; tax; when due.
- 16-630. Curbing and guttering bonds; interest rate; special assessments; how levied.
- 16-631. Curbing and guttering; cost; paving bonds may include; special assessment.
- 16-632. Improvement districts; assessments; when authorized; ordinary repairs excepted.
- 16-633. Improvements; assessments against public lands.
- 16-634. Improvements; real estate owned by minor or protected person; petition; guardian or conservator may sign.
- 16-635. Improvements; terms, defined; depth to which assessable.
- 16-636. Improvement districts; land which city council may include.

PUBLIC IMPROVEMENTS

Section

- 16-637. Improvements; special tax; assessments; action to recover.
- 16-646. Special taxes; lien upon property; collection.
- 16-647. Special taxes; payment by part owner.
- 16-649. Improvements; contracts; bids; requirement.
- 16-650. Public improvements; acceptance by city engineer; approval or rejection by city council.
- 16-651. Grading and grading districts.
- 16-652. Grading; special assessments; when delinquent.
- 16-653. Grading bonds; interest rate.
- 16-654. Grading upon petition; assessments; bonds.
- 16-655. Grading bonds; amount; sale; damages; how ascertained.

(d) SIDEWALKS

- 16-661. Construction and repair; materials.
- 16-662. Construction and repair; failure of property owner; power of city.
- 16-664. Construction; cost; special assessment; levy; when delinquent; payment.
- 16-665. Ungraded streets; construction of sidewalks.
- 16-666. Assessments; levy; certification; collection.

(e) WATER, SEWER, AND DRAINAGE DISTRICTS

- 16-667. Creation of districts; regulations.
- 16-667.01. Prohibit formation of district; procedure.
- 16-667.02. Districts; formation; sewer, drainage, or water systems and mains; special assessments; use of other funds.
- 16-667.03. Sewer, drainage, or water systems and mains; failure to make connections; order; costs assessed.
- 16-669. Special assessments; when delinquent; interest; future installments; collection.
- 16-670. Bonds; amount; interest; maturity; special assessments; revenue bonds.
- 16-671. Construction costs; warrants; power to issue; amount; interest; payment; fund; created.
- 16-672. Special assessments; equalization; reassessment.

(f) STORM SEWER DISTRICTS

- 16-672.01. Storm sewer districts; ordinance; contents.
- 16-672.02. Ordinance; hearing; notice.
- 16-672.03. Ordinance; protest; filing; effect.
- 16-672.04. Ordinance; adoption.
- 16-672.05. Construction; notice to contractors, when; contents; bids; acceptance.
- 16-672.06. Construction; acceptance; notice of assessments.
- 16-672.07. Assessments; hearing; equalization; delinquent payments; interest.
- 16-672.08. Special assessments; levy.
- 16-672.11. Bonds; maturity; interest; rate; contractor; interest; warrants; tax levy.

(g) PUBLIC UTILITIES

- 16-676. Acquisition; operation; bonds; issuance; amount; approval of electors required.
- 16-677. Bonds; sinking funds; tax to provide.
- 16-678. Existing franchises and contracts; rights preserved; tax authorized.
- 16-679. Service; duty to provide; rates; regulation.
- 16-680. Sewerage system; drainage; waterworks; bonds authorized; amount; approval of electors; sewer or water commissioner; authorized.
- 16-681. Municipal utilities; service; rates; regulation.
- 16-682. Municipal utilities; service; delinquent rents; lien; collection.
- 16-683. Construction; bonds; plan and estimate required; extensions, additions, and enlargements.
- 16-684. Construction; operation; location; eminent domain; procedure.
- 16-684.01. Reserve funds; water mains and equipment; when authorized; labor.
- 16-686. Rural lines; when authorized; rates.
- 16-686.01. Natural gas distribution system; service to cities of the second class and villages; when authorized.
- 16-687. Contracts; terms; special election.

§ 16-606

CITIES OF THE FIRST CLASS

Section

- 16-688. Water; unwholesome supply; purification system; authority to install; election; tax authorized.
- 16-691. Board of public works; powers and duties; employees authorized; approval of budget; powers of city council; signing of payroll checks.
- 16-691.01. Board of public works; surplus funds; investment; securities; purchase; sale.
- 16-691.02. Board of public works; surplus funds; disposition; transfer.
- 16-692. Water commissioner; city council member and mayor ineligible.
- 16-693. Bonds; tax authorized; how used.
- 16-694. Sewers; maintenance and repairs; annual tax; service rate in lieu of tax; lien.

(h) PARKS

- 16-695. Parks; swimming pool; stadium; other facilities; acquisition of land; bonds; election; issuance; interest; term.
- 16-696. Board of park commissioners; appointment; number; qualifications; powers and duties; recreation board; board of park and recreation commissioners.
- 16-697. Park fund or park and recreation fund; annual levy; audit of accounts; warrants; contracts; reports.
- 16-697.01. Parks, recreational facilities, and public grounds; acquisition; control.
- 16-697.02. Borrowing; authorized; bonds; approval of electors; mayor and city council; duties; issuance of refunding bonds; approval of electors.

(i) MARKETS

- 16-698. Markets; construction; operation; location; approval of electors; notice; when required.
- 16-699. Regulation of markets.

(j) PUBLIC BUILDINGS

- 16-6,100. Public buildings; construction; bonds authorized; approval of electors required, when.
- 16-6,100.03. Joint city-county building; indebtedness; bonds; principal and interest; in addition to other limitations.
- 16-6,100.05. Joint city-county building; building commission; plans and specifications; personnel; compensation; contracts.

(k) WATERWORKS; GAS PLANT

- 16-6,101. Acquisition; revenue bonds; approval of electors required.

(l) SANITARY SEWER AND WATER MAIN CONNECTION DISTRICT

- 16-6,102. Districts; created.
- 16-6,103. Districts; benefits; certification; connection fee.
- 16-6,104. Construction of sewer and water mains; cost; payment; connection fees; use.
- 16-6,105. Construction of sewer and water mains; cost; revenue bonds; issuance authorized.

(m) FLOOD CONTROL

- 16-6,107. Costs; financing.
- 16-6,108. General obligation bonds; issuance; hearing.
- 16-6,109. Sections; supplemental to other laws.

(a) CONDEMNATION PROCEEDINGS

16-606 Property; condemnation for streets; assessments; levy; collection.

The city council may assess and levy the whole expense and damage incurred in the creation of any street, avenue, or alley upon the real property fronting upon the same and other property nearby that may be benefited thereby in proportions according to benefits. Such assessments and levy shall be made by resolution, at a regular meeting of the city council, and notice of the time of

such meeting and that such assessments will be made thereat shall be published in a legal newspaper in or of general circulation within the city ten days before such meeting. Such special taxes shall be due and payable to the city treasurer in thirty days after the assessment and levy. At the time of the next certification to the county clerk for general revenue purposes, such special assessment and levy, so far as not then paid, shall be certified to the county clerk and be put upon the tax list and be collected as other real estate taxes are collected, and paid over to the city treasurer to reimburse the city. Such special taxes shall be a lien on the property upon which assessed and levied from the assessment, and shall bear interest at a rate not to exceed the rate of interest specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, from the time due until paid. The proceedings for widening streets shall be the same as herein provided for creating new streets, and shall apply to the widening of streets, alleys, and avenues.

Source: Laws 1903, c. 19, § 7, p. 239; R.S.1913, § 4906; C.S.1922, § 4074; Laws 1923, c. 145, § 1, p. 359; C.S.1929, § 16-603; R.S.1943, § 16-606; Laws 1980, LB 933, § 9; Laws 1981, LB 167, § 10; Laws 2016, LB704, § 79.
Effective date July 21, 2016.

16-607 Property; condemnation for other public purposes; bonds; issuance; approval by electors.

(1) Payment of damages assessed for the appropriation of private property for any of the purposes provided in section 19-709 but not provided for in section 16-606 may be made by the sale of the negotiable bonds of the city, and for that purpose the mayor and city council shall have power to borrow money and to pledge the property and credit of the city upon its negotiable bonds or otherwise in an amount not exceeding in the aggregate two hundred thousand dollars.

(2) No such bonds, referred to in subsection (1) of this section, shall be issued by the city council until the question of issuing the same shall have been submitted to the electors of the city at an election called and held for that purpose, notice of which election shall have been given by publication once each week three successive weeks prior thereto in a legal newspaper in or of general circulation in such city, and a majority of the electors voting on the proposition shall have voted in favor of issuing such bonds. The proposition shall not be submitted until after the appraisers referred to in section 76-710 have made their report fixing the amount of the damages for the property appropriated. If the proposition fails to carry, it shall be equivalent to a repeal of the ordinance authorizing the appropriation proceedings, and the city shall not be bound in any way on account of the appropriation proceedings referred to in section 19-709.

(3) When the bonds, referred to in subsections (1) and (2) of this section, are for the purpose of purchasing any system or portion of a system already in existence, it shall not be necessary for the city engineer to make or the city council to adopt any plans or specifications for the work already in existence, but only for proposed changes or additional work.

Source: Laws 1923, c. 145, § 1, p. 359; C.S.1929, § 16-603; R.S.1943, § 16-607; Laws 1951, c. 26, § 1, p. 117; Laws 1953, c. 27, § 1, p. 113; Laws 1971, LB 534, § 12; Laws 2016, LB704, § 80.
Effective date July 21, 2016.

(b) STREETS

16-609 Improvements; power of city council.

The city council shall have power to open, control, name, rename, extend, widen, narrow, vacate, grade, curb, gutter, park, and pave or otherwise to improve and control and keep in good repair and condition, in any manner it may deem proper, any street, avenue, or alley, or public park or square, or part of either, within the limits of the city or within its extraterritorial zoning jurisdiction, and it may grade partially or to the established grade, or park or otherwise improve any width or part of any such street, avenue, or alley. When the city vacates all or any portion of a street, avenue, or alley, or public park or square, or part of either, the city shall, within thirty days after the effective date of the vacation, file a certified copy of the vacating ordinance with the register of deeds for the county in which the vacated property is located to be indexed against all affected lots.

Source: Laws 1901, c. 18, § 48, LV, p. 259; Laws 1901, c. 19, § 4, p. 307; Laws 1907, c. 13, § 1, p. 111; R.S.1913, § 4908; C.S.1922, § 4076; C.S.1929, § 16-605; R.S.1943, § 16-609; Laws 2001, LB 483, § 4; Laws 2016, LB704, § 81.
Effective date July 21, 2016.

16-613 Bridges; repair; duty of county; aid by city, when.

All public bridges within a city of the first class, exceeding sixty feet in length, and the approaches thereto, over any stream crossing a county highway, shall be constructed and kept in repair by the county. When any city of the first class has constructed or repaired a bridge over sixty-foot span with approaches thereto, on any county highway within its corporate limits, and has incurred a debt for the same, then the treasurer of the county in which such bridge is located shall pay to the city treasurer seventy-five percent of all bridge taxes collected in such city until such debt and interest upon the same are fully paid. The city council may appropriate a sum not exceeding five dollars per linear foot to aid in the construction of any county bridge within the limits of such city, or may appropriate a like sum to aid in the construction of any bridge contiguous to such city on a highway leading to such bridge.

Source: Laws 1909, c. 19, § 1, p. 183; R.S.1913, § 4912; C.S.1922, § 4080; C.S.1929, § 16-609; R.S.1943, § 16-613; Laws 1955, c. 31, § 1, p. 137; Laws 2016, LB704, § 82.
Effective date July 21, 2016.

16-615 Grade or change of grade; procedure; damages; how ascertained; special assessments.

(1) The mayor and city council may establish the grade of any street, avenue, or alley in the city or within a county industrial area as defined in section 13-1111 contiguous to such city. When the grade of any street, avenue, or alley has been established, the grade of all or any part shall not be changed unless the city clerk has sent notice of the proposed change in grade to the owners of the lots or land abutting upon the street, avenue, or alley or part of a street, avenue, or alley where such change of grade is to be made. The notice shall be sent to the addresses of the owners as they appear in the office of the register of deeds upon the date of the mailing of the notice. The notice shall be sent by

regular United States mail, postage prepaid, postmarked at least twenty-one days before the date upon which the city council takes final action on approval of the ordinance authorizing the change in grade. The notice shall inform the owner of the nature of the proposed change, that final action by the city council is pending, and of the location where additional information on the project may be obtained. Following the adoption of an ordinance changing the grade of all or any part of a street, avenue, or alley, no change in grade shall be made until the damages to property owners which may be caused by such change of grade are determined as provided in sections 76-704 to 76-724.

(2) For the purpose of paying the damages, if any, so awarded, the mayor and city council may borrow money from any available fund in the amount necessary, which amount, upon the collection of such amount by special assessment, shall be transferred from such special fund to the fund from which it has been borrowed. No street, avenue, or alley shall be worked to such grade or change of grade until the damages so assessed shall be tendered to such property owners or their agents. Before the mayor and city council enter into any contract to grade any such street, avenue, or alley, the damages, if any, sustained by the property owners, shall be ascertained by condemnation proceedings. For the purpose of paying the damages awarded and the costs of the condemnation proceedings, the mayor and city council may levy a special assessment upon the lots and lands abutting upon such street, avenue, or alley, or part thereof, so graded, as adjudged by the mayor and city council to be especially benefited in proportion to such benefits. Such assessment shall be collected as other special assessments.

Source: Laws 1901, c. 18, § 48, LV, p. 259; Laws 1901, c. 19, § 4, p. 307; Laws 1907, c. 13, § 1, p. 111; R.S.1913, § 4914; C.S.1922, § 4082; C.S.1929, § 16-611; R.S.1943, § 16-615; Laws 1951, c. 101, § 51, p. 470; Laws 1969, c. 81, § 1, p. 412; Laws 1995, LB 196, § 1; Laws 2015, LB361, § 20; Laws 2016, LB704, § 83.
Effective date July 21, 2016.

16-617 Improvement districts; power to establish.

The mayor and city council of any city of the first class shall have power to make improvements of any street, streets, alley, alleys, or any part of any street, streets, alley or alleys, in the city, a street which divides the corporate limits of the city and the area adjoining the city, or within a county industrial area as defined in section 13-1111 contiguous to such city, and for that purpose to create suitable improvement districts, which shall be consecutively numbered, and such work shall be done under contract. Such districts may include properties within the corporate limits, adjoining the corporate limits, and within county industrial areas as defined in section 13-1111 contiguous to such cities.

Source: Laws 1901, c. 18, § 48, p. 259; Laws 1901, c. 19, § 4, p. 307; Laws 1907, c. 13, § 1, p. 114; R.S.1913, § 4916; Laws 1915, c. 86, § 1, p. 225; Laws 1917, c. 95, § 1, p. 254; C.S.1922, § 4084; Laws 1925, c. 50, § 1, p. 191; C.S.1929, § 16-613; Laws 1933, c. 27, § 1, p. 202; C.S.Supp.,1941, § 16-613; R.S.1943, § 16-617; Laws 1967, c. 67, § 3, p. 219; Laws 1969, c. 81, § 2, p. 413; Laws 1979, LB 136, § 1; Laws 2016, LB704, § 84.
Effective date July 21, 2016.

16-618 Improvement districts; property included.

Any improvement district shall include only portions of different streets, or portions of alleys, or portions of each, which abut or adjoin so that such district, when created, makes up one continuous or extended street or more, except that the district may include a cul de sac, any street, alley, or portion thereof which is closed at one end or which connects with only one other existing street, alley, or portion thereof. Any improvement district may include portions of different streets, or portions of different alleys, or portions of each, if they abut or connect with each other, or if the several portions abut on pavement or gravel already laid, or any other of improvements already laid.

Source: Laws 1917, c. 95, § 1, p. 254; C.S.1922, § 4084; Laws 1925, c. 50, § 1, p. 192; C.S.1929, § 16-613; Laws 1933, c. 27, § 1, p. 202; C.S.Supp.,1941, § 16-613; R.S.1943, § 16-618; Laws 1980, LB 654, § 1; Laws 2016, LB704, § 85.
Effective date July 21, 2016.

16-619 Improvement districts; creation; notice.

The mayor and city council of any city of the first class exercising authority to make improvements as provided under section 16-617 shall, by ordinance, create an improvement district or districts. After the passage, approval, and publication of such ordinance, the city clerk shall publish notice of the creation of any such district or districts one time each week for not less than twenty days in a legal newspaper in or of general circulation in the city.

Source: Laws 1915, c. 86, § 1, p. 225; Laws 1917, c. 95, § 1, p. 254; C.S.1922, § 4084; Laws 1925, c. 50, § 1, p. 192; C.S.1929, § 16-613; Laws 1933, c. 27, § 1, p. 202; C.S.Supp.,1941, § 16-613; R.S.1943, § 16-619; Laws 2016, LB704, § 86.
Effective date July 21, 2016.

16-620 Improvement districts; objections of property owners; effect.

If the owners of the record title representing more than fifty percent of the front footage of the property abutting or adjoining any continuous or extended street, cul de sac, or alley of an improvement district created pursuant to section 16-617, or portion thereof which is closed at one end, and who were such owners at the time the ordinance creating such district was published, shall file with the city clerk, within twenty days from the first publication of such notice, written objections to the improvement of a district, such work shall not be done in such district under such ordinance, but such ordinance shall be repealed. If objections are not filed against any district in the time and manner provided in this section, the mayor and city council shall forthwith proceed to construct such improvement.

Source: Laws 1917, c. 95, § 1, p. 254; C.S.1922, § 4084; Laws 1925, c. 50, § 1, p. 192; C.S.1929, § 16-613; Laws 1933, c. 27, § 1, p. 202; C.S.Supp.,1941, § 16-613; R.S.1943, § 16-620; Laws 1949, c. 20, § 1, p. 90; Laws 1967, c. 67, § 4, p. 219; Laws 1980, LB 654, § 2; Laws 2016, LB704, § 87.
Effective date July 21, 2016.

16-621 Improvement districts; materials; kind; petition of landowners; bids; advertisement.

In advertising for bids for paving, repaving, graveling, or macadamizing, the mayor and city council may provide for bids on different materials and types of construction, and shall in addition provide for asking bids on any material or materials that may be suggested by petition of owners of the record title representing twenty-five percent of the abutting property owners in an improvement district, if such petition is filed with the city clerk before advertisement for bids is ordered. On opening of bids for paving or repaving in any such district, the mayor and city council shall postpone action thereon for a period of not less than ten days. During such period of postponement, the owners of the record title representing a majority of the abutting property owners in a district may file with the city clerk a petition for the use of a particular material for paving for which a bid has been received, in which event a bid on that material shall be accepted and the work shall be done with that material. The regulations as to advertising for bids and opening of bids and postponing of action thereon and the right of selection of materials shall not apply in case of graveling. In case such owners fail to designate the material they desire used in such paving or repaving, or macadamizing, in the manner and within the time provided in this section, the mayor and city council shall determine the material to be used. The mayor and city council may reject all bids and readvertise if, in their judgment, the public interest requires.

Source: Laws 1917, c. 95, § 1, p. 254; C.S.1922, § 4034; Laws 1925, c. 50, § 1, p. 192; C.S.1929, § 16-613; Laws 1933, c. 27, § 1, p. 202; C.S.Supp.,1941, § 16-613; R.S.1943, § 16-621; Laws 1965, c. 54, § 1, p. 259; Laws 2016, LB704, § 88.
Effective date July 21, 2016.

16-622 Improvement districts; assessments; how levied; when delinquent; interest; collection; procedure.

The cost of making improvements of the streets and alleys within any improvement district created pursuant to section 16-619 shall be assessed upon the lots and lands in such districts specially benefited thereby in proportion to such benefits. The amounts thereof shall, except as provided in sections 19-2428 to 19-2431, be determined by the mayor and city council under section 16-615. The assessment of the special tax for the cost of such improvements, except as provided in this section, shall be levied at one time and shall become delinquent in equal annual installments over such period of years, not to exceed twenty, as the mayor and city council may determine at the time of making the levy, the first such installment to become delinquent in fifty days after the date of such levy. Each installment, including those for graveling and the construction and replacement of pedestrian walks, plazas, malls, landscaping, lighting systems, and permanent facilities used in connection therewith as provided in this section, except the first, shall draw interest at a rate established by the mayor and city council not exceeding the rate of interest specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, from the time of levy until the levy becomes delinquent. After the levy becomes delinquent, interest at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, shall be paid thereon. Should there be three or more installments delinquent and unpaid on the same property the mayor and city council may by resolution declare all future installments on such delinquent property to be due on a future fixed date. The resolution shall set forth the description of the property and the names of its

record title owners and shall provide that all future installments shall become delinquent upon the date fixed. A copy of such resolution shall be published one time each week for not less than twenty days in a legal newspaper in or of general circulation in the city and after the fixed date such future installments shall be deemed to be delinquent and the city may proceed to enforce and collect the total amount due and all future installments. For assessments for graveling alone and without guttering or curbing, one-third of the total amount assessed against each lot or parcel of land shall become delinquent in fifty days after the date of the levy of the same, one-third in one year, and one-third in two years.

Source: Laws 1901, c. 18, § 48, LV, p. 259; Laws 1901, c. 19, § 4, p. 307; Laws 1907, c. 13, § 1, p. 111; R.S.1913, § 4917; C.S.1922, § 4085; Laws 1925, c. 50, § 2, p. 193; C.S.1929, § 16-614; Laws 1933, c. 136, § 18, p. 527; C.S.Supp.,1941, § 16-614; R.S.1943, § 16-622; Laws 1953, c. 28, § 1, p. 115; Laws 1955, c. 32, § 1, p. 139; Laws 1959, c. 64, § 1, p. 285; Laws 1959, c. 47, § 1, p. 233; Laws 1967, c. 67, § 5, p. 220; Laws 1972, LB 1213, § 1; Laws 1973, LB 541, § 1; Laws 1980, LB 933, § 10; Laws 1981, LB 167, § 11; Laws 1983, LB 94, § 1; Laws 2016, LB704, § 89.
Effective date July 21, 2016.

16-623 Improvement districts; bonds; interest.

For the purpose of paying the cost of improving the streets, avenues, or alleys in an improvement district created pursuant to section 16-619, exclusive of intersections of streets or avenues, or spaces opposite alleys therein, the mayor and city council shall have power and may, by ordinance, cause to be issued bonds of the city, to be called Street Improvement Bonds of District No., payable in not exceeding twenty years from date, and bearing interest, payable either annually or semiannually, with interest coupons attached. In such cases they shall also provide that the special taxes and assessments shall constitute a sinking fund for the payment of the bonds. The entire cost of improving any such street, avenue, or alley, properly chargeable to any lot or land within any such improvement district according to the front footage thereof, may be paid by the owners of such lots or lands within fifty days from the levying of such special taxes, and thereupon such lot or lands shall be exempt from any lien or charge therefor.

Source: Laws 1901, c. 18, § 48, LV, p. 259; Laws 1901, c. 19, § 4, p. 307; Laws 1907, c. 13, § 1, p. 111; R.S.1913, § 4918; C.S.1922, § 4086; Laws 1925, c. 50, § 3, p. 194; C.S.1929, § 16-615; Laws 1931, c. 32, § 1, p. 123; C.S.Supp.,1941, § 16-615; R.S.1943, § 16-623; Laws 1967, c. 67, § 6, p. 221; Laws 1969, c. 51, § 27, p. 288; Laws 2016, LB704, § 90.
Effective date July 21, 2016.

16-624 Improvement districts; creation upon petition; denial; assessments; bonds.

Whenever the owners of lots or lands abutting upon any street, avenue, or alley within the city, representing three-fourths of the front footage thereon, so that an improvement district when created will make up one continuous or extended thoroughfare or more, shall petition the mayor and city council to

make improvement of such street, avenue, or alley without cost to the city, and to assess the entire cost of any such improvements in any such street, avenue, or alley, including intersections of streets or avenues and spaces opposite alleys, against the private property within such improvement district or districts, it shall be the duty of the mayor and city council to create the proper improvement district or districts, which shall be consecutively numbered, and to improve the same and to proceed in the same manner and form as provided for in other improvement districts. The mayor and city council shall have power to levy the entire cost of such improvements of any such street, avenue, or alley, including intersections of streets or avenues and spaces opposite alleys, against the private property within such district, and to issue Street Improvement Bonds of District No. to pay for such improvements in the same manner and form as provided for in other improvement bonds. Such bonds shall be issued to cover the entire cost of so improving such streets or avenues, intersections of the same, and spaces opposite alleys. If the assessments provided for, or any part thereof, shall fail, or for any reason shall be invalid, the mayor and city council may make other and further assessments upon such lots or lands as may be required to collect from the same the cost of any improvements properly chargeable thereto, as provided in this section. The mayor and city council shall have the discretion to deny the formation of the proposed district when the area to be improved has not previously been improved with a water system, sewer system, and grading of streets. If the mayor and city council should deny a requested improvement district formation, they shall state their grounds for such denial in a written letter to interested parties.

Source: Laws 1901, c. 18, § 48, LV, p. 259; Laws 1901, c. 19, § 4, p. 307; Laws 1907, c. 13, § 1, p. 111; R.S.1913, § 4919; C.S.1922, § 4087; Laws 1925, c. 50, § 4, p. 194; C.S.1929, § 16-616; Laws 1933, c. 27, § 2, p. 203; C.S.Supp.,1941, § 16-616; R.S.1943, § 16-624; Laws 1967, c. 67, § 7, p. 222; Laws 1983, LB 125, § 1; Laws 2016, LB704, § 91.
Effective date July 21, 2016.

16-625 Intersections; improvements; railways; duty to pave right-of-way.

The cost of improving the intersections of streets or avenues and spaces opposite alleys in an improvement district, except as specially provided in sections 16-609 to 16-624, shall be paid by the city as provided in sections 16-625 to 16-628. Nothing in sections 16-617 to 16-650 shall be construed to exempt any street or other railway company from improving, with such material as the mayor and city council may order, its whole right-of-way including all space between and one foot beyond the outer rails, at its own cost, whenever any street or avenue shall be ordered improved by the mayor and city council as provided by law. No street or other railway company shall enter upon or occupy any paved street or avenue, within five years after such paving shall have been completed, until it shall pay into the city treasury the original cost of paving between and one foot beyond the outer rails, which sum shall be credited on the special assessment upon the abutted lots. If the special assessment shall have been paid, then the money shall be paid, by warrant, to the party who has already paid such special assessment.

Source: Laws 1901, c. 18, § 48, LV, p. 259; Laws 1901, c. 19, § 4, p. 307; Laws 1907, c. 13, § 1, p. 111; R.S.1913, § 4920; C.S.1922,

§ 4088; Laws 1925, c. 50, § 5, p. 195; C.S.1929, § 16-617; R.S. 1943, § 16-625; Laws 1967, c. 67, § 8, p. 223; Laws 2016, LB704, § 92.

Effective date July 21, 2016.

16-626 Intersection improvement bonds; amount; interest; warrants; partial payments; final payment; interest; restrictions on work.

For all improvements of the intersections and areas formed by the crossing of streets, avenues, or alleys, and one-half of the streets adjacent to real estate owned by the United States, the State of Nebraska, or the city, the assessment shall be made upon all the taxable property of the city, and for the payment of such improvements, the mayor and city council are hereby authorized to issue improvement bonds of the city in such denominations as they deem proper, to be called Intersection Improvement Bonds, payable in not to exceed twenty years from date of the bonds and to bear interest payable annually or semiannually. Such bonds shall not be issued in excess of the cost of such improvements. For the purpose of making partial payments as the work progresses in making the improvements of streets, avenues, alleys, or intersections and areas formed by the crossing of streets, avenues, or alleys, or one-half of the streets adjacent to real estate owned by the United States, the State of Nebraska, or the city, warrants may be issued by the mayor and city council upon certificates of the engineer in charge showing the amount of the work completed and materials necessarily purchased and delivered for the orderly and proper continuation of the project, in a sum not exceeding ninety-five percent of the cost thereof, and upon completion and acceptance of the work issue a final warrant for the balance of the amount due the contractor, which warrants shall be redeemed and paid upon the sale of bonds authorized by law. The city shall pay to the contractor interest at the rate of eight percent per annum on the amounts due on partial and final payments beginning forty-five days after the certification of the amounts due by the engineer in charge and approval by the city council, and running until the date that the warrant is tendered to the contractor. Nothing in this section shall be construed as authorizing the mayor and city council to make improvements of any intersections or areas formed by the crossing of streets, avenues, or alleys, unless in connection with one or more blocks of any of aforesaid kinds or forms of street improvement of which the improvement of such intersection or areas shall form a part.

Source: Laws 1901, c. 18, § 48, LV, p. 259; Laws 1901, c. 19, § 4, p. 307; Laws 1907, c. 13, § 1, p. 111; R.S.1913, § 4921; Laws 1917, c. 96, § 1, p. 259; C.S.1922, § 4089; Laws 1923, c. 146, § 1, p. 360; Laws 1925, c. 50, § 14, p. 201; C.S.1929, § 16-618; R.S.1943, § 16-626; Laws 1965, c. 55, § 1, p. 261; Laws 1967, c. 67, § 9, p. 223; Laws 1969, c. 51, § 28, p. 289; Laws 1974, LB 636, § 1; Laws 2016, LB704, § 93.

Effective date July 21, 2016.

16-627 Intersections; improvement; cost; tax levy.

The cost and expense of improving, constructing, or repairing streets, avenues, alleys, and sidewalks, at their intersections, may be included in the

special tax levied for the construction or improvement of any one street, avenue, alley, or sidewalk, as may be deemed best by the city council.

Source: Laws 1901, c. 18, § 75, p. 288; R.S.1913, § 4922; C.S.1922, § 4090; C.S.1929, § 16-619; R.S.1943, § 16-627; Laws 1967, c. 67, § 10, p. 224; Laws 2016, LB704, § 94.
Effective date July 21, 2016.

16-628 Improvements; tax; when due.

Special taxes as provided in section 16-627 shall be due and may be collected as the improvements are completed in front of or along or upon any block or piece of ground, or at the time the improvement is entirely completed or otherwise, as shall be provided in the ordinance levying the tax.

Source: Laws 1901, c. 18, § 76, p. 288; R.S.1913, § 4923; C.S.1922, § 4091; C.S.1929, § 16-620; R.S.1943, § 16-628; Laws 2016, LB704, § 95.
Effective date July 21, 2016.

16-630 Curbing and guttering bonds; interest rate; special assessments; how levied.

If curbing, or curbing and guttering, is done upon any street, avenue, or alley in any improvement district in which paving or other such improvement has been ordered, and the mayor and city council shall deem it expedient to do so, the mayor and city council may, for the purpose of paying the cost of such curbing, or curbing and guttering, cause to be issued bonds of the city, to be called Curbing and Guttering Bonds of Improvement District No., payable in not exceeding ten years from date, bearing interest, payable annually or semiannually, with interest coupons attached. In all cases the mayor and city council shall assess at one time as a special assessment the total cost of such curbing, or curbing and guttering, upon the property abutting or adjacent to the portion of the street, avenue, or alley so improved, according to the special benefits. Such special assessments shall become delinquent the same as the special assessments for paving, repaving, graveling, or macadamizing purposes, draw the same rate of interest, be subject to the same penalties, and may be paid in the same manner, as special assessments for such purpose. The special assessment shall constitute a sinking fund for the payment of such bonds and interest, and the bonds shall not be sold for less than their par value.

Source: Laws 1901, c. 18, § 48, LV, p. 267; Laws 1901, c. 19, § 4, p. 315; Laws 1907, c. 13, § 1, p. 119; R.S.1913, § 4925; Laws 1915, c. 87, § 1, p. 226; C.S.1922, § 4093; Laws 1925, c. 50, § 7, p. 196; C.S.1929, § 16-622; R.S.1943, § 16-630; Laws 1945, c. 21, § 1, p. 128; Laws 1969, c. 51, § 29, p. 290; Laws 2015, LB361, § 21; Laws 2016, LB704, § 96.
Effective date July 21, 2016.

16-631 Curbing and guttering; cost; paving bonds may include; special assessment.

If an improvement district has been established, an improvement thereon constructed, and curbing, or curbing and guttering, is therewith constructed and it becomes necessary to issue and sell street improvement bonds to pay for the cost of construction of the improvement and the curbing, or curbing and

guttering, the mayor and city council may, at their discretion, include the cost of curbing, or curbing and guttering, with the cost of other improvements in the improvement district, and issue bonds for the combined cost of the improvement and curbing, or curbing and guttering, in any of the districts, naming the bonds Street Improvement Bonds of District No. The amount of money necessary for the payment of such bonds shall be levied upon and collected from abutting and adjacent property and property specially benefited as a special assessment.

Source: Laws 1915, c. 87, § 1, p. 227; C.S.1922, § 4093; Laws 1925, c. 50, § 7, p. 197; C.S.1929, § 16-622; R.S.1943, § 16-631; Laws 1967, c. 67, § 11, p. 224; Laws 2015, LB361, § 22; Laws 2016, LB704, § 97.

Effective date July 21, 2016.

16-632 Improvement districts; assessments; when authorized; ordinary repairs excepted.

In order to defray the costs and expenses of improvements in any improvement district, the mayor and city council shall have power and authority to levy and collect special taxes and assessments upon the lots and pieces of ground adjacent to or abutting upon the street, avenue, alley, or sidewalk, thus in whole or in part improved or repaired or which may be specially benefited by such improvements. The provisions in this section shall not apply to ordinary repairs of streets or alleys, and the cost of such repairs shall be paid out of the road fund. The mayor and city council are authorized to draw warrants against such fund not to exceed eighty-five percent of the amount levied as soon as levy shall be made by the county board.

Source: Laws 1901, c. 18, § 48, LV, p. 259; Laws 1901, c. 19, § 4, p. 307; Laws 1907, c. 13, § 1, p. 111; R.S.1913, § 4926; C.S.1922, § 4094; Laws 1925, c. 50, § 8, p. 198; C.S.1929, § 16-623; R.S. 1943, § 16-632; Laws 1967, c. 67, § 12, p. 225; Laws 2016, LB704, § 98.

Effective date July 21, 2016.

16-633 Improvements; assessments against public lands.

If, in any city of the first class, there shall be any real estate belonging to any county, school district, city, village, or other political subdivision abutting upon the street, avenue, or alley whereon paving or other improvements have been ordered, it shall be the duty of the governing body of the political subdivision to pay such special taxes. In the event of the neglect or refusal of such governing body to pay such taxes, or to levy and collect the taxes necessary to pay for such improvements, the city may recover the amount of such special taxes in a proper action. The judgment thus obtained may be enforced in the usual manner, and the signatures of such political subdivisions to all petitions shall have like force and effect as that of other property owners.

Source: Laws 1901, c. 18, § 48, LV, p. 259; Laws 1901, c. 19, § 4, p. 307; Laws 1907, c. 13, § 1, p. 111; R.S.1913, § 4927; C.S.1922, § 4095; C.S.1929, § 16-624; R.S.1943, § 16-633; Laws 2016, LB704, § 99.

Effective date July 21, 2016.

16-634 Improvements; real estate owned by minor or protected person; petition; guardian or conservator may sign.

If, in any city of the first class, there shall be any real estate of any minor or protected person, the guardian or conservator of such minor or protected person may sign any petition referred to by law, and such signature shall have like force and effect as that of other property owners.

Source: Laws 1907, c. 13, § 1, p. 111; R.S.1913, § 4928; C.S.1922, § 4096; C.S.1929, § 16-625; R.S.1943, § 16-634; Laws 1975, LB 481, § 3; Laws 2016, LB704, § 100.
Effective date July 21, 2016.

16-635 Improvements; terms, defined; depth to which assessable.

(1) For purposes of sections 16-617 to 16-650:

(a) Lot means a lot as described and designated upon the record plat of any city of the first class, or within a county industrial area as defined in section 13-1111 contiguous to such city. If there is no recorded plat of any such city or county industrial area, lot means a lot as described and designated upon any generally recognized map of any such city or county industrial area; and

(b) Land means any subdivided or unplatted real estate in such city or county industrial area.

(2) If the lots and real estate abutting upon that part of the street ordered improved, as shown upon any recorded plat or map, are not of uniform depth, or, if for any reason, it shall appear just and proper to the mayor and city council, they are authorized and empowered to determine and establish the depth to which such real estate shall be charged and assessed with the costs of the improvements, which shall be determined and established according to the benefits accruing to the property by reason of such improvements. Real estate may be so charged and assessed to a greater depth than lots as shown on any such plat or map.

Source: Laws 1901, c. 18, § 48, LV, p. 259; Laws 1901, c. 19, § 4, p. 307; Laws 1907, c. 13, § 1, p. 111; R.S.1913, § 4929; C.S.1922, § 4097; Laws 1925, c. 50, § 9, p. 198; C.S.1929, § 16-626; R.S. 1943, § 16-635; Laws 1967, c. 67, § 13, p. 225; Laws 1969, c. 81, § 3, p. 414; Laws 2016, LB704, § 101.
Effective date July 21, 2016.

16-636 Improvement districts; land which city council may include.

The mayor and city council may, in their discretion, include all the real estate to be charged and assessed with the cost of such improvements in the improvement districts described in sections 16-617 to 16-635 but are not required to do so. The mayor and city council may, in their discretion, in determining whether the requisite majority of owners who are authorized in sections 16-617 to 16-635 to petition for improvements, and to object to the improvements and to determine the kind of material to be used therefor, have joined in such petition, determination, or objections, consider and take into account all the owners of real estate to be charged and assessed with the cost of any of such improvements, or only such as own lots, parts of lots, and real estate which, in fact, abut upon the part of the street, avenue, or alley proposed to be so improved. This section, in regard to the depth to which real estate may be charged and

assessed, shall apply to all special taxes that may be levied by the mayor and city council in any such city in proportion to the front footage.

Source: Laws 1901, c. 18, § 48, LV, p. 259; Laws 1901, c. 19, § 4, p. 307; Laws 1907, c. 13, § 1, p. 111; R.S.1913, § 4930; Laws 1917, c. 95, § 1, p. 255; C.S.1922, § 4098; Laws 1925, c. 50, § 10, p. 199; C.S.1929, § 16-627; R.S.1943, § 16-636; Laws 1967, c. 67, § 14, p. 226; Laws 2016, LB704, § 102.
Effective date July 21, 2016.

16-637 Improvements; special tax; assessments; action to recover.

Any party feeling aggrieved by any special tax or assessment, or proceeding for improvements, may pay such special taxes assessed and levied upon his, her, or its property, or such installments thereof as may be due at any time before the special tax or assessment shall become delinquent, under protest, and with notice in writing to the city treasurer that he, she, or it intends to sue to recover the special tax or assessment, which notice shall particularly state the alleged grievance and the ground for the grievance. Such party shall have the right to bring a civil action within sixty days to recover so much of the special tax or assessment paid as he, she, or it shows to be illegal, inequitable, and unjust, the costs to follow the judgment or to be apportioned by the court, as may seem proper, which remedy shall be exclusive. The city treasurer shall promptly report all such notices to the city council for such action as may be proper. No court shall entertain any complaint that the party was authorized to make and did not make to the city council, sitting as a board of equalization, nor any complaint not specified in such notice fully enough to advise the city of the exact nature thereof, nor any complaint that does not go to the groundwork, equity, and justness of such tax. The burden of proof to show such tax or part thereof invalid, inequitable, and unjust shall rest upon the party who brings the suit.

Source: Laws 1901, c. 18, § 48, LV, p. 259; Laws 1901, c. 19, § 4, p. 307; Laws 1907; c. 13, § 1, p. 111; R.S.1913, § 4931; C.S.1922, § 4099; Laws 1925, c. 50, § 11, p. 199; C.S.1929, § 16-628; R.S.1943, § 16-637; Laws 1967, c. 67, § 15, p. 226; Laws 2016, LB704, § 103.
Effective date July 21, 2016.

16-646 Special taxes; lien upon property; collection.

In every case of the levy of special taxes, the special taxes shall be a lien on the property on which levied from date of levy and shall be due and payable to the city treasurer thirty days after such levy when not otherwise provided. At the time of the next certification for general revenue purposes to the county clerk, if not previously paid, the special taxes, except paving, repaving, graveling, macadamizing, and curbing or curbing and guttering shall be certified to the county clerk, placed upon the tax list, collected as other real estate taxes are collected, and paid over to the city treasurer. Paving, repaving, graveling, macadamizing, and curbing, or curbing and guttering taxes may be so certified and collected by the county treasurer at the option of such city.

Source: Laws 1901, c. 18, § 77, p. 288; Laws 1903, c. 19, § 14, p. 245; R.S.1913, § 4938; Laws 1917, c. 95, § 1, p. 255; C.S.1922,

§ 4106; Laws 1925, c. 50, § 12, p. 200; C.S.1929, § 16-635; R.S.1943, § 16-646; Laws 2016, LB704, § 104.
Effective date July 21, 2016.

16-647 Special taxes; payment by part owner.

It shall be sufficient in any case to describe the lot or piece of ground as it is platted and recorded although the lot or piece of ground belongs to several persons. If any lot or piece of ground belongs to different persons, the owner of any part thereof may pay his or her portion of the tax on such lot or piece of ground, and his or her proper share may be determined by the city treasurer.

Source: Laws 1901, c. 18, § 78, p. 289; R.S.1913, § 4939; C.S.1922, § 4107; C.S.1929, § 16-636; R.S.1943, § 16-647; Laws 2016, LB704, § 105.
Effective date July 21, 2016.

16-649 Improvements; contracts; bids; requirement.

All improvements of any streets, avenues, or alleys in the city for which, or any part thereof, a special tax shall be levied, shall be done by contract with the lowest responsible bidder to be determined by the city council.

Source: Laws 1901, c. 18, § 74, p. 288; R.S.1913, § 4941; C.S.1922, § 4109; Laws 1925, c. 50, § 13, p. 201; C.S.1929, § 16-638; R.S.1943, § 16-649; Laws 1967, c. 67, § 16, p. 227; Laws 2016, LB704, § 106.
Effective date July 21, 2016.

16-650 Public improvements; acceptance by city engineer; approval or rejection by city council.

When any improvement is completed according to contract, it shall be the duty of the city engineer to carefully inspect the improvement and if the improvement is found to be properly done, such engineer shall accept the improvement and report his or her acceptance to the board of public works or mayor, who shall report the same to the city council with recommendation that the same be approved or disapproved. The city council may confirm or reject such acceptance. When the ordinance levying the tax makes the same due as the improvement is completed in front of or along any block or piece of ground, the city engineer may accept the same in sections from time to time, if found to be done according to the contract, reporting his or her acceptance as in other cases.

Source: Laws 1901, c. 18, § 66, p. 278; R.S.1913, § 4942; C.S.1922, § 4110; C.S.1929, § 16-639; R.S.1943, § 16-650; Laws 2016, LB704, § 107.
Effective date July 21, 2016.

16-651 Grading and grading districts.

Whenever the owners of lots and lands abutting upon any street or alley, or part thereof, within the city, representing two-thirds of the feet front abutting upon such part of street or alley desired to be graded, shall petition the city council to grade such street or alley, or part thereof, without cost to the city, the mayor and city council shall order the grading done and assess the costs

thereof against the property abutting upon such street or alley or such part thereof so graded. For this purpose the mayor and city council shall create suitable grading districts, which shall be consecutively numbered.

Source: Laws 1901, c. 18, § 73, p. 285; R.S.1913, § 4943; C.S.1922, § 4111; C.S.1929, § 16-640; R.S.1943, § 16-651; Laws 2016, LB704, § 108.

Effective date July 21, 2016.

16-652 Grading; special assessments; when delinquent.

The cost of grading the streets and alleys within any grading district shall be assessed upon the lots and lands specially benefited thereby in such district in proportion to such benefits, to be determined by the mayor and city council under section 16-615, as a special assessment. The special assessment for grading purposes shall be levied at one time and shall become delinquent as follows: One-fifth of the total amount shall become delinquent in fifty days after such levy; one-fifth in one year; one-fifth in two years; one-fifth in three years; and one-fifth in four years. Each of the installments, except the first, shall draw interest at a rate not to exceed the rate of interest specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, from the time of the levy until the installment becomes delinquent. If the installment becomes delinquent, interest at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, shall be paid thereon, as in the case of other special assessments. The cost of grading the intersections of streets and spaces opposite alleys in any such district shall be paid by the city out of the general fund of such city.

Source: Laws 1901, c. 18, § 73, p. 286; R.S.1913, § 4943; C.S.1922, § 4111; C.S.1929, § 16-640; R.S.1943, § 16-652; Laws 1980, LB 933, § 11; Laws 1981, LB 167, § 12; Laws 2015, LB361, § 23.

16-653 Grading bonds; interest rate.

For the purpose of paying the costs of grading the streets and alleys in a grading district, exclusive of the intersection of streets and spaces opposite alleys therein, the mayor and city council shall have power, and may, by ordinance, cause to be issued bonds of the city, to be called District Grading Bonds of District No., payable in not exceeding five years from date and to bear interest, payable annually or semiannually, with interest coupons attached, and that as nearly as possible an equal amount of the bonds shall be made to mature each year, and in such case shall also provide that such special taxes and assessments shall constitute a sinking fund for the payment of such bonds and interest. The entire cost of grading any such street or alley properly chargeable to any lots or lands within any such grading district, according to feet front thereof, may be paid by the owner of such lots or lands within fifty days from the levy of such special taxes or assessments. Upon payment, such lot or land shall be exempt from any lien or charge therefor.

Source: Laws 1901, c. 18, § 73, p. 285; R.S.1913, § 4943; C.S.1922, § 4111; C.S.1929, § 16-640; R.S.1943, § 16-653; Laws 1945, c. 21, § 2, p. 129; Laws 1969, c. 51, § 30, p. 290; Laws 2016, LB704, § 109.

Effective date July 21, 2016.

16-654 Grading upon petition; assessments; bonds.

Whenever the owner of lots and lands abutting upon any street or avenue, alley, or lane, or part thereof, representing three-fourths of the feet front abutting upon any such street, avenue, alley, or lane, or part thereof, shall petition the mayor and city council to grade the street, avenue, alley, or lane, including the intersections of streets, avenues, or lanes and spaces opposite alleys and lanes, without cost to the city, and to assess the entire cost of grading such street, avenue, alley, or lane or part thereof, including the intersections of streets, avenues, or lanes and spaces opposite alleys or lanes, against the lots and lands abutting upon such street, avenue, alley, or lane, or part thereof, so graded, thereupon the mayor and city council shall create grading districts, make assessments, issue bonds, and proceed in the same manner as in cases of grading provided in sections 16-651 and 16-653. Bonds shall be issued to cover the entire cost of grading both the streets, avenues, or alleys, and the intersections of streets or avenues and spaces opposite alleys.

Source: Laws 1901, c. 18, § 73, p. 287; R.S.1913, § 4943; C.S.1922, § 4111; C.S.1929, § 16-640; R.S.1943, § 16-654; Laws 2016, LB704, § 110.

Effective date July 21, 2016.

16-655 Grading bonds; amount; sale; damages; how ascertained.

The aggregate amount of bonds issued under sections 16-653 and 16-654 in any one year shall not exceed fifty thousand dollars and shall not be sold for less than their par value. If any assessment or part thereof shall fail or for any reason be invalid, the mayor and city council may make such further assessments upon such lots or lands, as may be required, and collect from the owners the cost of any grading properly chargeable. No street, avenue, alley, or lane shall be so graded until the damages to property owners, if any, shall be ascertained by three disinterested property owners to be appointed by the mayor and city council and the proceedings to be the same in all respects as provided in section 16-615 for cases of change of grade.

Source: Laws 1901, c. 18, § 73, p. 287; R.S.1913, § 4943; C.S.1922, § 4111; C.S.1929, § 16-640; R.S.1943, § 16-655; Laws 2016, LB704, § 111.

Effective date July 21, 2016.

(d) SIDEWALKS**16-661 Construction and repair; materials.**

The mayor and city council may construct and repair, or cause and compel the construction and repair, of sidewalks in such city of such material and in such manner as they may deem necessary.

Source: Laws 1901, c. 18, § 48, LV, p. 259; Laws 1901, c. 19, § 4, p. 307; Laws 1907, c. 13, § 1, p. 111; R.S.1913, § 4945; C.S.1922, § 4114; C.S.1929, § 16-643; R.S.1943, § 16-661; Laws 2016, LB704, § 112.

Effective date July 21, 2016.

16-662 Construction and repair; failure of property owner; power of city.

In case the owner or owners of any lot, lots, or lands abutting on any street or avenue, or part thereof, shall fail to construct or repair any sidewalk in front of his, her, or their lot, lots, or lands within the time and in the manner as directed and requested by the mayor and city council, after having received due notice to do so, they shall be liable for all damages or injury occasioned by reason of the defective or dangerous condition of any sidewalk, and the mayor and city council shall have power to cause such sidewalk to be constructed or repaired and assess the cost thereof against such property.

Source: Laws 1901, c. 18, § 48, LV, p. 259; Laws 1901, c. 19, § 4, p. 307; Laws 1907, c. 13, § 1, p. 111; R.S.1913, § 4946; C.S.1922, § 4115; C.S.1929, § 16-644; R.S.1943, § 16-662; Laws 2016, LB704, § 113.

Effective date July 21, 2016.

16-664 Construction; cost; special assessment; levy; when delinquent; payment.

The mayor and city council may provide for the laying of permanent sidewalks. Upon the petition of any property owner who desires to build such a permanent sidewalk, the mayor and city council may order the sidewalk to be built, the cost of the sidewalk until paid shall be a perpetual lien upon the real estate along which the property owner desires such sidewalk to be constructed, and the city council may assess and levy the costs of the sidewalk against such real estate as a special assessment. The total cost of the building of the permanent sidewalk shall be levied at one time upon the property along which such permanent sidewalk is to be built, and become delinquent as follows: One-seventh of the total cost shall become delinquent in ten days after such levy; one-seventh in one year; one-seventh in two years; one-seventh in three years; one-seventh in four years; one-seventh in five years; and one-seventh in six years. Each of such installments, except the first, shall draw interest at a rate of not exceeding the rate of interest specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, from the time of the levy, until the installment becomes delinquent. If the installment becomes delinquent, interest at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, shall be paid thereon as in the case of other special assessments. The city council shall pay for the building of such permanent sidewalk out of the general fund. The mayor and city council may pass an ordinance to carry into effect this section.

Source: Laws 1901, c. 18, § 121, p. 303; R.S.1913, § 4948; C.S.1922, § 4117; C.S.1929, § 16-646; R.S.1943, § 16-664; Laws 1963, c. 65, § 1, p. 264; Laws 1965, c. 57, § 1, p. 264; Laws 1980, LB 933, § 12; Laws 1981, LB 167, § 13; Laws 2015, LB361, § 24; Laws 2016, LB704, § 114.

Effective date July 21, 2016.

16-665 Ungraded streets; construction of sidewalks.

The mayor and city council may provide for the laying of permanent sidewalks and of temporary plank sidewalks upon the natural surface of the ground without regard to the grade, on streets not permanently improved, and provide

for the assessment of the cost therein on the property in front of which such sidewalks shall be laid.

Source: Laws 1901, c. 18, § 48, VII, p. 246; R.S.1913, § 4949; C.S.1922, § 4118; C.S.1929, § 16-647; R.S.1943, § 16-665; Laws 2016, LB704, § 115.

Effective date July 21, 2016.

16-666 Assessments; levy; certification; collection.

Assessments made under sections 16-250 and 16-665 shall be made and assessed in the following manner:

(1) Such assessments shall be made by the city council at any meeting by a resolution fixing the costs of the construction or repair of such work along the lot adjacent thereto as a special assessment thereon, the amount charged against the same, which, with the vote thereon by yeas and nays, shall be recorded in the minutes, and notice of the time of holding such meeting and the purpose for which it is to be held shall be published in a legal newspaper in or of general circulation in the city at least ten days before the same shall be held, or in lieu thereof, personal service may be had upon persons owning or occupying property to be assessed;

(2) All such assessments shall be known as special assessments for improvements, and with the cost of notice shall be levied and collected as a special tax, in addition to the taxes for general revenue purposes, subject to the same penalties and collected in like manner as other city taxes, but such special assessment shall draw interest at a rate not to exceed the rate of interest specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, and the same shall be certified to the county clerk at the same time as the next certification for general revenue purposes.

Source: Laws 1901, c. 18, § 48, VIII, p. 246; Laws 1903, c. 19, § 8, p. 240; R.S.1913, § 4950; C.S.1922, § 4119; C.S.1929, § 16-648; R.S. 1943, § 16-666; Laws 1980, LB 933, § 13; Laws 1981, LB 167, § 14; Laws 2016, LB704, § 116.

Effective date July 21, 2016.

(e) WATER, SEWER, AND DRAINAGE DISTRICTS

16-667 Creation of districts; regulations.

A city of the first class may, by ordinance, lay off the city into suitable districts for the purpose of establishing one or more systems of sewerage, drainage, or water service; provide such sewerage, drainage, and water systems and regulate the construction, repair, and use of such systems; compel all proper connections therewith and branches from other streets, avenues, and alleys, and from private property; and provide a penalty not to exceed one hundred dollars for any obstruction or injury to any sewer, drain, or water main or part thereof, or for failure to comply with the regulations therefor prescribed.

Source: Laws 1901, C. 18, § 48, XXVII, p. 251; Laws 1905, c. 24, § 1, p. 247; Laws 1911, c. 14, § 1, p. 129; Laws 1913, c. 161, § 1, p. 500; R.S.1913, § 4951; C.S.1922, § 4120; C.S.1929, § 16-649; Laws 1933, c. 136, § 19, p. 528; C.S.Supp.,1941, § 16-649; R.S.1943, § 16-667; Laws 2016, LB704, § 117.

Effective date July 21, 2016.

16-667.01 Prohibit formation of district; procedure.

Upon formation by city ordinance of sewerage, drainage, and water service districts as described by section 16-667, the city shall mail copies of such city ordinance and this section to the owners of the record title of any property abutting upon the streets, avenues, or alleys, or parts thereof, which are within such district within twenty calendar days of the passage of the ordinance. The owners of the record title representing more than fifty percent of the front footage of the property abutting upon the streets, avenues, or alleys, or parts thereof which are within such a proposed district may, by petition, stop formation of such a district. Such written protest shall be submitted to the city council or city clerk within thirty calendar days after publication of notice concerning the ordinance in a legal newspaper in or of general circulation in the city. Publication of such notice shall follow within ten calendar days after passage of such an ordinance. The mailing notice requirement of this section shall be satisfied by mailing a copy of the ordinance and this section by United States mail to the last-known address of the owners of the record title.

Source: Laws 1901, c. 18, § 48, XXVII, p. 251; Laws 1905, c. 24, § 1, p. 247; Laws 1911, c. 14, § 1, p. 129; Laws 1913, c. 161, § 1, p. 500; R.S.1913, § 4951; C.S.1922, § 4120; C.S.1929, § 16-649; Laws 1933, c. 136, § 19, p. 528; C.S.Supp.,1941, § 16-649; R.S.1943, § 16-667.01; Laws 1981, LB 31, § 1; Laws 2016, LB704, § 118. Effective date July 21, 2016.

16-667.02 Districts; formation; sewer, drainage, or water systems and mains; special assessments; use of other funds.

Upon formation of a district as provided in section 16-667.01, the mayor and city council may order sewer, drainage, or water systems and mains to be laid and constructed in such district and the costs, to the extent of the special benefit, assessed against the lots and parcels of real estate in such district. The cost of sewer, drainage, or water systems or mains in excess of collections from special assessments under this section may be paid out of the sewer fund or water fund, or, if money in such fund is insufficient, out of the general fund of the city.

Source: Laws 1977, LB 483, § 2; Laws 2016, LB704, § 119. Effective date July 21, 2016.

16-667.03 Sewer, drainage, or water systems and mains; failure to make connections; order; costs assessed.

If, after ten days' notice by certified mail or publication in a legal newspaper in or of general circulation in the city, a property owner fails to make such connections and comply with such regulations as the city council may order in accordance with section 16-667.02, the city council may order such connection be made, and assess the cost thereof against the property so benefited.

Source: Laws 1977, LB 483, § 3; Laws 2016, LB704, § 120. Effective date July 21, 2016.

16-669 Special assessments; when delinquent; interest; future installments; collection.

(1) Except as provided in subsection (2) of this section, special assessments for sewer, drainage, or water improvements in a district created pursuant to section 16-667 shall be levied at one time and shall become delinquent in equal annual installments over a period of years equal to the number of years for which the bonds for such project were issued pursuant to section 16-670. The first installment becomes delinquent fifty days after the making of such levy. Each installment, except the first, shall draw interest from the time of such levy until such installment becomes delinquent. After an installment becomes delinquent, interest at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, shall be paid thereon until such installment is collected and paid. Such special assessments shall be collected and enforced as in cases of other special assessments and shall be a lien on such real estate from and after the date of the levy thereof. If three or more installments are delinquent and unpaid on the same property, the city council may by resolution declare all future installments on such delinquent property to be due on a future fixed date. The resolution shall set forth the description of the property and the names of its record title owners and shall provide that all future installments shall become delinquent upon the date fixed. A copy of such resolution shall be published one time each week for not less than twenty days in a legal newspaper in or of general circulation in the city and after the fixed date such future installments shall be deemed to be delinquent and the city may proceed to enforce and collect the total amount due and all future installments.

(2) If the city incurs no new indebtedness pursuant to section 16-670 for sewer or water improvements in a district, special assessments for sewer or water improvements shall be levied at one time and shall become delinquent in equal annual installments over such period of years as the city council determines at the time of making the levy to be reasonable and fair.

Source: Laws 1901, c. 18, § 48, XXVII, p. 252; Laws 1905, c. 24, § 1, p. 248; Laws 1911, c. 14, § 1, p. 130; Laws 1913, c. 161, § 1, p. 501; R.S.1913, § 4951; C.S.1922, § 4120; C.S.1929, § 16-649; Laws 1933, c. 136, § 19, p. 528; C.S.Supp.,1941, § 16-649; R.S.1943, § 16-669; Laws 1953, c. 29, § 1, p. 116; Laws 1955, c. 33, § 1, p. 140; Laws 1959, c. 64, § 2, p. 286; Laws 1969, c. 51, § 31, p. 291; Laws 1977, LB 483, § 4; Laws 1980, LB 933, § 14; Laws 1981, LB 167, § 15; Laws 2005, LB 161, § 4; Laws 2015, LB361, § 25; Laws 2016, LB704, § 121.
Effective date July 21, 2016.

16-670 Bonds; amount; interest; maturity; special assessments; revenue bonds.

For the purpose of paying the cost of any sewer, drainage, or water improvements in any district created pursuant to section 16-667, the city council shall have the power and may by ordinance cause bonds of the city to be issued called District Sewer Bonds of District No., District Drainage Bonds of District No., or District Water Bonds of District No., payable in not exceeding twenty years from date and to bear interest payable annually or semiannually with interest coupons attached. All special assessments which may be levied upon properties specially benefited by such work or improvements shall, when collected, be set aside and constitute a sinking fund for the payment of the interest and principal of such bonds. The cost of such sewer, drainage, or water improvements chargeable by special assessment to the

private property within such district may be paid by the owners of such property within fifty days from the levy of such special assessments, and thereupon such property shall be exempt from any lien for the special assessment. Such bonds shall not be sold for less than their par value and if any assessment or any part thereof fails or for any reason is invalid, the city council may make such other and further assessments on such lots or lands as may be required to collect from the lots or lands the cost of any such sewer, drainage, or water improvements properly chargeable to the lots or lands as provided in this section. If such assessments or any part thereof fails or for any reason is invalid, the city council may, without further notice, make such other and further assessments on such lots or lands as may be required to collect from the lots or lands the cost of such improvement properly chargeable to the lots or lands as provided in this section. Nothing in this section shall be construed to prevent a city from paying the cost of sewer, drainage, or water improvements from revenue bonds as otherwise provided by law. When revenue bonds are issued to pay the cost of sewer, drainage, or water improvements, the city council may provide that the collections from any related special assessment district shall be allocated to the gross revenue of the appropriate utility system.

Source: Laws 1901, c. 18, § 48, XXVII, p. 252; Laws 1905, c. 24, § 1, p. 248; Laws 1911, c. 14, § 1, p. 130; Laws 1913, c. 161, § 1, p. 501; R.S.1913, § 4952; C.S.1922, § 4121; C.S.1929, § 16-650; Laws 1937, c. 25, § 1, p. 144; C.S.Supp.,1941, § 16-650; R.S.1943, § 16-670; Laws 1969, c. 82, § 1, p. 415; Laws 1969, c. 51, § 32, p. 292; Laws 1977, LB 483, § 5; Laws 2005, LB 161, § 5; Laws 2016, LB704, § 122.
Effective date July 21, 2016.

16-671 Construction costs; warrants; power to issue; amount; interest; payment; fund; created.

For the purpose of paying the cost of construction of sewer, drainage, or water systems or mains, or any or all of such sewer, drainage, or water systems or mains, the mayor and city council shall have power to issue warrants in amounts not to exceed the total sum of the special assessments provided for in section 16-670, which such warrants shall bear interest at such rate as the mayor and city council shall order. When there are no funds immediately available for the payment thereof, such warrants shall be registered in the manner provided for the registration of other warrants, and called and paid whenever there are funds available for the purpose in the manner provided for the calling and paying of other warrants. For the purpose of paying such warrants and the interest thereon from the time of their registration until paid, the special assessments pursuant to section 16-670 shall be kept as they are paid and collected in a fund to be designated and known as the Sewer and Water Extension Fund into which all money levied for such improvements shall be paid as collected, and out of which all warrants issued for such purposes shall be paid.

Source: Laws 1913, c. 161, § 1, p. 502; R.S.1913, § 4952; C.S.1922, § 4121; C.S.1929, § 16-650; Laws 1937, c. 25, § 1, p. 145; C.S.Supp.,1941, § 16-650; R.S.1943, § 16-671; Laws 1969, c. 82, § 2, p. 416; Laws 1969, c. 51, § 33, p. 293; Laws 2016, LB704, § 123.
Effective date July 21, 2016.

16-672 Special assessments; equalization; reassessment.

Special assessments may be levied by the mayor and city council for the purpose of paying the cost of constructing sewers, drainage, or water systems or mains within the city. Such assessment shall be levied on the real estate lying and being within the sewerage, drainage, or water service district in which such improvements may be situated to the extent of benefits to such property by reason of such improvement. The benefits to such property shall be determined by the city council sitting as a board of equalization, after notice to property owners is provided as in other cases of special assessment. If the city council, sitting as such board of equalization, shall find such benefits to be equal and uniform, such levy may be according to the front foot of the lots or real estate within such sewerage district, according to such other rule as the city council sitting as such board of equalization may adopt for the distribution or adjustment of such cost upon the lots or real estate in such district benefited by such improvement. All assessments made for sewerage, drainage, or water purposes shall be collected as special assessments and shall be subject to the same penalty as other special assessments. If sewers, drainage, or water systems or mains are constructed and any assessments to cover the costs thereof shall be declared void, or doubts exist as to the validity of such assessment, the mayor and city council, for the purpose of paying the cost of such improvement, may make a reassessment of such costs on lots and real estate lying and being within the district in which such improvements may be situated, to the extent of the benefits to such property by reason of such improvements. Such reassessment shall be made substantially in the manner provided for making original special assessments as provided in this section. Any sums which may have been paid toward such improvement upon any lots or real estate included in such assessment shall be applied under the direction of the city council to the credit of the persons and property on account of which the sums were paid. If the credits exceed the sum reassessed against such persons and property, the city council shall cause such excess, with lawful interest, to be refunded to the party who made payment thereof. The sums so reassessed and not paid under a prior special assessment shall be collected and enforced in the same manner and be subject to the same penalty as other special assessments.

Source: Laws 1901, c. 18, § 67, p. 279; R.S.1913, § 4953; C.S.1922, § 4122; C.S.1929, § 16-651; R.S.1943, § 16-672; Laws 2015, LB361, § 26; Laws 2016, LB704, § 124.
Effective date July 21, 2016.

(f) STORM SEWER DISTRICTS**16-672.01 Storm sewer districts; ordinance; contents.**

Supplemental to any existing law on the subject, whenever the mayor and city council of any city of the first class shall deem it advisable or necessary to construct storm water sewers and appurtenances in any section of the city and the extraterritorial zoning jurisdiction of the city as established pursuant to section 16-901, together with outlets for such storm water sewers or appurtenances, the advisability and necessity thereof shall be declared in a proposed ordinance, which shall state the kinds of pipe proposed to be used, and shall include concrete pipe and vitrified clay pipe and any other material deemed

suitable and shall state the size or sizes and kinds of sewers proposed to be constructed and shall designate the location and terminal points thereof. The ordinance shall refer to the plans and specifications thereof which shall have been made and filed with the city clerk by the city engineer before publication of such ordinance. The city engineer shall also make and file, prior to the publication of such ordinance, an estimate of the total cost of the proposed improvement, which shall be stated in the ordinance. The mayor and city council shall have power to assess, to the extent of special benefits, the cost of such portions of the improvements as are local improvements, upon properties found specifically benefited. The ordinance shall state the outer boundaries of the district or districts in which it is proposed to make special assessments.

Source: Laws 1961, c. 46, § 1, p. 177; Laws 2005, LB 234, § 1; Laws 2016, LB704, § 125.
Effective date July 21, 2016.

16-672.02 Ordinance; hearing; notice.

Notice of the time when any ordinance as provided in section 16-672.01 shall be set for consideration before the mayor and city council shall be given by at least two publications in a legal newspaper in or of general circulation in such city, which publication shall state the entire wording of the ordinance. The last publication shall be not less than five days nor more than two weeks prior to the time set for the hearing of objections to the passage of any such ordinance, at which hearing the owners of real property located in such improvement district and which might become subject to assessment for the cost of the contemplated improvement may appear and make objections to the improvement. Thereafter the ordinance may be amended and passed or passed as proposed.

Source: Laws 1961, c. 46, § 2, p. 178; Laws 2016, LB704, § 126.
Effective date July 21, 2016.

16-672.03 Ordinance; protest; filing; effect.

If a written protest signed by owners of the property located in an improvement district provided in section 16-672.01 and representing a majority of the front footage which may become subject to assessment for the cost of the improvement is filed with the city clerk within three days before the date of the meeting for the consideration of such ordinance, such ordinance shall not be passed.

Source: Laws 1961, c. 46, § 3, p. 178; Laws 2016, LB704, § 127.
Effective date July 21, 2016.

16-672.04 Ordinance; adoption.

Upon compliance with sections 16-672.01 to 16-672.03, the mayor and city council may, by ordinance, order the making and construction of the improvements provided for in section 16-672.01. To adopt such ordinance, a majority of the whole number of members elected to the city council shall be required. If the vote is a tie, the mayor may vote to break such tie.

Source: Laws 1961, c. 46, § 4, p. 179; Laws 2016, LB704, § 128.
Effective date July 21, 2016.

16-672.05 Construction; notice to contractors, when; contents; bids; acceptance.

After ordering improvements as provided in section 16-672.01, the mayor and city council may enter into a contract for the construction of the improvements in one or more contracts, but no work shall be done or contract let, if the estimated cost of the improvements, as determined by the city engineer, is in excess of two thousand dollars, until notice to contractors has been published once each week for three weeks in a legal newspaper in or of general circulation in the city. The notice shall state the extent of the work, and the kind of materials to be bid upon, including in such notice all kinds of material mentioned in the ordinance specified in section 16-672.01, and the time when bids will be received, and may set forth the amount of the engineer's estimate of the cost of such improvements. The work provided for in sections 16-672.01 to 16-672.11 shall be done under a written contract with the lowest responsible bidder on the material selected after the bids are opened and in accordance with the requirements of the plans and specifications. The mayor and city council may reject any or all bids received and advertise for new bids in accordance with this section.

Source: Laws 1961, c. 46, § 5, p. 179; Laws 1969, c. 82, § 3, p. 416; Laws 1975, LB 112, § 1; Laws 2016, LB704, § 129.
Effective date July 21, 2016.

16-672.06 Construction; acceptance; notice of assessments.

After the completion of work in the construction of public improvements as provided in section 16-672.05, the city engineer shall file with the city clerk a certificate of acceptance, which acceptance shall be approved by the mayor and city council by ordinance. The mayor and city council shall then require the city engineer to make a complete statement of all the costs of such improvement and a plat of the property in the storm water sewer district and a schedule of the amount proposed to be assessed against each separate parcel of real property in such district, which shall be filed with the city clerk within ten days from the date of the acceptance of the work. The mayor and city council shall then order the clerk to give notice that the plat and schedules are on file in his or her office and that all objections thereto, or to prior proceedings on account of errors, irregularities, or inequalities, not made in writing and filed with the city clerk within twenty days after the first publication of the notice shall be deemed to have been waived. Such notice shall be given by two publications in a legal newspaper in or of general circulation in the city and by notices posted in three conspicuous places in such storm water sewer district. Such notice shall state the time and place where objections, filed as provided in this section, shall be considered by the mayor and city council.

Source: Laws 1961, c. 46, § 6, p. 180; Laws 2016, LB704, § 130.
Effective date July 21, 2016.

16-672.07 Assessments; hearing; equalization; delinquent payments; interest.

The hearing on the proposed assessments shall be held by the mayor and city council sitting as a board of adjustment and equalization, at the time and place specified in such notice which shall not be less than twenty days nor more than thirty days after the date of the first publication, unless adjourned. Such session may be adjourned, with provisions for proper notice of such adjournment. At

such meeting, the proposed assessment shall be adjusted and equalized with reference to benefits resulting from the improvement and shall not exceed such benefits. If any special assessment is payable in installments, each installment shall draw interest payable annually or semiannually from the date of levy until due. Any delinquent installments shall draw interest at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, from the date of delinquency until paid.

Source: Laws 1961, c. 46, § 7, p. 180; Laws 1969, c. 51, § 35, p. 294; Laws 1980, LB 933, § 15; Laws 1981, LB 167, § 16; Laws 2016, LB704, § 131.

Effective date July 21, 2016.

16-672.08 Special assessments; levy.

After the equalization of special assessments as required under section 16-672.07, the special assessments shall be levied by the mayor and city council upon all lots or parcels of real property within the storm water sewer district, specifically benefited by reason of the improvement. The special assessment may be relieved if, for any reason, the levy thereof is void or not enforceable and in an amount not exceeding the previous levy. Such levy shall be enforced as special assessments for street improvements are enforced in cities of the first class, and any payments thereon, made under previous levies, shall be credited to the property involved. All assessments made for such purposes shall be collected in the same manner as general taxes and shall be subject to the same penalties.

Source: Laws 1961, c. 46, § 8, p. 181; Laws 2016, LB704, § 132.

Effective date July 21, 2016.

16-672.11 Bonds; maturity; interest; rate; contractor; interest; warrants; tax levy.

For the purpose of paying the cost of the public improvements as provided in sections 16-672.01 to 16-672.11, the mayor and city council of any city of the first class, after such improvements have been completed and accepted, shall have the power to issue negotiable bonds of the city to be called storm water sewer district bonds, payable in not exceeding twenty years and bearing interest payable annually, which may either be sold by the city or delivered to the contractor in payment for the work, but in either case for not less than their par value. For the purpose of making partial payments as the work progresses, warrants may be issued by the mayor and city council upon certificates of the engineer in charge, showing the amount of work completed and materials necessarily purchased and delivered for the orderly and proper continuance of the project, in a sum not exceeding ninety-five percent of the cost thereof, and upon the completion and acceptance of the work, a final warrant may be issued for the balance due the contractor, which warrants shall be redeemed and paid upon the sale of the bonds issued and sold as provided in this section. The city shall pay to the contractor interest at the rate of eight percent per annum on the amounts due on partial and final payments beginning forty-five days after the certification of the amounts due by the engineer in charge and approval by the city council and running until the date that the warrant is tendered to the contractor. All special assessments which may be levied upon property specially benefited by such work or improvements in any such storm water sewer district

shall, when collected, be set aside and placed in a sinking fund for the payment of the interest and principal of the bonds. There shall be levied annually upon all of the taxable property in the city a tax which, together with such sinking fund derived from special assessments collected, shall be sufficient to meet payments of interest and principal on the bonds as the same become due. Such tax shall be known as the storm water sewer tax, shall be payable annually, shall be collected in the same manner as general taxes, and shall be subject to the same penalties.

Source: Laws 1961, c. 46, § 11, p. 182; Laws 1969, c. 51, § 37, p. 295; Laws 1974, LB 636, § 3; Laws 1992, LB 719A, § 42; Laws 2016, LB704, § 133.
Effective date July 21, 2016.

(g) PUBLIC UTILITIES

16-676 Acquisition; operation; bonds; issuance; amount; approval of electors required.

Where the amount of money which would be raised by the tax levy provided for in section 16-675 would be insufficient to establish or pay for a system of waterworks, gas, electric, or other light works, or heating or power system, the mayor and city council may borrow money and pledge the property and credit of the city upon its negotiable bonds or otherwise to an amount not exceeding two hundred and fifty thousand dollars for the purpose of establishing, constructing, extending, enlarging, or paying for, or maintaining the utilities named in this section. No such bonds shall be issued by the city council until the question of issuing the bonds shall have been submitted to the electors of the city at an election held for such purpose, notice of which shall have been given by publication once each week for three successive weeks prior thereto in a legal newspaper in or of general circulation in such city, and a majority of the electors voting upon the proposition shall have voted in favor of issuing such bonds. However, no election shall be called until a petition signed by at least fifty resident property owners shall be presented to the mayor and city council asking that an election be called for the purpose specified in this section.

Source: Laws 1901, c. 18, § 54, p. 272; Laws 1905, c. 23, § 2, p. 244; Laws 1907, c. 14, § 1, p. 122; Laws 1909, c. 19, § 1, p. 185; R.S.1913, § 4954; Laws 1917, c. 97, § 1, p. 261; Laws 1919, c. 38, § 1, p. 121; Laws 1921, c. 169, § 1, p. 662; C.S.1922, § 4123; C.S.1929, § 16-652; Laws 1931, c. 29, § 1, p. 118; C.S.Supp.,1941, § 16-652; R.S.1943, § 16-676; Laws 1951, c. 26, § 3, p. 118; Laws 2016, LB704, § 134.
Effective date July 21, 2016.

16-677 Bonds; sinking funds; tax to provide.

When bonds shall have been issued by the city as provided under section 16-676, the mayor and city council shall have power to levy annually upon all taxable property of the city such tax as may be necessary for a sinking fund for the payment of accruing interest on such bonds and the principal thereof at maturity, and to provide for the office of water commissioner, power commissioner, light commissioner, or heat commissioner, and to prescribe the powers and duties of such officers.

Source: Laws 1901, c. 18, § 54, p. 273; Laws 1905, c. 23, § 2, p. 245; Laws 1907, c. 14, § 1, p. 122; Laws 1909, c. 19, § 1, p. 185;

R.S.1913, § 4954; Laws 1917, c. 97, § 1, p. 261; Laws 1919, c. 38, § 1, p. 121; Laws 1921, c. 169, § 1, p. 662; C.S.1922, § 4123; C.S.1929, § 16-652; Laws 1931, c. 29, § 1, p. 119; C.S.Supp.,1941, § 16-652; R.S.1943, § 16-677; Laws 2016, LB704, § 135.

Effective date July 21, 2016.

16-678 Existing franchises and contracts; rights preserved; tax authorized.

Nothing contained in sections 16-673 to 16-677 shall change or in any way affect existing franchises or existing contracts between any city and any company, corporation, or individual for furnishing the city or its inhabitants with light, power, heat, or water. The mayor and city council shall levy a sufficient tax to pay for such light, power, heat, or water supply in accordance with the terms of such existing contracts, not exceeding four and nine-tenths cents on each one hundred dollars upon the taxable value of all the taxable property in such city in any one year for any one of the purposes.

Source: Laws 1901, c. 18, § 54, p. 273; Laws 1905, c. 23, § 2, p. 245; Laws 1907, c. 14, § 1, p. 123; Laws 1909, c. 19, § 1, p. 185; R.S.1913, § 4954; Laws 1917, c. 97, § 1, p. 261; Laws 1919, c. 38, § 1, p. 121; Laws 1921, c. 169, § 1, p. 662; C.S.1922, § 4123; C.S.1929, § 16-652; Laws 1931, c. 29, § 1, p. 119; C.S.Supp.,1941, § 16-652; R.S.1943, § 16-678; Laws 1953, c. 287, § 9, p. 934; Laws 1979, LB 187, § 40; Laws 1992, LB 719A, § 44; Laws 2016, LB704, § 136.

Effective date July 21, 2016.

16-679 Service; duty to provide; rates; regulation.

The mayor and city council shall have power (1) to require every individual or private corporation operating such works or plants, subject to reasonable rules and regulations, to furnish any person applying therefor, along the line of its pipes, mains, wires, or other conduits, with gas, water, power, light, or heat, and to supply such city with water for fire protection, and with gas, water, power, light, or heat, for other necessary public or private purposes, (2) to regulate and fix the rents or rates of water, power, gas, electric light, or heat, and (3) to regulate and fix the charges for water meters, power meters, gas meters, electric light, or heat meters, or other device or means necessary for determining the consumption of water, power, gas, electric light, or heat. These powers shall not be abridged by ordinance, resolution, or contract.

Source: Laws 1901, c. 18, § 55, p. 273; R.S.1913, § 4955; C.S.1922, § 4124; C.S.1929, § 16-653; R.S.1943, § 16-679; Laws 2016, LB704, § 137.

Effective date July 21, 2016.

16-680 Sewerage system; drainage; waterworks; bonds authorized; amount; approval of electors; sewer or water commissioner; authorized.

The mayor and city council shall have power to borrow money and pledge the property and credit of the city upon its negotiable bonds or otherwise in an amount not exceeding in the aggregate four hundred thousand dollars for the purpose of constructing or aiding in the construction of a system of sewerage. The city may borrow money and pledge the property and credit of the city upon

its negotiable bonds or otherwise in any amount, not exceeding in the aggregate seven hundred fifty thousand dollars, for the purpose of constructing culverts and drains for the purpose of deepening, widening, straightening, walling, filling, covering, altering, or changing the channel of any watercourse or any natural or artificial surface waterway or any creek, branch, ravine, ditch, draw, basin, or part thereof flowing or extending through or being within the limits of the city and for the purpose of constructing artificial channels or covered drains sufficient to carry the water theretofore flowing in such watercourse and divert it from the natural channel and conduct the water through such artificial channel or covered drain and fill the old channel. The city may borrow money and pledge the property and credit of the city upon its negotiable bonds or otherwise in an amount not exceeding in the aggregate two hundred fifty thousand dollars for the purpose of constructing, maintaining, and operating a system of waterworks for the city. No such bonds shall be issued by the city council until the question of issuing the bonds has been submitted to the electors of the city at an election called and held for that purpose, notice of which shall be given by publication in a legal newspaper in or of general circulation in the city at least thirty days before the date of the election, and a majority of the electors voting upon the proposition have voted in favor of issuing such bonds. When any such bonds have been issued by the city, the city may levy annually upon all taxable property of the city such tax as may be necessary for a sinking fund for the payment of the accruing interest upon the bonds and the principal thereof at maturity. The city may provide for the office of sewer commissioner or water commissioner and prescribe the duties and powers of such offices.

Source: Laws 1901, c. 18, § 56, p. 274; Laws 1909, c. 20, § 1, p. 188; Laws 1913, c. 35, § 1, p. 112; R.S.1913, § 4956; Laws 1917, c. 98, § 1, p. 262; C.S.1922, § 4125; Laws 1927, c. 41, § 1, p. 175; C.S.1929, § 16-654; R.S.1943, § 16-680; Laws 1965, c. 59, § 1, p. 273; Laws 1971, LB 534, § 13; Laws 1992, LB 719A, § 45; Laws 2016, LB704, § 138.
Effective date July 21, 2016.

16-681 Municipal utilities; service; rates; regulation.

Any city of the first class owning, operating or maintaining its own gas, water, power, light, or heat system shall furnish any person applying therefor, along the line of its pipes, mains, wires, or other conduits, subject to reasonable rules and regulations, with gas, water, power, light, or heat. Such city shall regulate and fix the rental or rate for gas, water, power, light, or heat and regulate and fix the charges for water meters, power meters, gas meters, light meters, or heat meters or other device or means necessary for determining the consumption of gas, water, power, light, or heat. Such city shall require water meters, gas meters, light meters, power meters, or heat meters to be used, or other device or means necessary for determining the consumption of gas, water, power, light, or heat.

Source: Laws 1901, c. 18, § 57, p. 275; R.S.1913, § 4957; C.S.1922, § 4126; C.S.1929, § 16-655; Laws 1937, c. 23, § 1, p. 146; C.S.Supp.,1941, § 16-655; R.S.1943, § 16-681; Laws 2016, LB704, § 139.
Effective date July 21, 2016.

16-682 Municipal utilities; service; delinquent rents; lien; collection.

Any city of the first class operating a municipal utility under section 16-681 shall have the right and power to tax, assess, and collect from the inhabitants of the city such rent or rents for the use and benefit of water, gas, power, light, or heat used or supplied to them by such waterworks, mains, pump, or extension of any system of waterworks, or water supply, or by such gas, light, or heat system, as the city council shall by ordinance deem just or expedient. With respect to water rates, taxes, or rents only, such water rates, taxes, or rents, when delinquent, shall be a lien upon the premises or real estate upon or for which the water is used or supplied, and such water taxes, rents, or rates shall be paid and collected and such lien enforced in such manner as the city council shall by ordinance direct and provide. Any delinquent water rentals which remain unpaid for a period of three months after they become due may be, by resolution of the city council, assessed against such real estate as a special assessment, which special assessment shall be certified by the city clerk to the county clerk of the county in which the city is situated. The county clerk shall place such special assessments on the tax rolls for collection, subject to the same penalties and to be collected in like manner as other city taxes. The city council shall notify in writing nonoccupying owners of premises or their agents whenever their tenants or lessees are sixty days delinquent in the payment of water rent. Thereafter, if the owner of such real estate or his or her agent within the city shall notify the city council in writing to discontinue water service to the real estate or the occupants thereof, it shall be the duty of the officer in charge of the water department promptly to discontinue such service, and rentals for any water furnished to the occupants of such real estate in violation of such notice shall not be a lien thereon.

Source: Laws 1937, c. 26, § 1, p. 147; C.S.Supp.,1941, § 16-655; R.S. 1943, § 16-682; Laws 2016, LB704, § 140.
Effective date July 21, 2016.

16-683 Construction; bonds; plan and estimate required; extensions, additions, and enlargements.

Before submitting any proposition for borrowing money for any of the purposes mentioned in sections 16-673, 16-674, and 16-680, the mayor and city council shall determine upon and adopt a system of sewerage, waterworks, heating, lighting, or power, as the case may be, and shall determine upon and adopt a plan for constructing drains or culverts, or for doing other work upon or in connection with watercourses or waterways as authorized in section 16-680. The mayor and city council shall procure from the city engineer an estimate of the actual cost of such system, an estimate of the cost of so much thereof as the mayor and city council may propose to construct with the amount proposed to be borrowed, and plans of such system. The estimate shall be placed and remain in the hands of the city clerk, subject to public inspection during all the times such proposition to borrow money shall be pending. After a system shall have been adopted, no other system or plan shall be adopted in lieu thereof unless authorized by a vote of the people. After construction of any such systems, works, or improvements as are authorized in sections 16-673, 16-674, and 16-680, the city may by vote of the people issue bonds to construct extensions, additions, or enlargements thereof, but not to exceed one hundred twenty-five thousand dollars in any one year, and the total amount of outstanding bonded indebtedness of any such city for the initial construction of any such

systems, works, or improvements and for the construction of extensions, additions, and enlargements thereof shall not exceed the respective aggregate limitations of amount imposed under section 16-680.

Source: Laws 1901, c. 18, § 58, p. 275; Laws 1913, c. 35, § 2, p. 113; R.S.1913, § 4958; C.S.1922, § 4127; C.S.1929, § 16-656; R.S. 1943, § 16-683; Laws 1947, c. 27, § 1, p. 132; Laws 2016, LB704, § 141.
Effective date July 21, 2016.

16-684 Construction; operation; location; eminent domain; procedure.

When a system of waterworks or sewerage, power, heating, lighting, or drainage shall have been adopted as provided under sections 16-680 to 16-683, the mayor and city council may erect and construct and maintain such system of waterworks or sewerage or power plant, lighting, heating, or drainage, either within or without the corporate limits of the city, make all needful rules and regulations concerning their use, and do all acts necessary for their construction, completion, management, and control not inconsistent with law, including the taking of private property for the public use for their construction and operation. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724, except as to property specifically excluded by section 76-703 and as to which sections 19-701 to 19-707 are applicable.

Source: Laws 1901, c. 18, § 59, p. 275; Laws 1909, c. 19, § 1, p. 186; Laws 1913, c. 35, § 3, p. 114; R.S.1913, § 4959; C.S.1922, § 4128; Laws 1929, c. 43, § 1, p. 187; C.S.1929, § 16-657; R.S.1943, § 16-684; Laws 1951, c. 101, § 54, p. 472; Laws 2016, LB704, § 142.
Effective date July 21, 2016.

16-684.01 Reserve funds; water mains and equipment; when authorized; labor.

After the establishment of a system of waterworks in any city of the first class, the mayor and city council may expend any accumulated reserve funds in its water department for the purpose of laying and relaying water mains and the installation of water equipment for fire protection. The city shall have the power and authority to employ the necessary labor therefor without the necessity of advertising for bids or of letting a contract or contracts therefor.

Source: Laws 1945, c. 24, § 1, p. 133; Laws 2016, LB704, § 143.
Effective date July 21, 2016.

16-686 Rural lines; when authorized; rates.

Any city of the first class is hereby authorized and empowered, for the purpose of carrying out the provisions of sections 16-684 and 19-2701, to construct, maintain, and operate the necessary rural transmission and distribution lines for a distance of eighteen miles from the corporate limits of such city upon, along, and across any of the public highways of this state under the conditions and provisions prescribed by law for the construction of electric transmission and distribution lines to persons, firms, associations, or corporations. Before the construction of any such rural electric transmission or distribution lines shall be undertaken, such city shall enter into contracts for

electric service with persons, firms, associations, or corporations to be served at rates which will produce an annual gross revenue to such city equal to not less than fifteen percent of the cost of such construction. Such city shall thereafter adjust such rates when necessary to produce such gross revenue.

Source: Laws 1929, c. 43, § 1, p. 188; C.S.1929, § 16-657; R.S.1943, § 16-686; Laws 1945, c. 22, § 1, p. 130; Laws 2016, LB704, § 144.

Effective date July 21, 2016.

16-686.01 Natural gas distribution system; service to cities of the second class and villages; when authorized.

Any city of the first class owning and operating a natural gas distribution system within such city, and owning and operating its own lateral supply line from its distribution system to a natural gas pipeline source of supply, may by ordinance, where such lateral supply line is so located with reference to any cities of the second class or villages within twenty miles of such city not then being supplied with natural gas and having no other source of gas supply available, make gas service available at retail to such municipalities and for that purpose construct, operate, and maintain connecting lines to and natural gas distribution systems in the municipalities. Such city prior to the construction of such facilities and the rendering of such service shall secure from the respective municipalities to be served a natural gas franchise as provided by law.

Source: Laws 1951, c. 24, § 1, p. 114; Laws 2016, LB704, § 145.

Effective date July 21, 2016.

16-687 Contracts; terms; special election.

If bonds to finance the construction or acquisition of waterworks, gas, electric, or other light works, or heating or power system, by the city are not approved under section 16-676 or sections 16-680 to 16-683, or if the city fails to obtain an adequate supply of good water, then the mayor and city council may contract with and procure individuals or corporations to construct and maintain a system of waterworks, power, heating, or lighting plant in such city for any time not exceeding twenty years from the date of the contract, with a reservation to the city of the right to purchase such waterworks, lighting, heating, or power plant at any time after the lapse of ten years from the date of the contract upon payment to such individuals or corporations of any amount to be determined from the contract, not exceeding the cost of the construction of such waterworks, power, lighting, or heating plant. In other respects such contract may be on such terms as may be agreed upon by a two-thirds vote of the city council. No such contract shall be made unless authorized by a majority vote of the legal voters of such city at a special election called for that purpose, notice of which shall be given by publication once each week for three successive weeks prior thereto in a legal newspaper in or of general circulation in such city.

Source: Laws 1901, c. 18, § 60, p. 276; Laws 1907, c. 13, § 1, p. 120; R.S.1913, § 4961; C.S.1922, § 4130; C.S.1929, § 16-659; R.S. 1943, § 16-687; Laws 1951, c. 26, § 4, p. 119; Laws 2016, LB704, § 146.

Effective date July 21, 2016.

16-688 Water; unwholesome supply; purification system; authority to install; election; tax authorized.

When any city of the first class has approved bonds and constructed a system of waterworks and obtained an adequate supply of water but the water is turbid or unwholesome during the whole or a portion of the year, the mayor and city council may without having previously made an appropriation therefor, when authorized by a majority vote of the electors voting on the question, which may be submitted at either a special or a general city election, construct, purchase, or enter into a contract for the construction or purchase of and install, establish, operate, and maintain a system of settling reservoirs, a system of filters, or both, for the purpose of clarifying and purifying such water. Notice of such election shall be given by publication once each week three successive weeks prior thereto in a legal newspaper in or of general circulation in such city. The city may levy taxes on all taxable property of such city, not to exceed three and five-tenths cents on each one hundred dollars upon the taxable value thereof in any one year for the payment of the cost thereof.

Source: Laws 1907, c. 13, § 1, p. 120; R.S.1913, § 4961; C.S.1922, § 4130; C.S.1929, § 16-659; R.S.1943, § 16-688; Laws 1951, c. 26, § 5, p. 120; Laws 1953, c. 287, § 10, p. 934; Laws 1979, LB 187, § 41; Laws 1992, LB 719A, § 46; Laws 2016, LB704, § 147.

Effective date July 21, 2016.

16-691 Board of public works; powers and duties; employees authorized; approval of budget; powers of city council; signing of payroll checks.

The mayor and city council may by ordinance confer upon the board of public works the active direction and supervision of the city's system of waterworks, power plant, or sewerage, heating, or lighting plant and the erection and construction of such system or plant. The board may provide that such duties be performed by such employee or employees as it may direct. The city council shall approve the budget of each proprietary function as provided in the Municipal Proprietary Function Act. The board shall make reports to the mayor and city council as often as the mayor and city council may require. In like manner the mayor and city council may confer upon such board the active direction and supervision of the system of streets and alleys.

The mayor and city council may, by ordinance, authorize and empower the board of public works to employ necessary laborers and clerks, to purchase material for the operation and maintenance of the systems, and to draw its orders on the several funds in the hands of the city treasurer to the credit of the various systems in payment of salaries, labor, and material. The mayor and city council shall establish the dollar amount for all extensions and projects above which the board of public works must obtain the approval of the mayor and city council before expending funds. The mayor and city council may, by ordinance, authorize and empower the board of public works to cooperate and participate in a plan of insurance designed and intended for the benefit of the employees of any public utility operated by the city. For that purpose the board of public works may make contributions to pay premiums or dues under such plan, authorize deductions from salaries of employees, and take such other steps as may be necessary to effectuate such plan of insurance. All orders for the disbursement of funds shall be signed by the chairperson and secretary of the

board or by any two members of the board who have previously been designated for that purpose by a resolution duly adopted by such board and shall be paid by the city treasurer, except that payroll checks only may be signed by any one member of the board who has previously been designated for that purpose by a resolution duly adopted by the board. Facsimile signatures of board members may be used to sign such orders and checks.

Source: Laws 1913, c. 191, § 1, p. 568; R.S.1913, § 4963; Laws 1917, c. 95, § 1, p. 256; C.S.1922, § 4132; Laws 1923, c. 150, § 1, p. 366; Laws 1925, c. 44, § 3, p. 177; C.S.1929, § 16-661; Laws 1931, c. 30, § 1, p. 120; C.S.Supp.,1941, § 16-661; R.S.1943, § 16-691; Laws 1947, c. 26, § 5, p. 130; Laws 1949, c. 29, § 1(1), p. 111; Laws 1953, c. 30, § 1, p. 117; Laws 1963, c. 66, § 1, p. 265; Laws 1978, LB 558, § 1; Laws 1981, LB 171, § 1; Laws 1983, LB 304, § 2; Laws 1993, LB 734, § 24; Laws 2016, LB704, § 148.
Effective date July 21, 2016.

Cross References

Municipal Proprietary Function Act, see section 18-2801.

16-691.01 Board of public works; surplus funds; investment; securities; purchase; sale.

Any surplus funds remaining in the hands of the city treasurer, to the credit of such various funds, may be invested by the board of public works, with the approval of the mayor and city council, in accordance with the provisions of sections 16-712, 16-713, and 16-715, in interest-bearing securities of the State of Nebraska or any political subdivision thereof, in certificates of deposit of banks which are members of the Federal Deposit Insurance Corporation, or in interest-bearing securities of the United States upon an order for that purpose drawn by the board of public works upon the city treasurer. Such securities may be purchased, sold, or hypothecated by the board of public works with the approval of the mayor and city council, at their fair market value, and the interest earned by such securities shall be credited to the account of the utility from which the funds paid for the securities were originally drawn. In cities which have not conferred upon any board of public works the active direction and supervision of the city's system of waterworks, power plant, sewerage, and heating or lighting plant, the powers and duties conferred upon the board of public works as to the purchase, sale, and hypothecation of such securities shall be exercised by the city treasurer. Securities so purchased shall be held by the city treasurer who shall provide adequate bond for their safekeeping. When sold, the treasurer shall deliver such securities to the purchaser and collect the sale price.

Source: Laws 1947, c. 26, § 5, p. 130; Laws 1949, c. 29, § 1(2), p. 112; Laws 1969, c. 84, § 2, p. 424; Laws 1972, LB 1213, § 2; Laws 2016, LB704, § 149.
Effective date July 21, 2016.

16-691.02 Board of public works; surplus funds; disposition; transfer.

The mayor and city council of any city of the first class may, by resolution, direct and authorize the city treasurer to dispose of the surplus electric light, water, or natural gas distribution system funds, or the funds arising from the sale of electric light and water properties, by the payment of outstanding

electric light, water, or natural gas distribution system warrants or bonds then due and by the payment of all current amounts required in any revenue bond ordinance in which any part of the earnings of the electric light or water utility or natural gas distribution system are pledged. The excess, if any, after such payments, may be transferred to the general fund of such city at the conclusion of the fiscal year.

Source: Laws 1965, c. 60, § 1, p. 275; Laws 2016, LB704, § 150.
Effective date July 21, 2016.

16-692 Water commissioner; city council member and mayor ineligible.

No member of the city council or the mayor shall be eligible to the office of water commissioner during the term for which he or she shall be elected.

Source: Laws 1901, c. 18, § 64, p. 278; R.S.1913, § 4964; C.S.1922, § 4133; C.S.1929, § 16-662; R.S.1943, § 16-692; Laws 2016, LB704, § 151.
Effective date July 21, 2016.

16-693 Bonds; tax authorized; how used.

When any bonds shall have been issued by the city for the purpose of constructing or aiding in the construction of a system of waterworks, power plant, sewerage, heating, lighting, or drainage, there shall thereafter be levied annually upon all taxable property of such city a tax not exceeding seven cents on each one hundred dollars for every twenty thousand dollars of bonds so issued, which shall be known as the waterworks tax, power tax, sewerage tax, heat tax, light tax, or drainage tax, as the case may be, and shall be payable only in money. The proceeds of such tax, together with all income received by the city from the payment and collection of water, power, heat, or light, rent, taxes, and rates of assessments, shall first be applied to the payment of the current expenses of waterworks, power plant, heating, or lighting, to improvements, extensions, and additions thereto, and interest on money borrowed and bonds issued for their construction. The surplus, if any, shall be retained for a sinking fund for the payment of such loan or bonds at maturity.

Source: Laws 1901, c. 18, § 65, p. 278; Laws 1913, c. 35, § 4, p. 115; R.S.1913, § 4965; Laws 1917, c. 95, § 1, p. 257; C.S.1922, § 4134; C.S.1929, § 16-663; R.S.1943, § 16-693; Laws 1965, c. 60, § 2, p. 275; Laws 1979, LB 187, § 42; Laws 2016, LB704, § 152.
Effective date July 21, 2016.

16-694 Sewers; maintenance and repairs; annual tax; service rate in lieu of tax; lien.

After the establishment of a system of sewerage in any city of the first class, the mayor and city council may, at the time of levying other taxes for city purposes, levy an annual tax of not more than three and five-tenths cents on each one hundred dollars upon the taxable value of all the taxable property in such city for the purpose of creating a fund to be used exclusively for the maintenance and repairing of any sewers in such city. In lieu of the levy of a tax, the mayor and city council may establish, by ordinance, such rates for such sewer service as may be deemed by them to be fair and reasonable, to be collected from either the owner or the person, firm, or corporation requesting

the service at such times, either monthly, quarterly, or otherwise, as may be specified in the ordinance. All such sewer charges shall be a lien upon the premises or real estate for which the sewer service is used or supplied. Such lien shall be enforced in such manner as the city council provides by ordinance. The charges thus made, when collected, shall be placed in a separate fund and used exclusively for the purpose of maintenance and repairs of any sewers in such city.

Source: Laws 1925, c. 46, § 1, p. 186; C.S.1929, § 16-664; Laws 1943, c. 33, § 1, p. 151; R.S.1943, § 16-694; Laws 1947, c. 51, § 1, p. 172; Laws 1951, c. 27, § 1, p. 122; Laws 1953, c. 287, § 11, p. 935; Laws 1979, LB 187, § 43; Laws 1992, LB 719A, § 47; Laws 2016, LB704, § 153.

Effective date July 21, 2016.

(h) PARKS

16-695 Parks; swimming pool; stadium; other facilities; acquisition of land; bonds; election; issuance; interest; term.

The mayor and city council of any city of the first class are hereby authorized to acquire by purchase or otherwise and hold in the name of the city, lands, lots, or grounds within or without the limits of the city to be used and improved for parks, parkways, or boulevards. To pay for and improve such lands, lots, or grounds, the mayor and city council are authorized to issue bonds for such purposes, except that no such bonds shall be issued until the question of issuing such bonds shall have been submitted to the electors of the city, at a general election therein, or at a special election appointed and called by the mayor and city council for such purposes, and a majority of electors voting at such election shall have voted in favor of issuing the bonds. Notice of such election shall be given by publication once each week for three successive weeks prior thereto in a legal newspaper in or of general circulation in such city. Such bonds shall be payable in not to exceed twenty years from the date of issuance thereof, and shall bear interest payable annually or semiannually, with interest coupons attached to the bonds. The mayor and city council may at their discretion construct in any park a swimming pool, stadium, or other facilities for public use and recreation and pay for such facilities out of the proceeds of such bonds.

Source: Laws 1901, c. 18, § 80, p. 289; R.S.1913, § 4966; C.S.1922, § 4135; C.S.1929, § 16-665; R.S.1943, § 16-695; Laws 1947, c. 28, § 1, p. 134; Laws 1951, c. 26, § 6, p. 120; Laws 1965, c. 61, § 1, p. 276; Laws 1969, c. 51, § 38, p. 295; Laws 1982, LB 692, § 1; Laws 2016, LB704, § 154.

Effective date July 21, 2016.

16-696 Board of park commissioners; appointment; number; qualifications; powers and duties; recreation board; board of park and recreation commissioners.

(1) In each city of the first class which acquires land for a park or parks, there may be a board of park commissioners, who shall have charge of all the parks belonging to the city, with power to establish rules for the management, care, and use of the same. The board of park commissioners shall be composed of not less than three members, but the total number shall be evenly divisible by

three, who shall be residents of the city. In the event of a tie vote, the motion under consideration shall fail to be adopted. They shall be appointed by the mayor and city council at their first regular meeting in January each year except for the original board which may be appointed any time. At the time of the first appointment, one-third of the number to be appointed shall be appointed for a term of one year, one-third for a term of two years, and the rest shall be appointed for a term of three years, which term shall be computed from the first meeting in the preceding January. After the appointment of the original board it shall be the duty of the mayor and city council to appoint or reappoint one-third of the board each year for a term of three years to commence at the time of appointment at the first meeting in January. Each member shall serve until his or her successor is appointed and qualified. A vacancy occurring on such board by death, resignation, or disqualification of a member shall be filled for the remainder of such term at the next regular meeting of the city council. A majority of all the members of the board of park commissioners shall constitute a quorum. It shall be the duty of the board of park commissioners to lay out, improve, and beautify all grounds owned or acquired for public parks, and employ helpers and laborers as may be necessary for the proper care and maintenance of such parks, and the improvement and beautification thereof, to the extent that funds may be provided for such purposes. The members of the board, at its first meeting in each year, shall elect one of their own members as chairperson of such board. Before entering upon his or her duties each member of the board shall take an oath, to be filed with the city clerk, that he or she will faithfully perform the duties of the office and will not in any manner be actuated or influenced therein by personal or political motives.

(2) The board of park commissioners may also be constituted by the mayor and city council as an ex officio recreation board. When so constituted, such recreation board shall have the duty and authority to promote, manage, supervise, and control all recreation activities supported financially by such city to the extent funds are available.

(3) The mayor and city council may abolish the board of park commissioners, if one has been appointed as provided in this section, and may establish a board of park and recreation commissioners, who shall have charge of all parks belonging to the city and all recreational activities supported financially by the city, with power to establish rules for the management, care, supervision, and use of such parks. The board of park and recreation commissioners shall be appointed to such terms of office and in such numbers as provided in this section for appointment of a board of park commissioners. It shall be the duty of the board of park and recreation commissioners to lay out, improve, beautify, and design all grounds, bodies of water, and buildings owned or acquired for public parks and recreational facilities, and employ such persons as may be necessary for the proper direction, care, maintenance, improvement, and beautification thereof, and for program planning and leadership of recreational activities, to the extent that funds may be provided for such purposes. The board shall also have the duty of continued study and promotion of the needs of such city for additional park and recreational facilities. Members of the board of park and recreation commissioners at its first meeting in each year shall elect one of its own members as chairperson of the board. Before entering upon his or her duties each member of the board shall take an oath, to be filed with the city clerk, that he or she will faithfully perform the duties of the office

and will not in any manner be actuated or influenced therein by personal or political motives.

Source: Laws 1901, c. 18, § 81, p. 290; Laws 1901, c. 19, § 8, p. 318; R.S.1913, § 4967; C.S.1922, § 4136; C.S.1929, § 16-666; R.S. 1943, § 16-696; Laws 1969, c. 85, § 1, p. 427; Laws 1969, c. 86, § 1, p. 429; Laws 1971, LB 559, § 1; Laws 2004, LB 937, § 1; Laws 2005, LB 626, § 2; Laws 2016, LB704, § 155.
Effective date July 21, 2016.

16-697 Park fund or park and recreation fund; annual levy; audit of accounts; warrants; contracts; reports.

(1) For the purpose of (a) providing funds for amusements and recreation, (b) providing funds for laying out, purchasing, improving, and beautifying parks and public grounds, and (c) providing for the payment of the salaries and wages of employees of the board of park commissioners or the board of park and recreation commissioners, the mayor and city council shall, each year at the time of making the levy for general city purposes, make a levy upon the taxable value of all the taxable property in such city. Such levy shall be collected and paid into the city treasury and shall constitute the park fund or park and recreation fund as the case may be.

(2) All accounts against the park fund or park and recreation fund of such city, provided for by subsection (1) of this section, for salaries and wages of the employees and all other expenses of such parks or recreational facilities shall be audited and allowed by the park or park and recreation commissioners. All warrants thereon shall be drawn only by the chairperson of the commissioners. Warrants so drawn shall be paid by the city treasurer out of such fund.

(3) The park or park and recreation commissioners of such city, as the case may be, shall enter into any contracts of any nature involving an expenditure in accordance with the policies of the city council.

(4) The chairperson of the board of park or park and recreation commissioners shall, on January 1 and July 1 of each year, file with the city clerk an itemized statement of all the expenditures of the board.

Source: Laws 1901, c. 18, § 81, p. 290; Laws 1901, c. 19, § 8, p. 318; R.S.1913, § 4968; Laws 1915, c. 88, § 1, p. 228; C.S.1922, § 4137; Laws 1925, c. 52, § 1, p. 204; C.S.1929, § 16-667; Laws 1933, c. 26, § 1, p. 200; Laws 1935, c. 30, § 1, p. 134; C.S.Supp.,1941, § 16-667; R.S.1943, § 16-697; Laws 1953, c. 31, § 1, p. 119; Laws 1969, c. 86, § 2, p. 431; Laws 1979, LB 187, § 44; Laws 1992, LB 719A, § 48; Laws 2016, LB704, § 156.
Effective date July 21, 2016.

16-697.01 Parks, recreational facilities, and public grounds; acquisition; control.

Any city of the first class is hereby authorized and empowered to take land in fee, within or without its corporate limits, by donation, gift, devise, purchase, or appropriation, and to hold, improve and control such land for parks, recreational facilities, and public grounds. The jurisdiction and police power of the mayor and city council of any city that shall acquire any such real estate shall be at once extended over such real estate. The mayor and city council shall have power to enact bylaws, rules, and ordinances for the protection, preserva-

tion, and control of any real estate acquired under this section and provide suitable penalties for the violation of any such bylaws, rules, or ordinances.

Source: Laws 1899, c. 15, § 1, p. 80; R.S.1913, § 5271; C.S.1922, § 4490; C.S.1929, § 19-101; R.S.1943, § 19-101; Laws 1969, c. 86, § 6, p. 433; Laws 2016, LB704, § 157.
Effective date July 21, 2016.

16-697.02 Borrowing; authorized; bonds; approval of electors; mayor and city council; duties; issuance of refunding bonds; approval of electors.

(1) The mayor and city council of any city of the first class shall have power to borrow money and pledge the property and credit of the city upon its negotiable bonds or otherwise, for the purpose of purchasing and improving land for parks, recreational facilities, and public grounds, authority therefor having first been obtained by a majority vote of the qualified electors of the city voting on such question at any general city election of such city or at an election called for that purpose, upon a proposition or propositions submitted in the manner provided by law for the submission of propositions to aid in the construction of railroads and other works of internal improvement.

(2) The mayor and city council shall identify the specific type of security pledge securing any financing or bond issue in the proposition to borrow money and pledge the property and credit of the city upon its negotiable bonds or otherwise for the purposes described in subsection (1) of this section. The proposition with language identifying the specific type of security pledged to be used shall be placed on the ballot to be voted on by the qualified electors of the city.

(3) If the mayor and city council decide to issue refunding bonds under section 10-142 for bonds issued pursuant to this section that change the specific type of security pledged from revenue bonds to general obligation bonds, authority therefor must first be obtained by a majority vote of the qualified electors of the city voting on such refinancing proposition at any general city election of such city or at an election called for that purpose.

Source: Laws 1899, c. 15, § 2, p. 81; Laws 1913, c. 190, § 1, p. 567; R.S.1913, § 5272; C.S.1922, § 4491; C.S.1929, § 19-102; R.S. 1943, § 19-102; Laws 1969, c. 86, § 7, p. 433; Laws 2016, LB378, § 1; Laws 2016, LB704, § 158.
Effective date July 21, 2016.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB378, section 1, with LB704, section 158, to reflect all amendments.

(i) MARKETS

16-698 Markets; construction; operation; location; approval of electors; notice; when required.

Any city of the first class may, by ordinance, (1) purchase and hold grounds for and erect and establish market houses and market places, and regulate and govern such market houses and market places, (2) contract with any person or persons or companies or corporations for the erection and regulation of such market houses and market places on such terms and conditions and in such manner as the city council may prescribe, and (3) raise all necessary revenue for the purposes provided in this section. The city council may provide for the

erection of all other useful and necessary buildings for the use of the city and for the protection and safety of all property owned by the city, in connection with such market houses and places. It may locate such market houses, market places, and buildings on any street, alley, or public grounds, or on any land purchased for such purposes, and establish, alter, and change the channel of streams and watercourses within the city, and bridge such streams and watercourses. Any such improvement costing in the aggregate a sum greater than two thousand dollars shall not be authorized until the ordinance providing for the improvement shall first be submitted to and ratified by a majority of the legal voters of such city voting thereon, notice of which shall be given by publication once each week for three successive weeks in a legal newspaper in or of general circulation in such city.

Source: Laws 1901, c. 18, § 48, XXVI, p. 251; R.S.1913, § 4969; C.S.1922, § 4138; C.S.1929, § 16-668; R.S.1943, § 16-698; Laws 1951, c. 26, § 7, p. 121; Laws 2016, LB704, § 159.
Effective date July 21, 2016.

16-699 Regulation of markets.

No charge or assessment of any kind shall be made or levied on any vehicle or on the owner of any vehicle bringing produce or provisions to any market place in the city, or standing in or occupying a place in any of the market places of the city, or in the street contiguous to such market places on market days. The mayor and city council shall have full power to prescribe the kind and description of articles which may be sold and the stand or place to be occupied by the vendors and may authorize the immediate seizure and arrest and removal from the markets of any person violating the regulations as established by ordinance, together with any article of produce in his or her possession, and the immediate seizure and destruction of tainted or unsound meat, provisions, or other articles of food.

Source: Laws 1901, c. 18, § 36, p. 239; R.S.1913, § 4970; C.S.1922, § 4139; C.S.1929, § 16-669; R.S.1943, § 16-699; Laws 2016, LB704, § 160.
Effective date July 21, 2016.

(j) PUBLIC BUILDINGS

16-6,100 Public buildings; construction; bonds authorized; approval of electors required, when.

The mayor and city council shall have the power to borrow money and pledge the property and credit of the city upon its negotiable bonds or otherwise for the purpose of acquiring, by purchasing or constructing, including site acquisition, or aiding in the acquiring of a city hall, jail, auditorium, buildings for the fire department, and other public buildings, including the acquisition of buildings authorized to be acquired by Chapter 72, article 14, and including acquisition of buildings to be leased in whole or in part by the city to any other political or governmental subdivision of the State of Nebraska authorized by law to lease such buildings. No such bonds shall be issued until after the same have been authorized by a majority vote of the electors of the city voting on the proposition of their issuance at an election called for the submission of such proposition and of which election notice of the time and

place thereof shall have been given by publication in a legal newspaper in or of general circulation in the city three successive weeks prior thereto. If the building to be acquired is to be used by the State of Nebraska or its agency or agencies under a lease authorized by Chapter 72, article 14, or the building is to be leased by any other political or governmental subdivision of the State of Nebraska or other governmental agencies and if the combined area of the building to be leased by the state or its agency or agencies and the political or governmental subdivision of the State of Nebraska is more than fifty percent of the area of the building and if the cost of acquisition does not exceed two million dollars, no such vote of the electors will be required.

Source: Laws 1911, c. 15, § 1, p. 132; R.S.1913, § 4971; Laws 1915, c. 89, § 1, p. 229; Laws 1919, c. 39, § 1, p. 122; C.S.1922, § 4140; C.S.1929, § 16-670; Laws 1941, c. 23, § 1, p. 116; C.S.Supp.,1941, § 16-670; R.S.1943, § 16-6,100; Laws 1945, c. 23, § 1, p. 131; Laws 1947, c. 30, § 1, p. 138; Laws 1947, c. 28, § 2, p. 135; Laws 1969, c. 87, § 1, p. 436; Laws 1972, LB 876, § 1; Laws 2016, LB704, § 161.
Effective date July 21, 2016.

16-6,100.03 Joint city-county building; indebtedness; bonds; principal and interest; in addition to other limitations.

The amount of indebtedness authorized to be incurred by any county or city of the first class for the payment of principal and interest for the bonds authorized by the provisions of sections 16-6,100.01 to 16-6,100.07 shall be in addition to and over and above any limits provided by law.

Source: Laws 1953, c. 32, § 3, p. 121; Laws 2016, LB704, § 162.
Effective date July 21, 2016.

16-6,100.05 Joint city-county building; building commission; plans and specifications; personnel; compensation; contracts.

The building commission shall cause to be prepared building plans and specifications for the joint city-county building, and may employ architects, engineers, draftsmen, and such clerical help as may be deemed necessary for the purpose of preparing such plans and specifications. The compensation of such personnel shall be fixed by the commission and shall be paid in the same proportion as is determined for defraying the cost as set forth in section 16-6,100.02. The contract for erecting the building, for the equipment, and for furnishings shall be let by the commission in the same manner as for other public buildings. The members of the commission shall receive no compensation for their services as members of the commission.

Source: Laws 1953, c. 32, § 5, p. 121; Laws 2016, LB704, § 163.
Effective date July 21, 2016.

(k) WATERWORKS; GAS PLANT

16-6,101 Acquisition; revenue bonds; approval of electors required.

Supplemental to any existing law on the subject and in lieu of the issuance of general obligation bonds, or the levying of taxes upon property, as by law provided, any city of the first class may construct, purchase, or otherwise acquire a waterworks plant or a water system, or a gas plant or a gas system,

including a natural or bottled gas plant, gas distribution system, or gas pipelines, either within or without the corporate limits of such city, and real and personal property needed or useful in connection therewith, and pay the cost thereof by pledging and hypothecating the revenue and earnings of any waterworks plant or water system, or a gas plant or a gas system, including a natural or bottled gas plant, gas distribution system, or gas pipelines, owned or to be owned by such city. In the exercise of the authority granted in this section, any city may issue and sell revenue bonds or debentures and enter into such contracts in connection therewith as may be proper and necessary. Such revenue bonds or debentures shall be a lien only upon the revenue and earnings of the waterworks plant or water system, or a gas plant or a gas system, including a natural or bottled gas plant, gas distribution system, or gas pipelines, owned or to be owned by such city. No such city shall pledge or hypothecate the revenue and earnings of any waterworks plant or water system, or a gas plant or a gas system, including a natural or bottled gas plant, gas distribution system, or gas pipelines, nor issue revenue bonds or debentures, as authorized in this section, until the proposition relating thereto has been submitted in the usual manner to the qualified voters of such city at a general or special election and approved by a majority of the electors voting on the proposition submitted. Such proposition shall be submitted whenever requested, within thirty days after a sufficient petition signed by the qualified voters of such city equal in number to twenty percent of the vote cast at the last general municipal election held therein, shall be filed with the city clerk. Three weeks' notice of the submission of the proposition shall be given by publication in a legal newspaper in or of general circulation in such city. The requirement for a vote of the electors, however, shall not apply when such city seeks to pledge or hypothecate such revenue or earnings or issues revenue bonds or debentures solely for the maintenance, extension, or enlargement of any waterworks plant or water system, or a gas plant or a gas system, including a natural or bottled gas plant, gas distribution system, or gas pipelines, owned by such city.

Source: Laws 1937, c. 29, § 1, p. 151; Laws 1941, c. 22, § 1, p. 113; C.S.Supp.,1941, § 16-671; R.S.1943, § 16-6,101; Laws 2016, LB704, § 164.
Effective date July 21, 2016.

(l) SANITARY SEWER AND WATER MAIN CONNECTION DISTRICT

16-6,102 Districts; created.

In addition to any other provision of state law, whenever the mayor and city council of any city of the first class shall deem it necessary and advisable to construct sanitary sewer mains or water mains, the mayor and city council may, by ordinance passed by not less than three-fourths of all members of the city council, create a district or districts to be known as sanitary sewer connection districts or water connection districts and such district or districts may include properties within the corporate limits of the city and within the city's extraterritorial zoning jurisdiction. Such ordinance shall state the size and kind of sewer mains or water mains proposed to be constructed in such district and shall designate the outer boundaries of the district or districts in which it is proposed to construct the sewer mains or water mains.

Source: Laws 1969, c. 73, § 1, p. 397; Laws 2016, LB704, § 165.
Effective date July 21, 2016.

16-6,103 Districts; benefits; certification; connection fee.

After sanitary sewer mains or water mains have been constructed in the districts as provided under section 16-6,102, the cost thereof shall be reported to the city council and the city council, sitting as a board of equalization, shall determine benefits to abutting property. The special benefits as determined by the board of equalization shall not be levied as special assessments against the property within the district but shall be certified in a resolution of the city council to the register of deeds of the county in which the improvement district is constructed. A connection fee in the amount of the benefit accruing to the property in the district shall be paid to the city at the time such property becomes connected to the sewer main or water main. The city shall provide that no property thus benefited by sanitary sewer or water main improvements shall be connected to the sanitary sewer or water mains until the connection fee is paid.

Source: Laws 1969, c. 73, § 2, p. 397; Laws 2016, LB704, § 166.
Effective date July 21, 2016.

16-6,104 Construction of sewer and water mains; cost; payment; connection fees; use.

For the purpose of paying the cost of any sanitary sewer mains or water mains constructed in a connection district created under section 16-6,102, the mayor and city council may spend funds accumulated in any sanitary sewer or water department surplus funds of the city. The connection fees collected by any such city for properties connecting to such sanitary sewer mains or water mains shall be paid into the sanitary sewer or water department surplus fund to replenish such funds for the construction costs.

Source: Laws 1969, c. 73, § 3, p. 398; Laws 2016, LB704, § 167.
Effective date July 21, 2016.

16-6,105 Construction of sewer and water mains; cost; revenue bonds; issuance authorized.

As an alternative to spending surplus funds as provided in section 16-6,104, or to pay for part of the construction of sanitary sewer mains or water mains, the mayor and city council may issue revenue bonds. Such revenue bonds shall not impose any general liability upon the city but shall be secured by the revenue received by the city for the operation of the sanitary sewer system or waterworks system, and the amount of connection fees collected by the city for connections to such sanitary sewer mains or water mains. Such revenue bonds shall be sold for not less than par and bear interest at a rate not to exceed the rate of interest specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature. The amount of such revenue bonds, either issued or outstanding, shall not be included in computing the maximum amount of bonds which the city may be authorized to issue under its charter or any statute of this state.

Source: Laws 1969, c. 73, § 4, p. 398; Laws 1980, LB 933, § 17; Laws 1981, LB 167, § 18; Laws 2016, LB704, § 168.
Effective date July 21, 2016.

(m) FLOOD CONTROL

16-6,107 Costs; financing.

For carrying out the purposes and powers set forth in section 16-6,106, including payment of the cost thereof, the city may:

(1) Borrow money and issue its negotiable general obligation bonds upon such terms and conditions as the mayor and city council may determine, without a vote of the electors;

(2) Levy a tax upon all taxable property in the city to pay such bonds and interest thereon and establish a sinking fund for such payment;

(3) Issue warrants to contractors and others furnishing services or materials or in satisfaction of other obligations created under section 16-6,106, such warrants to be issued in such amounts and on such terms and conditions as the mayor and city council shall determine, which warrants shall be redeemed and paid upon the sale of bonds or receipt of other funds available for such purpose;

(4) Receive gifts, grants, and funds from any source, including, but not limited to, state, federal, or private sources; and

(5) Cooperate and contract with any other government, governmental agency, or political subdivision, whether state or federal, and any person or organization providing funds for the purposes covered by sections 16-6,106 to 16-6,109.

Source: Laws 1971, LB 57, § 2; Laws 2016, LB704, § 169.

Effective date July 21, 2016.

16-6,108 General obligation bonds; issuance; hearing.

The powers granted by sections 16-6,106 to 16-6,109 may be exercised in whole or in part and from time to time as the city council may in its discretion determine but before general obligation bonds are issued for the purposes of sections 16-6,106 to 16-6,109, the city council shall hold a public hearing after three weeks' notice published in a legal newspaper in or of general circulation in such city, and the referendum provisions of sections 18-2501 to 18-2536 shall apply to any ordinance or resolution authorizing issuance of such bonds. The program for implementation of the plan may be adopted and carried out in parts, sections, or stages.

Source: Laws 1971, LB 57, § 3; Laws 1982, LB 807, § 42; Laws 2016, LB704, § 170.

Effective date July 21, 2016.

16-6,109 Sections; supplemental to other laws.

The powers granted by sections 16-6,106 to 16-6,109 are independent of and in addition to all other grants of powers on the same or related subjects but may be exercised jointly with or supplemented by the powers granted by existing state law, including, but not limited to, sections 16-667 to 16-672.11, 16-680, 16-683, 16-693, 18-401 to 18-411, 18-501 to 18-512, 19-1305, 23-320.07 to 23-320.13, and 31-501 to 31-553 and the Combined Improvement Act.

Source: Laws 1971, LB 57, § 4; Laws 2003, LB 52, § 1; Laws 2016, LB704, § 171.

Effective date July 21, 2016.

Cross References

Combined Improvement Act, see section 19-2415.

ARTICLE 7

FISCAL MANAGEMENT, REVENUE, AND FINANCES

Section

- 16-701. Fiscal year, commencement.
- 16-702. Property tax; general purposes; levy; collection; maximum authorized; specific purposes; additional levies.
- 16-704. Annual appropriation bill; contents.
- 16-706. Expenditures; how made; limitations; diversion of funds; violation; penalty; payment of judgments.
- 16-707. Board of equalization; meetings; notice; special assessments; grounds for review.
- 16-708. Special assessments; invalidity; reassessment.
- 16-709. Special assessments; irregularities; correction.
- 16-711. Road tax; how expended.
- 16-712. City funds; depositories; payment; conflict of interest.
- 16-713. City funds; certificates of deposit; time deposits; security required.
- 16-714. City funds; depository bond; conditions.
- 16-716. City funds; depositories; maximum deposits; liability of treasurer.
- 16-717. City treasurer; books and accounts.
- 16-718. City treasurer; warrants; issuance; delivery.
- 16-719. City treasurer; conversion of funds; penalty.
- 16-720. City treasurer; report; warrant register.
- 16-721. City funds; transfer; when authorized.
- 16-722. City receipts and expenditures; publication.
- 16-723. Taxes; payable in cash; sinking fund; investment; matured bonds or coupons; payment.
- 16-727. Claims; disallowance; appeal to district court; procedure.
- 16-728. Claims; allowance; appeal by taxpayer.
- 16-729. Claims; allowance or disallowance; appeal; transcript; trial.

16-701 Fiscal year, commencement.

The fiscal year of each city of the first class and of any public utility of a city of the first class commences on October 1 and extends through the following September 30 except as provided in the Municipal Proprietary Function Act.

Source: Laws 1901, c. 18, § 40, p. 242; R.S.1913, § 4972; C.S.1922, § 4141; C.S.1929, § 16-701; R.S.1943, § 16-701; Laws 1963, c. 67, § 1, p. 267; Laws 1995, LB 194, § 1; Laws 2016, LB704, § 172.

Effective date July 21, 2016.

Cross References

Municipal Proprietary Function Act, see section 18-2801.

16-702 Property tax; general purposes; levy; collection; maximum authorized; specific purposes; additional levies.

(1) Subject to the limits in section 77-3442, the mayor and city council shall have power to levy and collect taxes for all municipal purposes on the taxable property within the corporate limits of the city. All city taxes, except special assessments otherwise provided for, shall become due on the first day of December of each year.

(2) At the time provided for by law, the city council shall cause to be certified to the county clerk the amount of tax to be levied for purposes of the adopted budget statement on the taxable property within the city for the year then ensuing, as shown by the assessment roll for such year, including all special assessments and taxes assessed as provided by law. The county clerk shall place the same on the proper tax list to be collected in the manner provided by law for the collection of county taxes in the county where such city is situated.

(3) In all sales for delinquent taxes for municipal purposes, if there are other delinquent taxes due from the same person or lien on the same property, the sales shall be for all the delinquent taxes. Such sales and all sales made under and by virtue of this section or the provisions of law referred to in this section shall be of the same validity and, in all respects, shall be deemed and treated as though such sale had been made for the delinquent county taxes exclusively.

(4) The maximum amount of tax which may be certified, assessed, and collected for purposes of the adopted budget statement shall not require a tax levy in excess of eighty-seven and five-tenths cents on each one hundred dollars upon the taxable value of the taxable property within such city. Any special assessments, special taxes, amounts assessed as taxes, and such sums as may be authorized by law to be levied for the payment of outstanding bonds and debts may be made by the city council in addition to the levy of eighty-seven and five-tenths cents on each one hundred dollars upon the taxable value of the taxable property within such city. The city council may certify a further amount of tax to be levied which shall not require a tax levy in excess of seven cents on each one hundred dollars upon the taxable value of the taxable property within such city for the purpose of establishing the sinking fund or sinking funds authorized by sections 19-1301 to 19-1304, and in addition thereto, when required by section 18-501, a further levy of ten and five-tenths cents on each one hundred dollars upon the taxable value of the taxable property within such city may be imposed.

(5) Nothing in this section shall be construed to authorize an increase in the amounts of levies for any specific municipal purpose or purposes elsewhere limited by law, whether limited in specific sums or by tax levies.

Source: Laws 1901, c. 18, § 82, p. 291; Laws 1903, c. 19, § 16, p. 245; R.S.1913, § 4973; C.S.1922, § 4142; Laws 1925, c. 37, § 1, p. 145; C.S.1929, § 16-702; Laws 1937, c. 176, § 3, p. 694; Laws 1939, c. 12, § 5, p. 82; Laws 1941, c. 157, § 5, p. 610; C.S.Supp.,1941, § 16-702; R.S.1943, § 16-702; Laws 1947, c. 29, § 2, p. 136; Laws 1953, c. 287, § 12, p. 936; Laws 1957, c. 39, § 1, p. 210; Laws 1969, c. 145, § 16, p. 681; Laws 1979, LB 187, § 45; Laws 1987, LB 441, § 1; Laws 1992, LB 1063, § 8; Laws 1992, Second Spec. Sess., LB 1, § 8; Laws 1996, LB 1114, § 28; Laws 2016, LB704, § 173.
Effective date July 21, 2016.

16-704 Annual appropriation bill; contents.

Each city of the first class shall adopt a budget statement pursuant to the Nebraska Budget Act, to be termed "The Annual Appropriation Bill", in which

the city may appropriate such sums of money as may be deemed necessary to defray all necessary expenses and liabilities of such city.

Source: Laws 1901, c. 18, § 41, p. 242; R.S.1913, § 4974; Laws 1917, c. 95, § 1, p. 257; C.S.1922, § 4143; Laws 1925, c. 37, § 2, p. 146; C.S.1929, § 16-703; R.S.1943, § 16-704; Laws 1993, LB 734, § 25; Laws 1995, LB 194, § 2; Laws 2016, LB704, § 174.
Effective date July 21, 2016.

Cross References

Nebraska Budget Act, see section 13-501.

16-706 Expenditures; how made; limitations; diversion of funds; violation; penalty; payment of judgments.

The mayor and city council shall not have power to appropriate, issue, or draw any order or warrant on the city treasurer for money, unless the order or warrant has been appropriated or ordered by ordinance or the claim for the payment of which such order or warrant is issued has been allowed according to sections 16-726 to 16-729, and a fund has been provided in the adopted budget statement out of which such claim is payable. Any transfer or diversion of the money or credits from any of the funds to another fund or to a purpose other and different from that for which proposed, except as provided in section 16-721, shall render any city council member voting therefor or any officer of the city participating therein guilty of a misdemeanor, and any person shall, upon conviction thereof, be fined twenty-five dollars for each offense, together with costs of prosecution. Should any judgment be obtained against the city, the mayor and finance committee, with the sanction of the city council, may borrow a sufficient amount to pay the judgments, for a period of time not to extend beyond the close of the next fiscal year, which sum and interest thereon shall, in like manner, be added to the amount authorized to be raised in the general tax levy of the next year and embraced therein.

Source: Laws 1901, c. 18, § 43, p. 243; R.S.1913, § 4976; C.S.1922, § 4145; C.S.1929, § 16-705; Laws 1935, Spec. Sess., c. 10, § 11, p. 78; Laws 1941, c. 130, § 17, p. 501; C.S.Supp.,1941, § 16-705; R.S.1943, § 16-706; Laws 1959, c. 63, § 1, p. 282; Laws 1961, c. 40, § 2, p. 168; Laws 1969, c. 145, § 17, p. 682; Laws 1987, LB 652, § 3; Laws 2016, LB704, § 175.
Effective date July 21, 2016.

16-707 Board of equalization; meetings; notice; special assessments; grounds for review.

The mayor and city council shall meet as a board of equalization each year at such times as they shall determine to be necessary, giving notice of any such sitting at least ten days prior thereto by publication in a legal newspaper in or of general circulation in the city. When so assembled they shall have power to equalize all special assessments, not herein otherwise provided for, and to supply any omissions in the assessments and at such meeting the assessments shall be finally levied by them. A majority of all the members elected to the city council shall constitute a quorum for the transaction of any business properly brought before them, but a less number may adjourn from time to time and compel the attendance of absent members. When sitting as a board of equalization on special taxes, the city council may adopt such reasonable rules as to the

manner of presenting complaints and applying for remedies and relief as shall seem just. It shall not invalidate or prejudice the proceedings of the board that a majority of the members thereof do not, after organization by a majority, continue present during the advertised hours of sitting so long as the city clerk or some member of the board shall be present to receive complaints and applications and give information. No final action shall be taken by the board except by a majority of all the members elected to the city council comprising the same, and in open session. All the special taxes herein authorized shall be levied and assessed on all lots, parts of lots, lands, and real estate to the extent of the special benefit to such lots, parts of lots, lands, and real estate, by reason of such improvement, such benefits to be determined by the city council sitting as a board of equalization, or as otherwise herein provided, after publication and notice to property owners herein provided. In cases where the city council sitting as a board of equalization shall find such benefits to be equal and uniform, such assessments may be according to the feet frontage and may be prorated and scaled back from the line of such improvement according to such rules as the board of equalization may consider fair and equitable and all such assessments and findings of benefits shall not be subject to review in any equitable or legal action except for fraud, injustice, or mistake.

Source: Laws 1901, c. 18, § 83, p. 292; Laws 1903, c. 19, § 17, p. 246; Laws 1905, c. 23, § 3, p. 246; R.S.1913, § 4977; C.S.1922, § 4146; C.S.1929, § 16-706; R.S.1943, § 16-707; Laws 2010, LB848, § 1; Laws 2016, LB704, § 176.
Effective date July 21, 2016.

16-708 Special assessments; invalidity; reassessment.

Whenever any special assessment upon any lot or lots or lands or parcels of land in a city of the first class is found to be invalid and uncollectible, shall be adjudged to be void by a court of competent jurisdiction, or is paid under protest and recovered by suit, because of any defect, irregularity, or invalidity in any of the proceedings or on account of the failure to observe and comply with any of the conditions, prerequisites, and requirements of any statute or ordinance, the mayor and city council may relevy or reassess the special assessment upon the lot or lots or lands or parcels of land in the same manner as other special assessments are levied, without regard to whether the formalities, prerequisites, or conditions prior to equalization have been had or not.

Source: Laws 1925, c. 47, § 1, p. 187; C.S.1929, § 16-707; R.S.1943, § 16-708; Laws 2015, LB361, § 27; Laws 2016, LB704, § 177.
Effective date July 21, 2016.

16-709 Special assessments; irregularities; correction.

In cases of any omission, mistake, defect, or irregularity in the preliminary proceedings on any special assessment in a city of the first class, the city council shall have power to correct such mistake, omission, defect, or irregularity, and levy or relevy, as the case may be, a special assessment on any or all property in the district, in accordance with the special benefits received and damages sustained to the property on account of such improvement as found by the city council sitting as a board of equalization. The city council shall deduct

from the benefits and allow as a credit, before such relevy, an amount equal to the sum of the installments paid in the original levy.

Source: Laws 1925, c. 47, § 2, p. 188; C.S.1929, § 16-708; R.S.1943, § 16-709; Laws 2016, LB704, § 178.

Effective date July 21, 2016.

16-711 Road tax; how expended.

All money arising from the levying of a road tax against or upon property in a city of the first class shall belong to such city and shall be expended upon the streets and grades in such city.

Source: Laws 1901, c. 18, § 87, p. 294; Laws 1907, c. 13, § 1, p. 120; R.S.1913, § 4979; C.S.1922, § 4148; C.S.1929, § 16-710; Laws 1935, c. 31, § 1, p. 135; C.S.Supp.,1941, § 16-710; R.S.1943, § 16-711; Laws 2016, LB704, § 179.

Effective date July 21, 2016.

16-712 City funds; depositories; payment; conflict of interest.

The city treasurer shall deposit, and at all times keep on deposit, for safekeeping, in banks, capital stock financial institutions, or qualifying mutual financial institutions of approved and responsible standing, all money collected, received, or held by him or her as city treasurer. Such deposits shall be subject to all regulations imposed by law or adopted by the city council for the receiving and holding thereof. The fact that a stockholder, director, or other officer of such bank, capital stock financial institution, or qualifying mutual financial institution shall also be serving as mayor, as a member of the city council, as a member of a board of public works, or as any other officer of such city shall not disqualify such bank, capital stock financial institution, or qualifying mutual financial institution from acting as a depository for such city funds. 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.

Source: Laws 1901, c. 18, § 84, p. 293; R.S.1913, § 4980; C.S.1922, § 4149; C.S.1929, § 16-711; Laws 1935, c. 140, § 3, p. 516; C.S.Supp.,1941, § 16-711; R.S.1943, § 16-712; Laws 1957, c. 54, § 2, p. 263; Laws 1959, c. 48, § 1, p. 235; Laws 1969, c. 84, § 3, p. 425; Laws 1989, LB 33, § 18; Laws 1996, LB 1274, § 18; Laws 2001, LB 362, § 19; Laws 2016, LB704, § 180.

Effective date July 21, 2016.

16-713 City funds; certificates of deposit; time deposits; security required.

The city treasurer may, upon resolution of the mayor and city council authorizing the action, purchase certificates of deposit from and make time deposits in banks, capital stock financial institutions, or qualifying mutual financial institutions selected as depositories of city funds under the provisions of sections 16-712, 16-714, and 16-715. The certificates of deposit purchased and time deposits made shall bear interest and shall be secured as set forth in sections 16-714 and 16-715, except that the penal sum of such bond or the sum of such security shall be reduced in the amount of the time deposit or certificate of deposit insured or guaranteed by the Federal Deposit Insurance Corporation. 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.

Source: Laws 1901, c. 18, § 85, p. 293; R.S.1913, § 4981; C.S.1922, § 4150; C.S.1929, § 16-712; R.S.1943, § 16-713; Laws 1959, c. 48, § 2, p. 235; Laws 1969, c. 84, § 4, p. 425; Laws 1989, LB 33, § 19; Laws 1992, LB 757, § 17; Laws 1996, LB 1274, § 19; Laws 2001, LB 362, § 20; Laws 2009, LB259, § 7; Laws 2016, LB704, § 181.

Effective date July 21, 2016.

16-714 City funds; depository bond; conditions.

For the security of the fund so deposited, the city treasurer shall require each depository to give bond for the safekeeping and payment of such deposits and the accretions thereof, which bond shall run to the city and be approved by the mayor. Such bond shall be conditioned that such a depository shall, at the end of every quarter, render to the city treasurer a statement in duplicate, showing the several daily balances, the amount of money of the city held by it during the quarter, the amount of the accretion thereto, and how credited. The bond shall also be conditioned that the depository shall generally do and perform whatever may be required by the provisions of sections 16-712 to 16-715 and faithfully discharge the trust reposed in such depository. Such bond shall be as nearly as practicable in the form provided in section 77-2304. No person in any way connected with any depository as an officer or stockholder shall be accepted as a surety on any bond given by the depository of which he or she is an officer or stockholder. Such bond shall be deposited with the city clerk. 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.

Source: Laws 1901, c. 18, § 86, p. 294; R.S.1913, § 4982; C.S.1922, § 4151; C.S.1929, § 16-713; Laws 1931, c. 28, § 1, p. 115; Laws 1937, c. 22, § 1, p. 134; C.S.Supp.,1941, § 16-713; R.S.1943, § 16-714; Laws 1969, c. 84, § 5, p. 426; Laws 1989, LB 33, § 20; Laws 2001, LB 362, § 21; Laws 2016, LB704, § 182.

Effective date July 21, 2016.

16-716 City funds; depositories; maximum deposits; liability of treasurer.

The city treasurer shall not have on deposit in any bank, capital stock financial institution, or qualifying mutual financial institution at any time more than the amount insured or guaranteed by the Federal Deposit Insurance Corporation plus the maximum amount of the bond given by the bank, capital stock financial institution, or qualifying mutual financial institution if the bank, capital stock financial institution, or qualifying mutual financial institution gives a surety bond, nor in any bank, capital stock financial institution, or qualifying mutual financial institution giving a personal bond, more than the amount insured or guaranteed by the Federal Deposit Insurance Corporation plus one-half of the amount of the bond of such bank, capital stock financial institution, or qualifying mutual financial institution, and the amount so on deposit any time with any such bank, capital stock financial institution, or qualifying mutual financial institution shall not in either case exceed the amount insured or guaranteed by the Federal Deposit Insurance Corporation

plus the paid-up capital stock and surplus of such bank, capital stock financial institution, or qualifying mutual financial institution.

The city treasurer shall not be liable for any loss sustained by reason of the failure of any such bonded depository whose bond has been duly approved by the mayor as provided in section 16-714 or which has, in lieu of a surety bond, given security as provided in section 16-715.

Source: Laws 1901, c. 18, § 86, p. 294; R.S.1913, § 4982; C.S.1922, § 4151; C.S.1929, § 16-713; Laws 1931, c. 28, § 1, p. 116; Laws 1937, c. 22, § 1, p. 135; C.S.Supp.,1941, § 16-713; R.S.1943, § 16-716; Laws 1981, LB 491, § 1; Laws 1993, LB 157, § 2; Laws 1996, LB 1274, § 21; Laws 2001, LB 362, § 23; Laws 2002, LB 860, § 1; Laws 2009, LB259, § 9; Laws 2016, LB704, § 183. Effective date July 21, 2016.

16-717 City treasurer; books and accounts.

The city treasurer shall receive all money belonging to the city, and the city clerk and city treasurer shall keep their books and accounts in such a manner as the mayor and city council shall prescribe. The city treasurer shall keep a daily cash book, which shall be footed and balanced daily, and such books and accounts shall always be subject to inspection of the mayor, members of the city council, and such other persons as they may designate.

Source: Laws 1901, c. 18, § 88, p. 295; R.S.1913, § 4983; C.S.1922, § 4152; C.S.1929, § 16-714; R.S.1943, § 16-717; Laws 2016, LB704, § 184. Effective date July 21, 2016.

16-718 City treasurer; warrants; issuance; delivery.

Upon allowance of a claim by the city council, the order for the payment thereof shall specify the particular fund out of which it is payable as specified in the adopted budget statement, and no order or warrant shall be drawn in excess of eighty-five percent of the current levy for the purpose for which it is drawn unless there shall be sufficient money in the treasury to the credit of the proper fund for its payment, and no claim shall be audited or allowed except an order or warrant for the payment thereof may legally be drawn. All warrants drawn upon the treasury must be signed by the mayor and countersigned by the city clerk and shall state the particular fund to which the same is chargeable, the person to whom payable, and for what particular object. No money shall be otherwise paid than upon such warrant so drawn. Such warrants may be delivered immediately when so drawn.

Source: Laws 1901, c. 18, § 89, p. 295; Laws 1909, c. 19, § 1, p. 186; R.S.1913, § 4984; C.S.1922, § 4153; C.S.1929, § 16-715; R.S. 1943, § 16-718; Laws 1963, c. 68, § 1, p. 268; Laws 1969, c. 145, § 18, p. 683; Laws 2016, LB704, § 185. Effective date July 21, 2016.

16-719 City treasurer; conversion of funds; penalty.

The city treasurer shall keep all money in his or her hands belonging to the city separate and distinct from his or her own money. He or she is expressly prohibited from using, either directly or indirectly, the city money or warrants in his or her custody and keeping for his or her own use and benefit or that of

any other person. Any violation of this section shall subject him or her to immediate removal from office by the city council, and the council may declare such office vacant. The mayor shall appoint a successor, who shall be confirmed by the city council, to hold office for the remainder of the term.

Source: Laws 1901, c. 18, § 90, p. 295; R.S.1913, § 4985; C.S.1922, § 4154; C.S.1929, § 16-716; R.S.1943, § 16-719; Laws 2016, LB704, § 186.

Effective date July 21, 2016.

16-720 City treasurer; report; warrant register.

The city treasurer shall report to the mayor and city council annually, and more often if required, at such times as may be prescribed by ordinance, giving a full and detailed account of the receipts and expenditures during the preceding fiscal year, and the state of the treasury. He or she shall also keep a register of all warrants redeemed and paid during the year, describing such warrants, their date, amount, number, time of payment, the fund from which paid, and the person to whom paid. All such warrants shall be examined by the finance committee at the time of making such annual report.

Source: Laws 1901, c. 18, § 91, p. 296; R.S.1913, § 4986; C.S.1922, § 4155; C.S.1929, § 16-717; R.S.1943, § 16-720; Laws 2016, LB704, § 187.

Effective date July 21, 2016.

16-721 City funds; transfer; when authorized.

Each fund created under Chapter 16 shall be strictly devoted to the purpose for which it was created and shall not be diverted therefrom. When the city council by a three-fourths vote of the members thereof shall declare the expenditure of any fund for the purpose for which it was created to be unwise and impracticable or where the purpose thereof has been fully accomplished and the whole fund or an unexpired balance thereof remains, and no indebtedness has been incurred on account of such fund which has not been fully paid, such fund may be transferred to any other fund of the city by the affirmative vote of three-fourths of all the members of the city council.

Source: Laws 1901, c. 18, § 92, p. 296; Laws 1903, c. 19, § 18, p. 247; R.S.1913, § 4987; C.S.1922, § 4156; C.S.1929, § 16-718; R.S. 1943, § 16-721; Laws 2016, LB704, § 188.

Effective date July 21, 2016.

16-722 City receipts and expenditures; publication.

The mayor and city council shall cause to be published semiannually a statement of the receipts of the city and an itemized account of the expenditures of the city.

Source: Laws 1901, c. 18, § 93, p. 296; R.S.1913, § 4988; C.S.1922, § 4157; C.S.1929, § 16-719; R.S.1943, § 16-722; Laws 1992, LB 415, § 1; Laws 2016, LB704, § 189.

Effective date July 21, 2016.

Cross References

Receipts and expenditures, publication requirements, village or city having population of not more than one hundred thousand, see section 19-1101.

16-723 Taxes; payable in cash; sinking fund; investment; matured bonds or coupons; payment.

All taxes levied for the purpose of raising money to pay the interest or to create a sinking fund for the payment of the principal of any funded or bonded debt of the city shall be payable in money only. Except as otherwise expressly provided, no money so obtained shall be used for any other purpose than the payment of the interest or debt for the payment of which it shall have been raised. Such sinking fund may, under the direction of the mayor and city council, be invested in any of the unmatured bonds issued by the city, provided they can be procured by the city treasurer at such rate or premium as shall be prescribed by ordinance. Any due or overdue bond or coupon shall be a sufficient warrant or order for the payment of the same by the city treasurer out of any fund especially created for that purpose without any further order or allowance by the mayor or city council.

Source: Laws 1901, c. 18, § 96, p. 297; R.S.1913, § 4989; C.S.1922, § 4158; C.S.1929, § 16-720; R.S.1943, § 16-723; Laws 2016, LB704, § 190.

Effective date July 21, 2016.

16-727 Claims; disallowance; appeal to district court; procedure.

When the claim of any person against the city, except a tort claim as defined in section 13-903, is disallowed in whole or in part by the city council, such person may appeal from the decision of the city council to the district court of the same county by causing a written notice to be served on the city clerk within twenty days after making such decision and executing a bond to such city, with good and sufficient sureties to be approved by the city clerk, conditioned for the faithful prosecution of such appeal and the payment of all costs that may be adjudged against the appellant.

Source: Laws 1901, c. 18, § 38, p. 240; Laws 1903, c. 19, § 6, p. 236; Laws 1907, c. 13, § 1, p. 109; R.S.1913, § 4991; C.S.1922, § 4160; C.S.1929, § 16-722; R.S.1943, § 16-727; Laws 1969, c. 138, § 22, p. 635; Laws 2016, LB704, § 191.

Effective date July 21, 2016.

16-728 Claims; allowance; appeal by taxpayer.

Any taxpayer may appeal from the allowance of any claim against the city, except a tort claim as defined in section 13-903, by serving a written notice upon the city clerk within ten days from such allowance and giving bond as provided in section 16-727. When the city council, by ordinance, provides for the publication of the list of the claims allowed, giving the amounts allowed and the names of the persons to whom allowed, in a legal newspaper in or of general circulation in such city, such appeal may be taken by a taxpayer by serving a notice thereof within such time after such publication as may be fixed by such ordinance, and giving bond for such appeal within ten days after such allowance.

Source: Laws 1901, c. 18, § 38, p. 241; Laws 1903, c. 19, § 6, p. 236; Laws 1907, c. 13, § 1, p. 109; R.S.1913, § 4991; C.S.1922, § 4160; C.S.1929, § 16-722; R.S.1943, § 16-728; Laws 1969, c. 138, § 23, p. 635; Laws 2016, LB704, § 192.

Effective date July 21, 2016.

16-729 Claims; allowance or disallowance; appeal; transcript; trial.

The city clerk, upon an appeal being taken under section 16-727 or 16-728 and being paid the proper fees therefor, including fees for filing the same in the district court, shall make out a transcript of the proceedings of the city council, mayor, and other officers as relate to the presentation and allowance or disallowance of such claim and shall file it with the clerk of the district court within thirty days after the decision allowing or disallowing the claim and paying the proper commencement fees. Such appeal shall be entered on the docket of the court, tried, and determined and costs awarded thereon in the manner provided in sections 25-1901 to 25-1937. No appeal bond shall be required of the city by any court in the case of an appeal by the city, and judgment shall be stayed pending such appeal.

Source: Laws 1901, c. 18, § 38, p. 241; Laws 1903, c. 19, § 6, p. 236; Laws 1907, c. 13, § 1, p. 110; R.S.1913, § 4991; C.S.1922, § 4160; C.S.1929, § 16-722; R.S.1943, § 16-729; Laws 1991, LB 1, § 1; Laws 2016, LB704, § 193.
Effective date July 21, 2016.

ARTICLE 8**OFFSTREET PARKING**

Section

- 16-801. Offstreet parking; purpose.
- 16-802. Grant of power.
- 16-803. Acquisition of property and facilities; cost; revenue bonds; interest; issuance; revenue pledged.
- 16-804. Revenue bonds; plans and specifications; engineer.
- 16-805. City council; rules and regulations; rates and charges; adopt.
- 16-806. Ordinance; publication; objections; submission to electors; election; notice.
- 16-807. Lease of facilities; competitive bidding.
- 16-809. Revenue bonds; rights of holders.
- 16-810. Revenue bonds; onstreet parking meters; revenue; use; exception.

16-801 Offstreet parking; purpose.

The Legislature finds and declares that the great increase in the number of motor vehicles, buses, and trucks in Nebraska has created hazards to life and property in cities of the first class in the state. In order to remove or reduce such hazards to life and property and the inconvenience of congested traffic on the streets in such cities in this state, it is hereby deemed necessary and of general benefit to the entire State of Nebraska to provide means for such cities in Nebraska to own offstreet vehicle parking facilities exclusively for the parking of motor vehicles.

Source: Laws 1955, c. 35, § 1, p. 143; Laws 2016, LB704, § 194.
Effective date July 21, 2016.

16-802 Grant of power.

Any city of the first class is hereby authorized to own, purchase, construct, equip, lease, or operate within such city offstreet motor vehicle parking facilities for the use of the general public. This does not include the power to engage, directly or indirectly, in the sale of gasoline, oil, or other merchandise or in the furnishing of any service other than that of parking motor vehicles as provided in this section. Such city shall have the authority to acquire by grant, contract,

or purchase or through the condemnation of property, as provided by law for such acquisition, all real or personal property, including a site or sites on which to construct the facilities necessary or convenient in the carrying out of this grant of power. Before any such city may commence a program to construct, purchase, or acquire by other means a proposed offstreet parking facility or facilities, notice shall be given, by publication in a legal newspaper in or of general circulation in the city once each week for not less than three weeks, inviting application for private ownership and operation of offstreet parking facilities. If no application or applications have been received or, if received, the application or applications have been disapproved by the city council within ninety days from the first date of publication, then such city may proceed in the exercise of the powers granted under this section.

Source: Laws 1955, c. 35, § 2, p. 144; Laws 1996, LB 299, § 13; Laws 2016, LB704, § 195.
Effective date July 21, 2016.

16-803 Acquisition of property and facilities; cost; revenue bonds; interest; issuance; revenue pledged.

In order to pay the cost required by any purchase, construction, lease, or condemnation of property and equipping of facilities, or the enlargement of presently owned facilities, or to pay a portion of the cost of facilities purchased or constructed pursuant to the Offstreet Parking District Act, a city of the first class may issue revenue bonds to provide the funds for such improvements. Such revenue bonds shall not be payable from any general tax upon the issuing city, but shall be a lien only upon the revenue and earnings of the parking facilities. Such revenue bonds may be issued at an interest cost to maturity set by the city council and shall mature in not to exceed forty years but may be optional prior to maturity at a premium as provided in the authorizing resolution or ordinance. Any such revenue bonds which may be issued shall not be included in computing the maximum amount of bonds which the issuing city of the first class may be authorized to issue under its charter or any statute of this state. Such revenue bonds may be issued and sold or delivered to the contractor at par and accrued interest for the amount of work performed. If any city has installed or installs onstreet parking meters, it may pledge all or any part of the revenue of such parking meters, not previously pledged, as security for the bonds authorized in this section.

Source: Laws 1955, c. 35, § 3, p. 144; Laws 1969, c. 88, § 27, p. 450; Laws 1969, c. 51, § 40, p. 296; Laws 2016, LB704, § 196.
Effective date July 21, 2016.

Cross References

Offstreet Parking District Act, see section 19-3301.

16-804 Revenue bonds; plans and specifications; engineer.

Before the issuance of any revenue bonds as provided under section 16-803, the city of the first class shall have an independent and qualified firm of engineers prepare plans and specifications for such improvements. In the preparation of the plans and specifications, the independent engineer shall collaborate and counsel with any city engineering or traffic departments so as

to coordinate the program with the program for the control of traffic within such city.

Source: Laws 1955, c. 35, § 4, p. 145; Laws 2016, LB704, § 197.
Effective date July 21, 2016.

16-805 City council; rules and regulations; rates and charges; adopt.

The city council shall make all necessary rules and regulations governing the use, operation, and control of the improvements as provided in sections 16-801 to 16-811. In the exercise of the grant of power as provided in sections 16-801 to 16-811, the city of the first class may make contracts with departments of the city, or others, if such contracts are necessary and needed for the payment of the revenue bonds authorized in section 16-803 and for the successful operation of the parking facilities. The city council shall also establish and maintain equitable rates or charges for such services sufficient in amount to pay for the cost of operation, repair, and upkeep of the facilities to be purchased, acquired, or leased, and the principal of and interest on any revenue bonds issued pursuant to sections 16-801 to 16-811. The city council may also make any other agreements with the purchasers of the bonds for the security of the issuing city and the purchasers of such bonds not in contravention with sections 16-801 to 16-811.

Source: Laws 1955, c. 35, § 5, p. 145; Laws 2016, LB704, § 198.
Effective date July 21, 2016.

16-806 Ordinance; publication; objections; submission to electors; election; notice.

The mayor and city council of a city of the first class may adopt by ordinance the proposition to make such purchase or to erect such facility or facilities as set forth in section 16-802, and before the purchase can be made or facility created, the city council shall publish in a legal newspaper in or of general circulation in the city the location of the proposed offstreet motor vehicle parking facility or facilities, the proposed cost, and the total amount of the bonds to be issued. If the electors of such city, equal in number to five percent of the electors of such city voting at the last preceding general municipal election, file a written objection or objections to the proposed issuance of revenue bonds within sixty days after the adoption of such ordinance, the city council must submit the question to the electors of such city at a general municipal election or at a special election called for that purpose and be approved by a majority of the electors voting on such question. If the question is submitted at a special election, the vote for the purchase or acquisition of such real estate or the purchase or erection of such facility or facilities shall equal at least a majority of the votes cast at the last preceding general election. Notice of the time and place of the election shall be given by publication in a legal newspaper in or of general circulation in such city three successive weeks prior thereto.

Source: Laws 1955, c. 35, § 6, p. 146; Laws 1957, c. 27, § 1, p. 181; Laws 2016, LB704, § 199.
Effective date July 21, 2016.

16-807 Lease of facilities; competitive bidding.

On the creation of a parking facility as provided under section 16-802 for the use of the general public, the city may lease such facility to one or more operators to provide for the efficient operation of the facility. Such lease shall be let on a competitive basis and no lease shall run for a period in excess of ten years. In granting any lease, the city shall retain such control of the facility as may be necessary to insure that the facility will be properly operated in the public interest and that the prices charged are reasonable. The provisions of sections 16-801 to 16-811 shall not be construed to authorize the city or the lessee of the facility to engage in the sale of any commodity, product, or service, or to engage in any business other than the purposes set forth in section 16-802.

Source: Laws 1955, c. 35, § 7, p. 146; Laws 2016, LB704, § 200.
Effective date July 21, 2016.

16-809 Revenue bonds; rights of holders.

The provisions of sections 16-801 to 16-811 and of any ordinance authorizing the issuance of bonds under the provisions of sections 16-801 to 16-811 shall constitute a contract with the holders of such bonds, and any holder of a bond or bonds or any of the coupons of any bond or bonds of such city, issued under the provisions of sections 16-801 to 16-811, may either in law or in equity, by suit, action, mandamus, or other proceedings, enforce and compel the performance of all duties required by the provisions of sections 16-801 to 16-811 or by the ordinance authorizing the bonds, including the making and collection of sufficient charges and fees for service and the use thereof, and the application of income and revenue thereof.

Source: Laws 1955, c. 35, § 9, p. 146; Laws 2016, LB704, § 201.
Effective date July 21, 2016.

16-810 Revenue bonds; onstreet parking meters; revenue; use; exception.

Any city of the first class is authorized to use any or all of the revenue from onstreet parking meters for the purpose set forth in section 16-802 if such revenue has not been pledged for the payment of revenue bonds authorized in section 16-803.

Source: Laws 1955, c. 35, § 10, p. 147; Laws 2016, LB704, § 202.
Effective date July 21, 2016.

ARTICLE 9

SUBURBAN DEVELOPMENT

Section

- 16-901. Zoning regulations; building ordinances; public utility codes; extension; notice to county board.
- 16-902. Designation of jurisdiction; subdivision; platting; consent required; review by county planning commission; when required.
- 16-905. Designation of jurisdiction; how described.

16-901 Zoning regulations; building ordinances; public utility codes; extension; notice to county board.

(1) Except as provided in section 13-327 and subsection (2) of this section, the extraterritorial zoning jurisdiction of a city of the first class shall consist of the unincorporated area two miles beyond and adjacent to its corporate boundaries.

(2) For purposes of sections 70-1001 to 70-1020, the extraterritorial zoning jurisdiction of a city of the first class shall consist of the unincorporated area one mile beyond and adjacent to its corporate boundaries.

(3) Any city of the first class may apply by ordinance any existing or future zoning regulations, property use regulations, building ordinances, electrical ordinances, plumbing ordinances, and ordinances authorized by section 16-240 within its extraterritorial zoning jurisdiction with the same force and effect as if such area were within the corporate limits of the city, except that no such ordinance shall be extended or applied so as to prohibit, prevent, or interfere with the conduct of existing farming, livestock operations, businesses, or industry. The fact that the extraterritorial zoning jurisdiction is located in a different county or counties than some or all portions of the municipality shall not be construed as affecting the powers of the city to apply such ordinances.

(4)(a) A city of the first class shall provide written notice to the county board of the county in which the city's two-mile extraterritorial zoning jurisdiction is located when proposing to adopt or amend a zoning ordinance which affects the city's two-mile extraterritorial zoning jurisdiction within such county. The written notice of the proposed change to the zoning ordinance shall be sent to the county board or its designee at least thirty days prior to the final decision by the city. The county board may submit comments or recommendations regarding the change in the zoning ordinance at the public hearings on the proposed change or directly to the city within thirty days after receiving such notice. The city may make its final decision (i) upon the expiration of the thirty days following the notice or (ii) when the county board submits comments or recommendations, if any, to the city prior to the expiration of the thirty days following the notice.

(b) Subdivision (4)(a) of this section does not apply to a city of the first class (i) located in a county with a population in excess of one hundred thousand inhabitants or (ii) if the city and the county have a joint planning commission or joint planning department.

Source: Laws 1957, c. 28, § 1, p. 183; Laws 1967, c. 70, § 1, p. 232; Laws 1967, c. 75, § 1, p. 242; Laws 1988, LB 934, § 5; Laws 2002, LB 729, § 3; Laws 2016, LB295, § 1; Laws 2016, LB704, § 203.
Effective date July 21, 2016.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB295, section 1, with LB704, section 203, to reflect all amendments.

16-902 Designation of jurisdiction; subdivision; platting; consent required; review by county planning commission; when required.

(1) Except as provided in subsection (4) of this section, a city of the first class may designate by ordinance the portion of the territory located within its extraterritorial zoning jurisdiction and outside of any other organized city or village within which the designating city will exercise the powers and duties granted by sections 16-902 to 16-904 or section 19-2402.

(2) No owner of any real property located within the area designated by a city pursuant to subsection (1) or (4) of this section may subdivide, plat, or lay out such real property in building lots, streets, or other portions of the same intended to be dedicated for public use or for the use of the purchasers or owners of lots fronting thereon or adjacent thereto without first having obtained the approval of the city council of such city or its agent designated

pursuant to section 19-916 and, when applicable, having complied with sections 39-1311 to 39-1311.05. The fact that such real property is located in a different county or counties than some or all portions of the city shall not be construed as affecting the necessity of obtaining the approval of the city council of such city or its designated agent.

(3) In counties that (a) have adopted a comprehensive development plan which meets the requirements of section 23-114.02 and (b) are enforcing subdivision regulations, the county planning commission shall be provided with all available materials on any proposed subdivision plat, contemplating public streets or improvements, which is filed with a city of the first class in that county, when such proposed plat lies partially or totally within the portion of that city's extraterritorial zoning jurisdiction where the powers and duties granted by sections 16-902 to 16-904 are being exercised by that city in such county. The commission shall be given four weeks to officially comment on the appropriateness of the design and improvements proposed in the plat. The review period for the commission shall run concurrently with subdivision review activities of the city after the commission receives all available material for a proposed subdivision plat.

(4) If a city of the first class receives approval for the cession and transfer of additional extraterritorial zoning jurisdiction under section 13-327, such city may designate by ordinance the portion of the territory located within two miles of the corporate limits of the city and outside of any other organized city or village within which the designating city will exercise the powers and duties granted by sections 16-902 to 16-904 or section 19-2402 and shall include territory ceded under section 13-327 within such designation.

Source: Laws 1957, c. 28, § 2(1), p. 183; Laws 1967, c. 70, § 2, p. 232; Laws 1967, c. 75, § 2, p. 243; Laws 1978, LB 186, § 1; Laws 1983, LB 71, § 2; Laws 1993, LB 208, § 1; Laws 2001, LB 222, § 1; Laws 2002, LB 729, § 4; Laws 2003, LB 187, § 4; Laws 2016, LB704, § 204; Laws 2016, LB864, § 2.
Effective date July 21, 2016.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB704, section 204, with LB864, section 2, to reflect all amendments.

16-905 Designation of jurisdiction; how described.

An ordinance of any city of the first class designating the extraterritorial zoning jurisdiction of the city under section 16-901 or 16-902 shall describe such territory by metes and bounds or by reference to an official map.

Source: Laws 1993, LB 208, § 2; Laws 2016, LB704, § 205.
Effective date July 21, 2016.

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.
- 16-1014. Retirement committee; established; city council; responsibilities.
- 16-1017. Retirement committee; duties.

Section

- 16-1019. Exemption from legal process; administration; requirements; retirement committee; powers and duties; review of adjustment; tax levy authorized.
- (b) FIREFIGHTERS RETIREMENT
- 16-1021. Terms, defined.
- 16-1027. Retiring firefighter; annuity options; how determined; lump-sum payment.
- 16-1034. Retirement committee; established; city council; responsibilities; powers and duties; allocation.
- 16-1035. Retirement committee; members; terms; vacancy; expenses.
- 16-1037. Retirement committee; officers; duties.
- 16-1038. Retirement benefits; exemption from legal process; exception; tax-qualification requirements; benefit error; correction; appeal; tax levy authorized.

(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) 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;

(3) 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;

(4) 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;

(5) 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;

(6) 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;

(7) Retirement committee means the retirement committee created pursuant to section 16-1014;

(8) Retirement system means a retirement system established pursuant to the act;

(9) 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;

(10) 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;

(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 237, § 2; Laws 1992, LB 672, § 7; Laws 1995, LB 574, § 17; Laws 2012, LB1082, § 2; Laws 2014, LB759, § 8; Laws 2016, LB790, § 1.
Effective date July 21, 2016.

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.

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.

16-1014 Retirement committee; established; city council; responsibilities.

A retirement committee shall be established to supervise the general operation of the retirement system established pursuant to the Police Officers Retirement Act. The city council shall continue to be responsible for the general administration of such retirement system unless specific functions or all functions with regard to the administration of the retirement system are delegated, by ordinance, to the retirement committee. Whenever duties or powers are vested in the city or the retirement committee under the act or whenever the act fails to specifically allocate the duties or powers of administration of the retirement system, such powers or duties shall be vested in the city unless such powers or duties have been delegated by ordinance to the retirement committee. The city and the retirement committee shall have all powers which are necessary for or appropriate to establishing, maintaining, managing, and administering the retirement system.

Source: Laws 1983, LB 237, § 14; Laws 1992, LB 672, § 17; Laws 2012, LB1082, § 12; Laws 2016, LB704, § 206.
Effective date July 21, 2016.

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.

16-1019 Exemption from legal process; administration; requirements; retirement committee; powers and duties; review of adjustment; tax levy authorized.

(1) The right to any benefits under the retirement system and the assets of any fund of the retirement system shall not be assignable or subject to execution, garnishment, attachment, or the operation of any bankruptcy or insolvency laws, except that the retirement system may comply with the directions set forth in a qualified domestic relations order meeting the requirements of section 414(p) of the Internal Revenue Code. The city or retirement committee may require appropriate releases from any person as a condition to complying with any such order. The retirement system shall not recognize any domestic relations order which alters or changes benefits, provides for a form of benefit not otherwise provided for by the retirement system, increases benefits not otherwise provided by the retirement system, or accelerates or defers the time of payment of benefits. No participant or beneficiary shall have any right to any specific portion of the assets of the retirement system.

(2) The retirement system shall be administered in a manner necessary to comply with the tax-qualification requirements applicable to government retirement plans under section 401(a) of the Internal Revenue Code, including section 401(a)(9) relating to the time and manner in which benefits are required to be distributed and section 401(a)(9)(G) relating to incidental death benefit requirements, section 401(a)(16) relating to compliance with the maximum limitation on the plan benefits or contributions under section 415, section 401(a)(17) which limits the amount of compensation which can be taken into account under a retirement plan, section 401(a)(25) relating to the specification of actuarial assumptions, section 401(a)(31) relating to direct rollover distributions from eligible retirement plans, and section 401(a)(37) relating to the death benefit of a police officer who dies while performing qualified military service. Any requirements for compliance with section 401(a) of the Internal Revenue Code may be set forth in any trust or funding medium for the retirement system. This subsection shall be in full force and effect only so long as conformity with section 401(a) of the Internal Revenue Code is required for public retirement systems in order to secure the favorable income tax treatment extended to sponsors and beneficiaries of tax-qualified retirement plans.

(3) If the retirement committee determines that the retirement system has previously overpaid or underpaid a benefit payable under the Police Officers Retirement Act, it shall have the power to correct such error. In the event of an overpayment, the retirement system may, in addition to any other remedy that the retirement system may possess, offset future benefit payments by the amount of the prior overpayment, together with regular interest thereon.

(4) A police officer whose benefit payment is adjusted by the retirement committee pursuant to subsection (3) of this section may request a review by the city council of the adjustment made by the retirement committee.

(5) In order to provide the necessary amounts to pay for or fund a pension plan established under the act, the mayor and council may make a levy which is within the levy restrictions of section 77-3442.

Source: Laws 1983, LB 237, § 19; Laws 1992, LB 672, § 20; Laws 1995, LB 574, § 20; Laws 1996, LB 1114, § 29; Laws 2012, LB916, § 2; Laws 2012, LB1082, § 15; Laws 2015, LB40, § 2.

(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.

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 retiree-

ment 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.

16-1034 Retirement committee; established; city council; responsibilities; powers and duties; allocation.

A retirement committee shall be established to supervise the general operation of the retirement system. The city council shall be responsible for the general administration of such retirement system unless specific functions or all

functions with regard to the administration of the retirement system are delegated, by ordinance, to the retirement committee. All costs incurred with regard to the administration of the retirement system shall be paid by the city from the unallocated employer account as provided in section 16-1036.01.

The city and retirement committee shall have all powers which are necessary for or appropriate to establishing, maintaining, managing, and administering the retirement system. Whenever sections 16-1020 to 16-1042 fail to address the allocation of duties or powers in the administration of the retirement system, such powers or duties shall be vested in the city unless such powers or duties have been delegated by ordinance to the retirement committee.

Source: Laws 1983, LB 531, § 15; Laws 1992, LB 672, § 25; Laws 1993, LB 724, § 11; Laws 2016, LB704, § 207.
Effective date July 21, 2016.

16-1035 Retirement committee; members; terms; vacancy; expenses.

Each retirement committee established pursuant to section 16-1034 shall consist of six members of which four members shall be selected by the active paid firefighters excluding firefighters identified in section 16-1039. Two members shall be designated by the city council. The members who are not participants in such retirement system shall have a general knowledge of retirement plans. Members of the city council, active members of the fire department, and members of the general public may serve on the retirement committee. The committee members shall be appointed to four-year terms. Vacancies shall be filled for the remainder of the term by a person with the same representation as his or her predecessor. Members of the retirement committee shall, subject to approval by the city council, be reimbursed for their actual and necessary expenses incurred in carrying out their duties.

Source: Laws 1983, LB 531, § 16; Laws 1992, LB 672, § 26; Laws 2016, LB704, § 208.
Effective date July 21, 2016.

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.

Cross References

Open Meetings Act, see section 84-1407.

16-1038 Retirement benefits; exemption from legal process; exception; tax-qualification requirements; benefit error; correction; appeal; tax levy authorized.

(1) The right to any benefits under the retirement system and the assets of any fund of the retirement system shall not be assignable or subject to execution, garnishment, attachment, or the operation of any bankruptcy or insolvency laws, except that the retirement system may comply with the directions set forth in a qualified domestic relations order meeting the requirements of section 414(p) of the Internal Revenue Code. The city or retirement committee may require appropriate releases from any person as a condition to complying with any such order. The retirement system shall not recognize any domestic relations order which alters or changes benefits, provides for a form of benefit not otherwise provided for by the retirement system, increases benefits not otherwise provided by the retirement system, or accelerates or defers the time of payment of benefits. No participant or beneficiary shall have any right to any specific portion of the assets of the retirement system.

(2) The retirement system shall be administered in a manner necessary to comply with the tax-qualification requirements applicable to government retirement plans under section 401(a) of the Internal Revenue Code, including section 401(a)(9) relating to the time and manner in which benefits are required to be distributed and section 401(a)(9)(G) relating to incidental death benefit requirements, section 401(a)(16) relating to compliance with the maximum limitation on the plan benefits or contributions under section 415, section 401(a)(17) which limits the amount of compensation which can be taken into account under a retirement plan, section 401(a)(25) relating to the specification of actuarial assumptions, section 401(a)(31) relating to direct rollover distribution from eligible retirement plans, and section 401(a)(37) relating to the death benefit of a firefighter who dies while performing qualified military service. Any requirements for compliance with section 401(a) of the Internal Revenue Code may be set forth in any trust or funding medium for the retirement system. This subsection shall be in full force and effect only so long as conformity with section 401(a) of the Internal Revenue Code is required for public retirement systems in order to secure the favorable income tax treatment extended to sponsors and beneficiaries of tax-qualified retirement plans.

(3) If the retirement committee determines that the retirement system has previously overpaid or underpaid a benefit payable under sections 16-1020 to 16-1042, it shall have the power to correct such error. In the event of an overpayment, the retirement system may, in addition to any other remedy that the retirement system may possess, offset future benefit payments by the amount of the prior overpayment, together with regular interest thereon.

(4) A firefighter whose benefit payment is adjusted by the retirement committee pursuant to subsection (3) of this section may request a review by the city council of the adjustment made by the retirement committee.

(5) In order to provide the necessary amounts to pay for or fund a pension plan established under sections 16-1020 to 16-1042, the mayor and council may make a levy which is within the levy restrictions of section 77-3442.

Source: Laws 1983, LB 531, § 19; Laws 1993, LB 724, § 13; Laws 1995, LB 574, § 24; Laws 1996, LB 1114, § 30; Laws 2012, LB916, § 3; Laws 2012, LB1082, § 16; Laws 2015, LB40, § 3.



CHAPTER 17

CITIES OF THE SECOND CLASS AND VILLAGES

Article.

1. Laws Applicable Only to Cities of the Second Class. 17-101 to 17-149.01.
2. Laws Applicable Only to Villages. 17-201, 17-207.
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. 17-510 to 17-563.
6. Elections, Officers, Ordinances.
 - (b) Officers. 17-605, 17-606.
 - (c) Ordinances. 17-614.
9. Particular Municipal Enterprises.
 - (b) Sewerage System. 17-913, 17-921.
 - (c) Cemeteries. 17-934 to 17-945.
 - (i) Water Service District. 17-971, 17-972.
10. Suburban Development. 17-1001, 17-1002.

ARTICLE 1

LAWS APPLICABLE ONLY TO CITIES OF THE SECOND CLASS

Section

- 17-101. Cities of the second class, defined; population; exception.
- 17-102. Wards; number; how determined.
- 17-104. City council; members; election; term; qualifications.
- 17-110. Mayor; general duties and powers.
- 17-111. Mayor; ordinances; veto power; passage over veto.
- 17-123. Public health; regulations; water; power to supply.
- 17-123.01. Litter; removal; notice; action by city or village.
- 17-149.01. Sewerage and drainage; failure of property owner to connect; notice; cost; special assessment; collection.

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.

17-102 Wards; number; how determined.

Unless the city elects council members at large as provided in section 32-554, each city of the second class shall be divided into not less than two nor more

than six wards, as provided by ordinance of the city council. Each ward shall contain, as nearly as practicable, an equal portion of the population.

Source: Laws 1879, § 2, p. 193; R.S.1913, § 4994; C.S.1922, § 4163; C.S.1929, § 17-102; Laws 1935, c. 32, § 1, p. 137; C.S.Supp.,1941, § 17-102; R.S.1943, § 17-102; Laws 1969, c. 257, § 5, p. 934; Laws 2016, LB702, § 1.
Effective date July 21, 2016.

17-104 City council; members; election; term; qualifications.

Unless the city elects council members at large as provided in section 32-554, each ward of each city shall have at least two council members elected in the manner provided in the Election Act. The term of office shall begin on the first regular meeting of the council in December following the statewide general election. No person shall be eligible to the office of council member who is not at the time of the election an actual resident of the ward for which he or she is elected and a registered voter.

Source: Laws 1879, § 4, p. 194; R.S.1913, § 4996; C.S.1922, § 4165; C.S.1929, § 17-104; R.S.1943, § 17-104; Laws 1969, c. 257, § 6, p. 934; Laws 1973, LB 559, § 2; Laws 1979, LB 253, § 1; Laws 1981, LB 446, § 2; Laws 1994, LB 76, § 490; Laws 2016, LB702, § 2.
Effective date July 21, 2016.

Cross References

City council, election, see section 32-533.

Election Act, see section 32-101.

Vacancies, see sections 32-568 and 32-569.

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

LAWS APPLICABLE ONLY TO CITIES OF THE SECOND CLASS § 17-149.01

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.

17-123 Public health; regulations; water; power to supply.

A city of the second class shall have power to make regulations to secure the general health of the city, to prevent and remove nuisances within the city and within its one-mile zoning jurisdiction, and to provide the city with water.

Source: Laws 1879, § 39, IV, p. 201; Laws 1881, c. 24, § 1, p. 194; R.S.1913, § 5017; C.S.1922, § 4186; C.S.1929, § 17-125; R.S. 1943, § 17-123; Laws 2015, LB266, § 8.

17-123.01 Litter; removal; notice; action by city or village.

Each city of the second-class and village may, by ordinance, prohibit and control the throwing, depositing, or accumulation of litter on any lot or piece of ground within the city or village or within its one-mile zoning jurisdiction and require the removal thereof so as to abate any nuisance occasioned thereby. If the owner fails to remove such litter, after five days' notice by publication and by certified mail, the city or village, through its proper officers, shall remove the litter or cause it to be removed and shall assess the cost thereof against the property so benefited as provided by ordinance.

Source: Laws 1975, LB 117, § 2; Laws 2015, LB266, § 9.

17-149.01 Sewerage and drainage; failure of property owner to connect; notice; cost; special assessment; collection.

If any property owner neglects or fails within a period of ten days after notice has been given to him or her by certified or registered mail or by publication in some newspaper published or of general circulation in such city or village to make connection with the sewerage system as provided in section 17-149, the governing body of such city or village may cause the connection to be done, assess the cost thereof against the property as a special assessment, and collect the special assessment in the manner provided for collection of other special assessments.

Source: Laws 1949, c. 22, § 1(2), p. 94; Laws 1987, LB 93, § 4; Laws 2015, LB361, § 28.

ARTICLE 2

LAWS APPLICABLE ONLY TO VILLAGES

Section

17-201. Village, defined; incorporation; restriction on territory; condition.

17-207. Board of trustees; powers; restrictions.

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.

17-207 Board of trustees; powers; restrictions.

The board of trustees shall have power to pass ordinances to prevent and remove nuisances within the village or within its one-mile zoning jurisdiction; to restrain and prohibit gambling; to provide for licensing and regulating theatrical and other amusements within the village; to prevent the introduction and spread of contagious diseases; to establish and regulate markets; to erect

and repair bridges; to erect, repair, and regulate wharves and the rates of wharfage; to regulate the landing of watercraft; to provide for the inspection of building materials to be used or offered for sale in the village; to govern the planting and protection of shade trees in the streets and the building of structures projecting upon or over and adjoining, and all excavations through and under, the sidewalks of the village; and in addition to the special powers herein conferred and granted, to maintain the peace, good government, and welfare of the village and its trade, commerce, and manufactories, and to enforce all ordinances by inflicting penalties upon inhabitants or other persons, for the violation thereof, not exceeding five hundred dollars for any one offense, recoverable with costs. Nothing in this section shall be construed to apply to bingo, lotteries, lotteries by the sale of pickle cards, or raffles conducted in accordance with the Nebraska Bingo Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, or the State Lottery Act.

Source: Laws 1879, § 46, p. 203; Laws 1907, c. 15, § 1, p. 123; R.S.1913, § 5057; C.S.1922, § 4229; C.S.1929, § 17-207; R.S.1943, § 17-207; Laws 1986, LB 1027, § 190; Laws 1991, LB 849, § 63; Laws 1993, LB 138, § 65; Laws 1999, LB 128, § 1; Laws 2015, LB266, § 10.

Cross References

Nebraska Bingo Act, see section 9-201.

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.

State Lottery Act, see section 9-801.

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.

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.

(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; R.S.Supp.,1990, § 17-307; Laws 1994, LB 76, § 496; Laws 2014, LB702, § 5.

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.

ARTICLE 5

GENERAL GRANT OF POWER

Section

- 17-510. Streets; improvement district; creation by petition; denial; special assessments.
- 17-511. Streets; improvement by ordinance; objections; time of filing; special assessment.
- 17-512. Streets; main thoroughfares; improvement by ordinance; assessments.
- 17-525. Occupation tax; power to levy; exceptions.
- 17-539. Waterworks; construction; cost; special assessments.
- 17-555. Streets and sidewalks; removal of obstructions; trees; declaration of nuisance; procedure; special assessment.
- 17-557.01. Sidewalks; removal of encroachments; cost of removal; special assessments; interest.
- 17-563. Lots; drainage; weeds or litter; nuisance; noncompliance by owner; notice; hearing; special assessment; violation; penalty; civil action.

17-510 Streets; improvement district; creation by petition; denial; special assessments.

If a petition is signed by the owners of the record title representing more than sixty percent of the front footage of the property directly abutting upon the streets, alleys, public ways, or public grounds proposed to be improved and presented and filed with the city clerk or village clerk, petitioning therefor, the governing body shall by ordinance create a paving, graveling, or other improvement district, cause such work to be done or such improvement to be made, contract therefor, and levy special assessments on the lots and parcels of land abutting on or adjacent to such streets or alleys specially benefited thereby in such district in proportion to such benefits, except as provided in sections 19-2428 to 19-2431, to pay the cost of such improvement. The governing body may deny the formation of the proposed district when the area has not previously been improved with a water system, sewer system, and grading of streets. If the governing body denies a requested improvement district formation, it shall state the grounds for such denial in a written letter to interested parties.

Source: Laws 1879, § 69, IV, p. 211; Laws 1881, c. 23, § 8, IV, p. 173; Laws 1885, c. 20, § 1, IV, p. 163; Laws 1887, c. 12, § 1, IV, p. 292; Laws 1903, c. 20, § 1, p. 248; Laws 1909, c. 22, § 1, p. 191; Laws 1911, c. 21, § 1, p. 139; R.S.1913, § 5110; Laws 1915, c. 92, § 1, p. 232; Laws 1917, c. 102, § 1, p. 268; Laws 1919, c. 50, § 1, p. 145; C.S.1922, § 4283; Laws 1923, c. 135, § 1, p. 331; Laws 1927, c. 42, § 1, p. 177; C.S.1929, § 17-432; Laws 1933, c. 136, § 20, p. 529; C.S.Supp.,1941, § 17-432; R.S.1943, § 17-510; Laws 1979, LB 176, § 1; Laws 1983, LB 125, § 2; Laws 1983, LB 94, § 3; Laws 2015, LB361, § 29.

17-511 Streets; improvement by ordinance; objections; time of filing; special assessment.

Whenever the governing body deems it necessary to make the improvements in section 17-509 which are to be funded by a levy of special assessment on the property specially benefited, such governing body shall by ordinance create a paving, graveling, or other improvement district and, after the passage, approval, and publication of such ordinance, shall publish notice of the creation of any

such district for six days in a legal newspaper of the city or village if it is a daily newspaper or for two consecutive weeks if it is a weekly newspaper. If no legal newspaper is published in the city or village, the publication shall be in a legal newspaper of general circulation in the city or village. If the owners of the record title representing more than fifty percent of the front footage of the property directly abutting on the street or alley to be improved file with the city clerk or the village clerk within twenty days after the first publication of such notice written objections to the creation of such district, such improvement shall not be made as provided in such ordinance, but such ordinance shall be repealed. If objections are not filed against the district in the time and manner prescribed in this section, the governing body shall immediately cause such work to be done or such improvement to be made, shall contract for the work or improvement, and shall levy special assessments on the lots and parcels of land abutting on or adjacent to such street or alley specially benefited in such district in proportion to such benefits to pay the cost of such improvement.

Source: Laws 1927, c. 42, § 1, p. 177; C.S.1929, § 17-432; Laws 1933, c. 136, § 20, p. 530; C.S.Supp.,1941, § 17-432; R.S.1943, § 17-511; Laws 1979, LB 176, § 2; Laws 1986, LB 960, § 8; Laws 1995, LB 196, § 3; Laws 2015, LB361, § 30.

17-512 Streets; main thoroughfares; improvement by ordinance; assessments.

The council or board of trustees may, by a three-fourths vote of all members of such council or board of trustees, enact an ordinance creating a paving, graveling, or other improvement district, order such work to be done without petition upon any federal or state highways in the city or village or upon a street or route, designated by the mayor and council or board of trustees as a main thoroughfare, that connects to either a federal or state highway or a county road, and shall contract therefor, and shall levy assessments on the lots and parcels of land abutting on or adjacent to such street or alley specially benefited thereby in such district in proportion to such benefits, to pay the cost of such improvement.

Source: Laws 1879, § 69, IV, p. 211; Laws 1881, c. 23, § 8, IV, p. 173; Laws 1885, c. 20, § 1, IV, p. 163; Laws 1903, c. 20, § 1, p. 248; Laws 1909, c. 22, § 1, p. 191; Laws 1911, c. 21, § 1, p. 139; R.S.1913, § 5110; Laws 1915, c. 92, § 1, p. 232; Laws 1917, c. 102, § 1, p. 268; Laws 1919, c. 50, § 1, p. 145; C.S.1922, § 4283; Laws 1923, c. 135, § 1, p. 331; Laws 1927, c. 42, § 1, p. 178; C.S.1929, § 17-432; Laws 1933, c. 136, § 20, p. 530; C.S.Supp.,1941, § 17-432; R.S.1943, § 17-512; Laws 1972, LB 1320, § 1; Laws 2015, LB361, § 31.

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.

17-539 Waterworks; construction; cost; special assessments.

The expense of erecting, locating, and constructing reservoirs and hydrants for the purpose of fire protection and the expense of constructing and laying water mains, pipes, or such parts thereof as may be just and lawful, may be assessed upon and collected from the property and real estate specially benefited thereby, if any, as a special assessment in such manner as may be provided for the making of special assessments for other public improvements in such cities and villages.

Source: Laws 1881, c. 23, § 8, XV, p. 179; Laws 1885, c. 20, § 1, XV, p. 170; Laws 1887, c. 12, § 1, XV, p. 298; Laws 1893, c. 8, § 1, p. 135; Laws 1903, c. 21, § 1, p. 252; Laws 1905, c. 30, § 1, p. 258; Laws 1907, c. 17, § 1, p. 128; R.S.1913, § 5119; Laws 1917, c. 103, § 1, p. 273; Laws 1919, c. 48, § 1, p. 139; Laws 1919, c. 52, § 1, p. 153; Laws 1919, c. 46, § 2, p. 133; C.S.1922, § 4292; Laws 1925, c. 41, § 1, p. 159; C.S.1929, § 17-441; Laws 1935, c. 34, § 1, p. 143; C.S.Supp.,1941, § 17-441; R.S.1943, § 17-539; Laws 2015, LB361, § 32.

17-555 Streets and sidewalks; removal of obstructions; trees; declaration of nuisance; procedure; special assessment.

(1) Cities of the second class or villages may remove all obstructions from the sidewalks, curbstones, gutters, and crosswalks at the expense of the person placing them there or at the expense of the city or village and require and regulate the planting and protection of shade trees in and along the streets and the trimming and removing of such trees.

(2) Cities of the second class or villages may by ordinance declare it to be a nuisance for a property owner to permit, allow, or maintain any dead or diseased trees within the right-of-way of streets within the corporate limits or within its one-mile zoning jurisdiction of the city or village. Notice to abate and remove such nuisance and notice of the right to a hearing and the manner in which it may be requested 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 the 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 the work done to abate and remove the dead or diseased trees. If the owner or occupant of the lot or piece of ground does not request a hearing with the city or village within five days after receipt of such notice or fails to comply with the order to abate and remove the nuisance, the city or village may have such work done. The city or village may levy and assess all or any portion of the costs and expenses of the work upon the lot or piece of ground so benefited as a special assessment.

(3) Cities or villages may regulate the building of bulkheads, cellar and basement ways, stairways, railways, windows, doorways, awnings, hitching posts and rails, lampposts, awning posts, all other structures projecting upon or over and adjoining, and all other excavations through and under the sidewalks in the city or village.

Source: Laws 1879, § 69, XXIV, p. 215; Laws 1881, c. 23, § 8, XXIV, p. 183; Laws 1885, c. 20, § 1, XXIV, p. 174; Laws 1887, c. 12, § 1, XXIV, p. 303; R.S.1913, § 5129; C.S.1922, § 4304; C.S.1929, § 17-453; R.S.1943, § 17-555; Laws 1994, LB 695, § 6; Laws 2015, LB266, § 11; Laws 2015, LB361, § 33; Laws 2016, LB703, § 2.

Effective date July 21, 2016.

17-557.01 Sidewalks; removal of encroachments; cost of removal; special assessments; interest.

If the abutting property owner refuses or neglects, after five days' notice by publication or, in place thereof, personal service of such notice, to remove all encroachments from sidewalks, as provided in section 17-557, the city or village through the proper officers may cause such encroachments to be removed and the cost of removal shall be paid out of the street fund. The city council or board of trustees shall assess the cost of the notice and removal of the encroachment against such abutting property as a special assessment. Such special assessment shall be known as a special sidewalk assessment and, together with the cost of notice, shall be levied and collected as a special assessment in addition to the general revenue taxes and shall be subject to the same penalties as other special assessments and shall draw interest from the date of the assessment. Upon payment of the assessment, the assessment shall be credited to the street fund.

Source: Laws 1947, c. 37, § 2, p. 149; Laws 1969, c. 51, § 48, p. 302; Laws 2015, LB361, § 34.

17-563 Lots; drainage; weeds or litter; nuisance; noncompliance by owner; notice; hearing; special assessment; 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 or within its one-mile zoning jurisdiction 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 or within its one-mile zoning

jurisdiction 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 or within its one-mile zoning jurisdiction.

(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 as a special assessment in the same manner as other special assessments 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; Laws 2015, LB266, § 12; Laws 2015, LB361, § 35.

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

(b) SEWERAGE SYSTEM

Section

17-913. Sewers; resolution to construct, purchase, or acquire; contents; estimate of cost; special assessment.

17-921. Sewers; special assessments; levy; collection.

(c) CEMETERIES

17-934. Cemetery; existing cemetery association; transfer to; conditions.

17-941. Cemetery; lots; conveyance.

17-944. Cemetery association; formation; when authorized.

17-945. Cemetery association; trustees; conveyances.

(i) WATER SERVICE DISTRICT

17-971. Water service districts; improvements; protest; effect; special assessments.

17-972. Water service districts; failure to comply with regulation or make connection; effect; special assessment.

(b) SEWERAGE SYSTEM

17-913 Sewers; resolution to construct, purchase, or acquire; contents; estimate of cost; special assessment.

When the city council of any city of the second class, or the board of trustees of any village, deems it advisable or necessary to build, reconstruct, purchase, or otherwise acquire a sanitary sewer system or a sanitary or storm water sewer, or sewers or sewage disposal plant, or pumping stations or sewer outlets for any such city or village, constructed or to be constructed in whole or in part inside or outside thereof, it shall declare the advisability and necessity therefor in a proposed resolution, which, in the case of pipe sewer construction, shall state the kinds of pipe proposed to be used, and shall state the size or sizes and kinds of sewers proposed to be constructed and shall designate the location and terminal points thereof. If it is proposed to construct disposal plants, pumping stations, or outlet sewers, the resolution shall refer to the plans and specifications thereof which shall have been made and filed before the publication of such resolution by the city engineer of any such city or by the engineer who has been employed by any such city or village for such purpose. If it is proposed to purchase or otherwise acquire a sanitary sewer system or a sanitary or storm water sewer, or sewers or sewage disposal plant, or pumping stations or sewer outlets, the resolution shall state the price and conditions of the purchase or how the system, sewer, plant, station, or outlet is being acquired. Such engineer shall also make and file, prior to the publication of such resolution, an estimate of the total cost of the proposed improvement. The proposed resolution shall state the amount of such estimated cost. The city council or board of trustees may assess, to the extent of special benefits, the cost of such portions of the

improvements as are local improvements, upon properties found specially benefited thereby as a special assessment. The resolution shall state the outer boundaries of the district or districts in which it is proposed to make special assessments.

Source: Laws 1919, c. 189, § 1, p. 427; Laws 1921, c. 281, § 1, p. 926; C.S.1922, § 4337; Laws 1923, c. 143, § 1, p. 355; C.S.1929, § 17-528; R.S.1943, § 17-913; Laws 1947, c. 39, § 1, p. 151; Laws 2015, LB361, § 36.

17-921 Sewers; special assessments; levy; collection.

After the equalization of special assessments as required by section 17-920, the special assessments shall be levied by the mayor and city council or the board of village trustees, upon all lots or parcels of ground within the district specified which are benefited by reason of the improvement. The special assessments may be relieved if, for any reason, the levy thereof is void or not enforceable and in an amount not exceeding the previous levy. Such levy shall be enforced as a special assessment, and any payments thereof under previous levies shall be credited to the person or property making the same. All special assessments made for such purposes shall be collected in the same manner as other special assessments.

Source: Laws 1919, c. 189, § 9, p. 430; C.S.1922, § 4345; C.S.1929, § 17-536; R.S.1943, § 17-921; Laws 2015, LB361, § 37.

(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.

17-941 Cemetery; lots; conveyance.

The mayor and council or board of trustees may convey cemetery lots by certificate signed by the mayor and chairperson, and countersigned by the clerk, under the seal of the city or village, specifying that the person to whom the same is issued is the owner of the lot or lots described therein by number as laid down on such map or plat, for the purpose of interment; and such certificate shall vest in the proprietor, his or her heirs and assigns, a right in fee simple to such lot for the sole purpose of interment, under the regulation of the city council or board of trustees.

Source: Laws 1879, § 69, XXXIV, p. 218; Laws 1881, c. 23, § 8, XXXIV, p. 186; Laws 1885, c. 20, § 1, XXXIV, p. 177; Laws 1887, c. 12, § 1, XXXIV, p. 306; R.S.1913, § 5168; C.S.1922, § 4355; C.S.1929, § 17-553; R.S.1943, § 17-941; Laws 1971, LB 32, § 4; Laws 2015, LB241, § 3.

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.

17-945 Cemetery association; trustees; conveyances.

Upon the formation of such cemetery association, the lot owners in such cemetery shall elect five of their number as trustees, to whom shall be given the general care, management, and supervision of such cemetery. The mayor or chairperson of such city or village shall, by virtue of his or her office, be a member of the board of trustees, and it shall be his or her duty to make, execute, and deliver to purchasers of lots deeds therefor, when requested by such board of trustees. Such deed shall be executed under the corporate seal of such city, and countersigned by the clerk, specifying that the person to whom the same is issued is the owner, for the purposes of interment, of the lot or lots described therein by numbers, as laid down on the map or plat of such cemetery. Such deed shall vest in the proprietor, his or her heirs or assigns, a right in fee simple to such lot for the sole purpose of interment, under the regulations of the board of trustees.

Source: Laws 1887, c. 15, § 2, p. 330; R.S.1913, § 5172; C.S.1922, § 4359; C.S.1929, § 17-557; R.S.1943, § 17-945; Laws 2015, LB241, § 4.

(i) WATER SERVICE DISTRICT

17-971 Water service districts; improvements; protest; effect; special assessments.

If a governing body deems it necessary or desirable to make improvements in a water service district, it shall by ordinance create such water service district and, after the passage, approval, and publication of such ordinance, shall publish notice of the creation of such district for two consecutive weeks in a legal newspaper of the city or village. If no legal newspaper is published in the

city or village, the notice shall be placed in a legal newspaper of general circulation in the city or village. If a majority of the resident owners of the property directly abutting upon any water main to be constructed within such water service district shall file with the city clerk or the village clerk within twenty days after the first publication of such notice written objections to the creation of such district, such improvement shall not be made as provided in such ordinance, but such ordinance shall be repealed. If such objections are not so filed against the district, the governing body shall immediately cause such work to be done or such improvement to be made, shall contract therefor, and shall levy special assessments on the lots and parcels of land within such district or districts specially benefited in proportion to such benefits in order to pay the cost of such improvement.

Source: Laws 1967, c. 73, § 2, p. 237; Laws 1986, LB 960, § 10; Laws 2015, LB361, § 38.

17-972 Water service districts; failure to comply with regulation or make connection; effect; special assessment.

If any property owner shall neglect or fail, for ten days after notice either by personal service or by publication in a legal newspaper in the manner prescribed in section 17-971, to comply with the regulations adopted pursuant to section 17-970 or to make any required connections, the governing body may cause the compliance or connections to be done and assess the cost against the property as a special assessment and collect the special assessment in the manner provided for other special assessments.

Source: Laws 1967, c. 73, § 3, p. 238; Laws 1986, LB 960, § 11; Laws 2015, LB361, § 39.

ARTICLE 10

SUBURBAN DEVELOPMENT

Section

- 17-1001. Suburban development; zoning ordinances; building regulations; public utility codes; extension; notice to county board.
 17-1002. Designation of jurisdiction; suburban development; subdivision; platting; consent required; review; when required.

17-1001 Suburban development; zoning ordinances; building regulations; public utility codes; extension; notice to county board.

(1) Except as provided in section 13-327, any city of the second class or village may apply by ordinance any existing or future zoning ordinances, property use regulation ordinances, building ordinances, electrical ordinances, and plumbing ordinances to an area within one mile of the corporate limits of such municipality, with the same force and effect as if such area was within its corporate limits. No such ordinance shall be extended or applied so as to prohibit, prevent, or interfere with the conduct of existing farming, livestock operations, businesses, or industry. For purposes of sections 70-1001 to 70-1020, the zoning area of a city of the second class or village shall be one-half mile from the corporate limits of such municipalities. The fact that the zoning area or part thereof is located in a different county or counties than some or all portions of the municipality shall not be construed as affecting the necessity of obtaining the approval of the city council or board of trustees of such municipality or its agent designated pursuant to section 19-916.

(2)(a) A city of the second class or village shall provide written notice to the county board of the county in which the one-mile extraterritorial zoning jurisdiction of the city or village is located when proposing to adopt or amend a zoning ordinance which affects the one-mile extraterritorial zoning jurisdiction of the city or village within such county. The written notice of the proposed change to the zoning ordinance shall be sent to the county board or its designee at least thirty days prior to the final decision by the city or village. The county board may submit comments or recommendations regarding the change in the zoning ordinance at the public hearings on the proposed change or directly to the city or village within thirty days after receiving such notice. The city or village may make its final decision (i) upon the expiration of the thirty days following the notice or (ii) when the county board submits comments or recommendations, if any, to the city or village prior to the expiration of the thirty days following the notice.

(b) Subdivision (2)(a) of this section does not apply to a city of the second class or a village (i) located in a county with a population in excess of one hundred thousand inhabitants or (ii) if the city or village and the county have a joint planning commission or joint planning department.

Source: Laws 1957, c. 37, § 1, p. 204; Laws 1967, c. 70, § 3, p. 232; Laws 1967, c. 75, § 4, p. 244; Laws 1983, LB 71, § 4; Laws 2002, LB 729, § 10; Laws 2016, LB295, § 2.
Effective date July 21, 2016.

17-1002 Designation of jurisdiction; suburban development; subdivision; platting; consent required; review; when required.

(1) Except as provided in subsection (5) of this section, any city of the second class or village may designate by ordinance the portion of the territory located within one mile of the corporate limits of such city or village and outside of any other organized city or village within which the designating city or village will exercise the powers and duties granted by this section and section 17-1003 or section 19-2402.

(2) No owner of any real property located within the area designated by a city or village pursuant to subsection (1) or (5) of this section may subdivide, plat, or lay out such real property in building lots, streets, or other portions of the same intended to be dedicated for public use or for the use of the purchasers or owners of lots fronting thereon or adjacent thereto without first having obtained the approval of the city council or board of trustees of such municipality or its agent designated pursuant to section 19-916 and, when applicable, having complied with sections 39-1311 to 39-1311.05. The fact that such real property is located in a different county or counties than some or all portions of the municipality shall not be construed as affecting the necessity of obtaining the approval of the city council or board of trustees of such municipality or its designated agent.

(3) No plat of such real property shall be recorded or have any force or effect unless approved by the city council or board of trustees of such municipality or its designated agent.

(4) Except as provided in subsection (6) of this section, in counties that have adopted a comprehensive development plan which meets the requirements of section 23-114.02 and are enforcing subdivision regulations, the county planning commission shall be provided with all available materials on any proposed

subdivision plat, contemplating public streets or improvements, which is filed with a municipality in that county, when such proposed plat lies partially or totally within the extraterritorial zoning jurisdiction being exercised by that municipality in such county. The commission shall be given four weeks to officially comment on the appropriateness of the design and improvements proposed in the plat. The review period for the commission shall run concurrently with subdivision review activities of the municipality after the commission receives all available material for a proposed subdivision plat.

(5) If a city of the second class or village receives approval for the cession and transfer of additional extraterritorial zoning jurisdiction under section 13-327, such city or village may designate by ordinance the portion of the territory located within one mile of the corporate limits of such city or village and outside of any other organized city or village within which the designating city or village will exercise the powers and duties granted by this section and section 17-1003 or section 19-2402 and shall include territory ceded under section 13-327 within such designation.

(6) In counties having a population in excess of one hundred thousand inhabitants but less than two hundred fifty thousand inhabitants that have adopted a comprehensive development plan which meets the requirements of section 23-114.02 and are enforcing subdivision regulations, the county planning department and public works department shall be provided with all available materials on any proposed subdivision plat, contemplating public streets or improvements, which is filed with a municipality in that county, when such proposed plat lies partially or totally within the extraterritorial subdivision jurisdiction being exercised by that municipality in such county. The county may officially comment on the appropriateness of the design and improvements proposed in the plat.

Source: Laws 1957, c. 37, § 2, p. 204; Laws 1967, c. 70, § 4, p. 233; Laws 1967, c. 75, § 5, p. 244; Laws 1978, LB 186, § 2; Laws 1983, LB 71, § 5; Laws 1993, LB 208, § 3; Laws 2001, LB 222, § 2; Laws 2002, LB 729, § 11; Laws 2003, LB 187, § 5; Laws 2016, LB864, § 3; Laws 2016, LB877, § 1.
Effective date July 21, 2016.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB864, section 3, with LB877, section 1, to reflect all amendments.

CHAPTER 18

CITIES AND VILLAGES; LAWS APPLICABLE TO ALL

Article.

1. Ordinances. 18-132.
2. Direct Borrowing from Financial Institution. 18-201.
4. Public Utilities. 18-406.
17. Miscellaneous. 18-1719 to 18-1751.
21. Community Development. 18-2101 to 18-2147.
27. Municipal Economic Development. 18-2701 to 18-2714.
30. Planned Unit Development. 18-3001.
31. Municipal Custodianship for Dissolved Homeowners Associations Act. 18-3101 to 18-3105.
32. Property Assessed Clean Energy Act. 18-3201 to 18-3211.

ARTICLE 1

ORDINANCES

Section

18-132. Adoption of standard codes.

18-132 Adoption of standard codes.

(1) The city council of any city or village board of any village may adopt by ordinance the conditions, provisions, limitations, and terms of a plumbing code, an electrical code, a fire prevention code, a building or construction code, and any other standard code which contains rules and regulations printed as a code in book or pamphlet form, by reference to such code, or portions thereof, alone, without setting forth in the ordinance the conditions, provisions, limitations, and terms of such code. When any such code, or portion thereof, has been incorporated by reference into such ordinance, as provided in this section, it shall have the same force and effect as though it had been written in its entirety in such ordinance without further or additional publication thereof.

(2) Not less than one copy of such standard code, or portion thereof, shall be kept for use and examination by the public in the office of the city or village clerk prior to the adoption thereof and as long as such standard code is in effect in such city or village.

(3) Any building or construction code implemented under this section shall be adopted and enforced as provided in section 71-6406.

(4) If there is no ordinance adopting a plumbing code in effect in a city or village, the 2009 Uniform Plumbing Code accredited by the American National Standards Institute shall serve as the plumbing code for all the area within the jurisdiction of the city or village. Nothing in this section shall be interpreted as creating an obligation for the city or village to inspect plumbing work done within its jurisdiction to determine compliance with the plumbing code.

Source: Laws 1933, c. 111, § 1, p. 451; C.S.Supp.,1941, § 18-1501; R.S.1943, § 18-132; Laws 1984, LB 748, § 1; Laws 1996, LB 1304, § 1; Laws 2012, LB42, § 1; Laws 2016, LB704, § 209.
Effective date July 21, 2016.

ARTICLE 2

DIRECT BORROWING FROM FINANCIAL INSTITUTION

Section

18-201. Direct borrowing; purposes; ordinance or resolution; public notice; limitation.

18-201 Direct borrowing; purposes; ordinance or resolution; public notice; limitation.

(1) The mayor and the council of any city or board of trustees of any village, in addition to other powers granted by law, may by ordinance or resolution provide for direct borrowing from a financial institution for the purposes outlined in this section. Loans made under this section shall not be restricted to a single year and may be repaid in installment payments.

(2) The mayor and the council of any city or board of trustees of any village may borrow directly from a financial institution for the purchase of real or personal property, construction of improvements, or refinancing of existing indebtedness upon a certification in the ordinance or resolution authorizing the direct borrowing that:

(a) Financing the purchase of property, construction of improvements, or refinancing of existing indebtedness through traditional bond financing would be impractical;

(b) Financing the purchase of property, construction of improvements, or refinancing of existing indebtedness through traditional bond financing could not be completed within the time restraints facing the city or village; or

(c) Financing the purchase of property, construction of improvements, or refinancing of existing indebtedness through direct borrowing would generate taxpayer savings over traditional bond financing.

(3) Prior to approving direct borrowing under this section, the council or board of trustees shall include in any public notice required for meetings a clear notation that an ordinance or resolution authorizing direct borrowing from a financial institution will appear on the agenda.

(4) The total amount of indebtedness from direct borrowing under this section shall not exceed:

(a) For a city of the metropolitan class, city of the primary class, city of the first class, or city of the second class, ten percent of the municipal budget of the city; and

(b) For any village, twenty percent of the municipal budget of the village.

(5) Prior to approving direct borrowing under this section, a municipality shall consider, to the extent possible, proposals from multiple financial institutions.

(6) For purposes of this section, financial institution means a state-chartered or federally chartered bank, savings bank, building and loan association, or savings and loan association.

Source: Laws 2015, LB152, § 1.

ARTICLE 4
PUBLIC UTILITIES

Section

18-406. Public utility districts; special assessments; when due; equalization; interest.

18-406 Public utility districts; special assessments; when due; equalization; interest.

The special assessment provided in section 18-405 shall be paid in ten installments. The first installment, or one-tenth of the assessment, shall become due and delinquent fifty days after the date of levy, and one-tenth of such assessment shall become due and delinquent each year thereafter, counting from the date of levy, for nine years. The special assessment shall bear interest at a rate not to exceed the rate of interest specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, prior to delinquency, and at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, after delinquency. Prior to the levy of the special assessment as provided in section 18-405, such assessment shall be equalized in the same manner as provided by law for the equalization of special assessments levied in such cities, such villages, and the city of the metropolitan class within such metropolitan utilities district.

Source: Laws 1921, c. 110, § 5, p. 388; C.S.1922, § 4479; C.S.1929, § 18-1005; Laws 1941, c. 27, § 1, p. 129; C.S.Supp.,1941, § 18-1005; R.S.1943, § 18-406; Laws 1963, c. 80, § 1, p. 287; Laws 1980, LB 933, § 22; Laws 1981, LB 167, § 23; Laws 1983, LB 438, § 1; Laws 1992, LB 746, § 67; Laws 2015, LB361, § 40.

ARTICLE 17
MISCELLANEOUS

Section

- 18-1719. Weeds; destruction and removal within right-of-way of railroads; powers; special assessment.
- 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.
- 18-1751. Special improvement district; authorized; when; special assessment.

18-1719 Weeds; destruction and removal within right-of-way of railroads; powers; special assessment.

Any city or village may provide for the destruction and removal of specified portions of weeds and worthless vegetation within the right-of-way of all railroads within the corporate limits of any such city or village, and it may require the owner or owners of such right-of-way to destroy and remove the weeds or vegetation therefrom. If such owner or owners fail, neglect, or refuse, after ten days' written notice to remove the weeds or vegetation, such city or village, by its proper officers, shall destroy and remove the weeds or vegetation

or cause the weeds or vegetation to be destroyed or removed and shall assess the cost thereof against such property as a special assessment. No city or village shall destroy or remove or otherwise treat such specified portions until after the time has passed in which the railroad company is required to destroy or remove such vegetation.

Source: Laws 1969, c. 599, § 2, p. 2454; Laws 2015, LB361, § 41.

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.

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.

18-1742 Repealed. Laws 2014, LB 657, § 14.

18-1751 Special improvement district; authorized; when; special assessment.

All cities and villages may create a special improvement district for the purpose of replacing, reconstructing, or repairing an existing street, alley, water line, sewer line, or any other such improvement. Except as provided in sections 19-2428 to 19-2431, the city council or board of trustees may levy a special assessment, to the extent of such special benefits, for the costs of such improvements upon the properties found specially benefited thereby, whether or not such properties were previously assessed for the same general purpose. In creating such special improvement district, the city council or board of trustees shall follow procedures applicable to the creation and assessment of the same type of improvement district as otherwise provided by law.

Source: Laws 1987, LB 721, § 1; Laws 2015, LB361, § 42.

ARTICLE 21

COMMUNITY DEVELOPMENT

Section

- 18-2101. Act, how cited.
- 18-2103. Terms, defined.
- 18-2115. Plan; public hearing; notice.
- 18-2119. Redevelopment contract proposal; notice; considerations; acceptance; disposal of real property; contract relating to real estate within an enhanced employment area; recordation; use of tax-increment financing; certification by redeveloper.
- 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.
- 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, deterioration 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.

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.

18-2119 Redevelopment contract proposal; notice; considerations; acceptance; disposal of real property; contract relating to real estate within an enhanced employment area; recordation; use of tax-increment financing; certification by redeveloper.

(1) An authority shall, by public notice by publication once each week for two consecutive weeks in a legal newspaper having a general circulation in the city, prior to the consideration of any redevelopment contract proposal relating to real estate owned or to be owned by the authority, invite proposals from, and make available all pertinent information to, private redevelopers or any persons interested in undertaking the redevelopment of an area, or any part thereof, which the governing body has declared to be in need of redevelopment. Such notice shall identify the area, and shall state that such further information as is available may be obtained at the office of the authority. The authority shall consider all redevelopment proposals and the financial and legal ability of the prospective redevelopers to carry out their proposals and may negotiate with any redevelopers for proposals for the purchase or lease of any real property in the redevelopment project area. The authority may accept such redevelopment contract proposal as it deems to be in the public interest and in furtherance of the purposes of the Community Development Law if the authority has, not less than thirty days prior thereto, notified the governing body in writing of its

intention to accept such redevelopment contract proposal. Thereafter, the authority may execute such redevelopment contract in accordance with the provisions of section 18-2118 and deliver deeds, leases, and other instruments and take all steps necessary to effectuate such redevelopment contract. In its discretion, the authority may, without regard to the foregoing provisions of this section, dispose of real property in a redevelopment project area to private redevelopers for redevelopment under such reasonable competitive bidding procedures as it shall prescribe, subject to the provisions of section 18-2118.

(2) In the case of any real estate owned by a redeveloper, the authority may enter into a redevelopment contract providing for such undertakings as the authority shall determine appropriate. Any such redevelopment contract relating to real estate within an enhanced employment area shall include a statement of the redeveloper's consent with respect to the designation of the area as an enhanced employment area, shall be recorded with respect to the real estate owned by the redeveloper, and shall be binding upon all future owners of such real estate.

(3)(a) Prior to entering into a redevelopment contract pursuant to this section for a redevelopment plan that includes the use of tax-increment financing as provided in section 18-2147, the authority shall require the redeveloper to certify the following to the authority:

(i) Whether the redeveloper has filed or intends to file an application with the Department of Revenue to receive tax incentives under the Nebraska Advantage Act for a project located or to be located within the redevelopment project area;

(ii) Whether such application includes or will include, as one of the tax incentives, a refund of the city's local option sales tax revenue; and

(iii) Whether such application has been approved under the Nebraska Advantage Act.

(b) The authority may consider the information provided under subdivision (3)(a) of this section in determining whether to enter into the redevelopment contract.

Source: Laws 1951, c. 224, § 7(2), p. 809; R.R.S.1943, § 14-1619; R.R.S. 1943, § 19-2619; Laws 2007, LB562, § 6; Laws 2016, LB1059, § 1.
Effective date July 21, 2016.

Cross References

Nebraska Advantage Act, see section 77-5701.

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.

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.

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

- 18-2701. Act, how cited.
- 18-2703. Definitions, where found.
- 18-2705. Economic development program, defined.
- 18-2709. Qualifying business, defined.
- 18-2709.01. Workforce housing plan, defined.
- 18-2710.02. Economic development program; workforce housing plan; proposed plan; contents.
- 18-2710.03. Economic development program; applicant; certification regarding tax incentives; city consider information.
- 18-2714. Economic development program; established by ordinance; amendment; repeal; procedures.

18-2701 Act, how cited.

Sections 18-2701 to 18-2739 shall be known and may be cited as the Local Option Municipal Economic Development Act.

Source: Laws 1991, LB 840, § 1; Laws 1993, LB 732, § 16; Laws 1995, LB 207, § 1; Laws 2001, LB 827, § 9; Laws 2012, LB863, § 1; Laws 2016, LB1059, § 2.
Effective date July 21, 2016.

18-2703 Definitions, where found.

For purposes of the Local Option Municipal Economic Development Act, the definitions found in sections 18-2703.01 to 18-2709.01 shall be used.

Source: Laws 1991, LB 840, § 4; Laws 2001, LB 827, § 11; Laws 2016, LB1059, § 3.
Effective date July 21, 2016.

18-2705 Economic development program, defined.

(1) 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.

(2) 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 businesses; 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 to qualifying businesses for job training; the purchase of real estate, options for such purchases, and the renewal or extension of such

options; grants or loans to qualifying businesses to provide 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.

(3) 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.

(4) 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.

(5) 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 as part of a workforce housing plan.

(6) 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; Laws 2015, LB150, § 1; Laws 2016, LB1059, § 4.

Effective date July 21, 2016.

18-2709 Qualifying business, defined.

(1) Qualifying business means any corporation, partnership, limited liability company, or sole proprietorship which derives its principal source of income from any of the following: The manufacture of articles of commerce; the conduct of research and development; the processing, storage, transport, or sale of goods or commodities which are sold or traded in interstate commerce; the sale of services in interstate commerce; headquarters facilities relating to eligible activities as listed in this section; telecommunications activities, including services providing advanced telecommunications capability; tourism-related activities; or the production of films, including feature, independent, and documentary films, commercials, and television programs.

(2) Qualifying business also means:

(a) In cities of the first and second class and villages, a business that derives its principal source of income from the construction or rehabilitation of housing;

(b) A business that derives its principal source of income from retail trade, except that no more than forty percent of the total revenue generated pursuant to the Local Option Municipal Economic Development Act for an economic development program in any twelve-month period and no more than twenty percent of the total revenue generated pursuant to the act for an economic development program in any five-year period, commencing from the date of municipal approval of an economic development program, shall be used by the city for or devoted to the use of retail trade businesses. For purposes of this subdivision, retail trade means a business which is principally engaged in the

sale of goods or commodities to ultimate consumers for their own use or consumption and not for resale; and

(c) In cities with a population of two thousand five hundred inhabitants or less, a business shall be a qualifying business even though it derives its principal source of income from activities other than those set out in this section.

(3) If a business which would otherwise be a qualifying business employs people and carries on activities in more than one city in Nebraska or will do so at any time during the first year following its application for participation in an economic development program, it shall be a qualifying business only if, in each such city, it maintains employment for the first two years following the date on which such business begins operations in the city as a participant in its economic development program at a level not less than its average employment in such city over the twelve-month period preceding participation.

(4) A qualifying business need not be located within the territorial boundaries of the city from which it is or will be receiving financial assistance.

(5) Qualifying business does not include a political subdivision, a state agency, or any other governmental entity, except as allowed for cities of the first and second class and villages for rural infrastructure development as provided for in subsection (4) of section 18-2705.

Source: Laws 1991, LB 840, § 10; Laws 1993, LB 121, § 145; Laws 1993, LB 732, § 18; Laws 1994, LB 1188, § 1; Laws 1995, LB 207, § 4; Laws 2001, LB 827, § 14; Laws 2011, LB471, § 2; Laws 2012, LB863, § 2; Laws 2015, LB150, § 2.

18-2709.01 Workforce housing plan, defined.

Workforce housing plan means a program to construct or rehabilitate single-family housing or market rate multi-family housing which is designed to address a housing shortage that impairs the ability of the city to attract new businesses or impairs the ability of existing businesses to recruit new employees.

Source: Laws 2016, LB1059, § 5.
Effective date July 21, 2016.

18-2710.02 Economic development program; workforce housing plan; proposed plan; contents.

If the proposed economic development program involves the making of grants or loans for the construction or rehabilitation for sale or lease of housing as part of a workforce housing plan, the proposed plan shall include:

(1) An assessment of current housing stock in the city, including both single-family and market rate multi-family housing;

(2) Whether the plan will also include housing for persons of low or moderate income under section 18-2710.01;

(3) Such other factors, as determined by the city, which are particularly relevant in assessing the conditions faced by existing businesses in recruiting new employees; and

(4) Such other factors, as determined by the city, which are particularly relevant in assessing the conditions faced by persons seeking new or rehabilitated housing in the city.

Source: Laws 2016, LB1059, § 6.
Effective date July 21, 2016.

18-2710.03 Economic development program; applicant; certification regarding tax incentives; city consider information.

(1) At the time that a qualifying business applies to a city to participate in an economic development program, the qualifying business shall certify the following to the city:

(a) Whether the qualifying business has filed or intends to file an application with the Department of Revenue to receive tax incentives under the Nebraska Advantage Act for the same project for which the qualifying business is seeking financial assistance under the Local Option Municipal Economic Development Act;

(b) Whether such application includes or will include, as one of the tax incentives, a refund of the city's local option sales tax revenue; and

(c) Whether such application has been approved under the Nebraska Advantage Act.

(2) The city may consider the information provided under this section in determining whether to provide financial assistance to the qualifying business under the Local Option Municipal Economic Development Act.

Source: Laws 2016, LB1059, § 8.
Effective date July 21, 2016.

Cross References

Nebraska Advantage Act, see section 77-5701.

18-2714 Economic development program; established by ordinance; amendment; repeal; procedures.

(1) After approval by the voters of an economic development program, the governing body of the city shall, within forty-five days after such approval, establish the economic development program by ordinance in conformity with the terms of such program as set out in the original enabling resolution.

(2) After the adoption of the ordinance establishing the economic development program, such ordinance shall only be amended after the governing body of the city (a) gives notice of and holds at least one public hearing on the proposed changes, (b) approves the proposed changes by a two-thirds vote of the members of such governing body, and (c) except as provided in subsection (3) of this section, submits the proposed changes to a new vote of the registered voters of the city in the manner provided in section 18-2713.

(3) A new vote of the registered voters of the city is not required for the following types of amendments to an economic development program:

(a) An amendment adding a type of qualifying business to those that are eligible to participate in the economic development program or removing a type of qualifying business from those that are eligible to participate in such program if such addition or removal is recommended by the citizen advisory review committee established under section 18-2715;

(b) An amendment making corrective changes to comply with the Local Option Municipal Economic Development Act; or

(c) An amendment making corrective changes to comply with any other existing or future state or federal law.

(4) The governing body of a city may, at any time after the adoption of the ordinance establishing the economic development program, by a two-thirds vote of the members of the governing body, repeal the ordinance in its entirety and end the economic development program, subject only to the provisions of any existing contracts relating to such program and the rights of any third parties arising from those contracts. Prior to such vote by the governing body, it shall publish notice of its intent to consider the repeal and hold a public hearing on the issue. Any funds in the custody of the city for such economic development program which are not spent or committed at the time of the repeal and any funds to be received in the future from the prior operation of the economic development program shall be placed into the general fund of the city.

Source: Laws 1991, LB 840, § 15; Laws 2011, LB471, § 3; Laws 2016, LB1059, § 7.

Effective date July 21, 2016.

ARTICLE 30

PLANNED UNIT DEVELOPMENT

Section

18-3001. Planned unit development ordinance; authorized; planned unit development approval; conditions.

18-3001 Planned unit development ordinance; authorized; planned unit development approval; conditions.

(1) Except as provided in subsection (5) of this section and notwithstanding any provisions of Chapter 14, article 4, Chapter 15, article 9, Chapter 19, article 9, or of any home rule charter to the contrary, every city or village may include within its zoning ordinance provisions authorizing and regulating planned unit developments within such city or village or within the zoning jurisdiction of such city or village, except such cities or villages shall not have authority to impose such power over other organized cities or villages within the zoning jurisdiction of such cities or villages. As used in this section, planned unit development includes any development of a parcel of land or an aggregation of contiguous parcels of land to be developed as a single project which proposes density transfers, density increases, and mixing of land uses, or any combination thereof, based upon the application of site planning criteria. The purpose of such ordinance shall be to permit flexibility in the regulation of land development, to encourage innovation in land use and variety in design, layout, and type of structures constructed, to achieve economy and efficiency in the use of land, natural resources, and energy and the provision of public services and utilities, to encourage the preservation and provision of useful open space, and to provide improved housing, employment, or shopping opportunities particularly suited to the needs of an area.

(2) An ordinance authorizing and regulating planned unit developments shall establish criteria relating to the review of proposed planned unit developments to ensure that the land use or activity proposed through a planned unit

development shall be compatible with adjacent uses of land and the capacities of public services and utilities affected by such planned unit development and to ensure that the approval of such planned unit development is consistent with the public health, safety, and general welfare of the city or village and is in accordance with the comprehensive plan.

(3) Within a planned unit development, regulations relating to the use of land, including permitted uses, lot sizes, setbacks, height limits, required facilities, buffers, open spaces, roadway and parking design, and land-use density shall be determined in accordance with the planned unit development regulations specified in the zoning ordinance. The planned unit development regulations need not be uniform with regard to each type of land use.

(4) The approval of planned unit developments, as authorized under a planned unit development ordinance, shall be generally similar to the procedures established for the approval of zone changes. In approving any planned unit development, a city or village may, either as a condition of the ordinance approving a planned unit development, by covenant, by separate agreement, or otherwise, impose reasonable conditions as deemed necessary to ensure that a planned unit development shall be compatible with adjacent uses of land, will not overburden public services and facilities, and will not be detrimental to the public health, safety, and welfare. Such conditions or agreements may provide for dedications of land for public purposes.

(5) Except as provided in subsection (6) of this section, a city of the second class or village located in a county that has adopted a comprehensive development plan which meets the requirements of section 23-114.02 and is enforcing subdivision regulations shall not finally approve a planned unit development upon property located outside of the corporate boundaries of the city or village until the plans for the planned unit development have been submitted to, reviewed, and approved by the county's planning commission pursuant to subsection (4) of section 17-1002.

(6) A city of the second class or village located in whole or in part within the boundaries of a county having a population in excess of one hundred thousand inhabitants but less than two hundred thousand inhabitants that has adopted a comprehensive development plan which meets the requirements of section 23-114.02 and is enforcing subdivision regulations shall not finally approve a planned unit development upon property located outside of the corporate boundaries of the city or village until the plans for the planned unit development have been submitted to the county's planning department and public works department for review.

Source: Laws 1983, LB 135, § 1; R.S.1943, (2007), § 19-4401; Laws 2011, LB146, § 1; Laws 2016, LB875, § 1.
Effective date July 21, 2016.

ARTICLE 31

MUNICIPAL CUSTODIANSHIP FOR DISSOLVED HOMEOWNERS ASSOCIATIONS ACT

Section

- 18-3101. Act, how cited.
- 18-3102. Terms, defined.
- 18-3103. Municipality; action to be appointed custodian.
- 18-3104. Appointment of municipality as custodian; findings; hearing; powers; compensation; costs; lien; recording; foreclosure; termination of custodianship; withdrawal or termination of custodianship.

CUSTODIANSHIP FOR DISSOLVED HOMEOWNERS ASSOCIATIONS § 18-3103

Section

18-3105. Dissolved homeowners association; reinstatement; procedure; fee; Secretary of State; duties; effect of reinstatement.

18-3101 Act, how cited.

Sections 18-3101 to 18-3105 shall be known and may be cited as the Municipal Custodianship for Dissolved Homeowners Associations Act.

Source: Laws 2015, LB304, § 1.

18-3102 Terms, defined.

For purposes of the Municipal Custodianship for Dissolved Homeowners Associations Act, unless the context otherwise requires:

(1) Common area means lot or outlot within a plat or subdivision of real property including the improvements thereon owned or otherwise maintained, cared for, or administered by the homeowners association for the common use, benefit, and enjoyment of its members;

(2) Homeowners association means a nonprofit corporation duly incorporated under the laws of the State of Nebraska for the purpose of enforcing the restrictive covenants established upon the real property legally described in the articles of incorporation which is located within the corporate limits of a municipality, each member of which is an owner of a lot located within the plat or subdivision and, by virtue of membership or ownership of a lot, is obligated to pay costs for the administration, maintenance, and care of the common area within the plat or subdivision. Homeowners association includes associations of residential homeowners, nonresidential property owners, or both;

(3) Lot means any designated parcel of land located within a plat or subdivision to be separately owned, used, developed, or built upon;

(4) Member means an owner that is qualified to be a member of a homeowners association by virtue of ownership of a lot covered by the property described in the declaration and articles of incorporation of a homeowners association dissolved under section 21-19,138;

(5) Municipality means any city or incorporated village of this state;

(6) Owner means the owner of a lot within the plat or subdivision, but does not include a person who has an interest in a lot solely as security for an obligation; and

(7) Real property means the real property described in the articles of incorporation which is located within or to be located within a plat or subdivision approved by a municipality and which is subject to restrictive covenants to be enforced by the homeowners association and filed of record in the office of the register of deeds of the county in which the real property is located.

Source: Laws 2015, LB304, § 2.

18-3103 Municipality; action to be appointed custodian.

In the event a homeowners association is dissolved pursuant to section 21-19,138 and not reinstated pursuant to the Nebraska Nonprofit Corporation Act, any municipality may bring an action to be appointed as custodian to

manage the affairs of the homeowners association as set forth in section 18-3104.

Source: Laws 2015, LB304, § 3.

Cross References

Nebraska Nonprofit Corporation Act, see section 21-1901.

18-3104 Appointment of municipality as custodian; findings; hearing; powers; compensation; costs; lien; recording; foreclosure; termination of custodianship; withdrawal or termination of custodianship.

(1) The district court of the county in which a dissolved homeowners association was previously existing shall, in a proceeding brought by a municipality by petition to the district court, appoint the municipality as custodian to manage the affairs of the homeowners association upon a finding that:

(a) The homeowners association has been administratively dissolved by the Secretary of State pursuant to section 21-19,138;

(b) The homeowners association has failed in one or more of the following ways:

(i) To maintain the common area as required by the municipality's conditions of approval for the plat or subdivision of real property;

(ii) To maintain the common area or private improvements located outside of the common area on the real property in the plat or subdivision in accordance with all terms and conditions of any agreement with the municipality; or

(iii) To comply with any applicable laws, rules, or regulations pertaining to maintenance of the common area or private improvements located outside of the common area on the real property in the plat or subdivision such that the noncompliance is adverse to the interests of the municipality and may result in expenditures by the municipality not otherwise required;

(c) The municipality has made a demand on the members to hold a special meeting to remove and elect new directors and to approve a submission of an application to the Secretary of State for reinstatement pursuant to the Municipal Custodianship for Dissolved Homeowners Associations Act or the Nebraska Nonprofit Corporation Act; and

(d) The members have failed to reinstate the homeowners association within six months after the demand.

(2) The district court shall hold a hearing, after written notification thereof by the petitioner to all parties to the proceeding and any interested persons designated by the court, before appointing a custodian, and the petitioner shall provide sufficient proof of service to the court. Service by first-class mail shall be deemed sufficient service. The district court appointing the custodian shall have exclusive jurisdiction over the homeowners association and all of its property wherever located.

(3) The district court shall describe the powers and duties of the custodian in its appointing order, which order may be amended upon motion and notice to the parties from time to time. Among other powers, the appointing order shall provide that the custodian may exercise all of the powers of the homeowners association, through or in place of its board of directors or officers, to the extent necessary to manage the affairs of the association in the best interests of its members. The custodian shall not be liable for the actions or inactions of the

homeowners association and shall maintain all immunities granted to municipalities by applicable law.

(4) Upon application of the custodian, the district court from time to time during the custodianship may order compensation paid and expense disbursements or reimbursements made to the custodian from the assets of the association or proceeds from the sale of the assets. Notice of a hearing to determine compensation and costs shall be provided to all owners and interested parties by the custodian as set forth in subsection (2) of this section, with proof of service provided by the custodian. In the event the district court awards compensation or reimbursement of costs, all such compensation and costs shall be a lien on each and all of the lots in the manner as set forth in subsection (5) of this section. Any court order awarding compensation or reimbursement of costs herein shall identify each lot and the amount of compensation or reimbursement of costs each lot shall be charged as a lien.

(5)(a) A lien created under subsection (4) of this section shall be effective from the time the district court awards the compensation or reimbursement of costs and a notice containing the dollar amount of the lien is recorded in the office where mortgages or deeds of trust are recorded. The lien may be foreclosed in like manner as a mortgage on real estate but the municipality shall give reasonable notice of its action to all other lienholders whose interest would be affected.

(b) A lien created under subsection (4) of this section is prior to all other liens and encumbrances on real estate except (i) liens and encumbrances recorded before the recordation of the declaration or agreement, (ii) a first mortgage or deed of trust on real estate recorded before the notice required under subdivision (5)(a) of this section has been recorded, and (iii) liens for real estate taxes.

(6) In the event the homeowners association is reinstated after appointment of a custodian, any interested party may make a request to the district court for termination of the custodianship.

(7) A custodian may be allowed to withdraw from or terminate the custodianship upon an order from the district court permitting such withdrawal or termination following a hearing for which notice is provided to all owners and interested parties by the custodian.

Source: Laws 2015, LB304, § 4.

Cross References

Nebraska Nonprofit Corporation Act, see section 21-1901.

18-3105 Dissolved homeowners association; reinstatement; procedure; fee; Secretary of State; duties; effect of reinstatement.

(1) Notwithstanding any provision to the contrary in the Nebraska Nonprofit Corporation Act or the articles of incorporation or bylaws of a homeowners association, a homeowners association dissolved pursuant to section 21-19,138 may, in addition to any other procedure allowed by law, apply to the Secretary of State for reinstatement in one or more of the following ways:

(a) An application for reinstatement may be brought at any time after dissolution by an officer or director of the dissolved homeowners association pursuant to section 21-19,139; or

(b) Three or more members of such homeowners association may, at any time after dissolution, call a special meeting to (i) remove and elect new directors

and (ii) approve the submission of an application to the Secretary of State for reinstatement. Such members may set the time and place of the meeting. Notice of the meeting shall be given pursuant to section 21-1955. For purposes of this section only and notwithstanding the declaration, the articles of incorporation, or the bylaws of a dissolved homeowners association, action on matters described in this subsection shall be approved by the affirmative vote of the voters present and voting on the matter. Three members eligible to vote on the matter shall constitute a quorum.

(2) Upon action being taken to apply for reinstatement as set forth in subdivision (1)(a) or (b) of this section, the process for reinstatement set forth in section 21-19,139 shall apply, except that the reinstatement fee for a homeowners association dissolved more than five years shall be one hundred dollars. Nothing in this subsection shall be construed to abolish, modify, or otherwise change any restrictive covenant or other benefit or obligation of membership in a homeowners association.

(3) The application for reinstatement must:

(a) Recite the name of the homeowners association 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; and

(c) State that the homeowners association's name satisfies the requirements of section 21-1931.

(4) If the Secretary of State determines that the application contains the information required by subdivisions (1)(a) and (b) of this section and that the information is correct, the Secretary of State shall cancel the certificate of dissolution and prepare a certificate of reinstatement reciting that determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the homeowners association under section 21-1937.

(5) When reinstatement is effective, the reinstatement shall relate back to and take effect as of the effective date of the administrative dissolution, and the homeowners association shall resume carrying on its activities as if the administrative dissolution had never occurred.

Source: Laws 2015, LB304, § 5.

Cross References

Nebraska Nonprofit Corporation Act, see section 21-1901.

ARTICLE 32

PROPERTY ASSESSED CLEAN ENERGY ACT

Section

18-3201. Act, how cited.

18-3202. Legislative findings.

18-3203. Terms, defined.

18-3204. Clean energy assessment district; creation; procedures; governing body; public hearing; notice; ordinance; contents; assessment contracts.

18-3205. Assessment contract; contents; recorded with register of deeds; municipality; duties; annual assessments; copy to county assessor and register of deeds.

18-3206. Annual assessment; PACE lien; notice of lien; contents; priority; sale of property; use of proceeds; release of lien; recording.

18-3207. Municipality; raise capital; sources; bonds; issuance; statutory lien; vote; when required.

Section

- 18-3208. Loss reserve fund; created; funding; use.
18-3209. Debt service reserve fund.
18-3210. Use of Interlocal Cooperation Act; public hearing; contract authorized.
18-3211. Report; contents.

18-3201 Act, how cited.

Sections 18-3201 to 18-3211 shall be known and may be cited as the Property Assessed Clean Energy Act.

Source: Laws 2016, LB1012, § 1.
Effective date July 21, 2016.

18-3202 Legislative findings.

The Legislature finds that:

(1) Energy efficiency and the use of renewable energy are important for preserving the health and economic well-being of Nebraska's citizens. Using less energy decreases the cost of living and keeps the cost of public power low by delaying the need for additional power plants. By building the market for energy efficiency and renewable energy products, new jobs will be created for Nebraskans in the energy efficiency and renewable energy job sectors;

(2) To further these goals, the state should promote energy efficiency improvements and renewable energy systems;

(3) The upfront costs for energy efficiency improvements and renewable energy systems prohibit many property owners from making improvements. Therefore, it is necessary to authorize municipalities to implement an alternative financing method through the creation of clean energy assessment districts; and

(4) A public purpose will be served by providing municipalities with the authority to finance the installation of energy efficiency improvements and renewable energy systems through the creation of clean energy assessment districts.

Source: Laws 2016, LB1012, § 2.
Effective date July 21, 2016.

18-3203 Terms, defined.

For purposes of the Property Assessed Clean Energy Act:

(1) Assessment contract means a contract entered into between a municipality, a property owner, and, if applicable, a third-party lender under which the municipality agrees to provide financing for an energy project in exchange for a property owner's agreement to pay an annual assessment for a period not to exceed the weighted average useful life of the energy project;

(2) Clean energy assessment district means a district created by a municipality to provide financing for energy projects;

(3) Energy efficiency improvement means any acquisition, installation, or modification benefiting publicly or privately owned property that is designed to reduce the electric, gas, water, or other utility demand or consumption of the buildings on or to be constructed on such property or to promote the efficient and effective management of natural resources or storm water, including, but not limited to:

(a) Insulation in walls, roofs, floors, foundations, or heating and cooling distribution systems;

(b) Storm windows and doors; multiglazed windows and doors; heat-absorbing or heat-reflective glazed and coated window and door systems; and additional glazing, reductions in glass area, and other window and door system modifications that reduce energy consumption;

(c) Automated energy control systems;

(d) Heating, ventilating, or air conditioning and distribution system modifications or replacements;

(e) Caulking, weatherstripping, and air sealing;

(f) Replacement or modification of lighting fixtures to reduce the energy use of the lighting system;

(g) Energy recovery systems;

(h) Daylighting systems;

(i) Installation or upgrade of electrical wiring or outlets to charge a motor vehicle that is fully or partially powered by electricity;

(j) Facilities providing for water conservation or pollutant control;

(k) Roofs designed to reduce energy consumption or support additional loads necessitated by other energy efficiency improvements;

(l) Installation of energy-efficient fixtures, including, but not limited to, water heating systems, escalators, and elevators;

(m) Energy efficiency related items so long as the cost of the energy efficiency related items financed by the municipality does not exceed twenty-five percent of the total cost of the energy project; and

(n) Any other installation or modification of equipment, devices, or materials approved as a utility cost-saving measure by the municipality;

(4) Energy efficiency related item means any repair, replacement, improvement, or modification to real property that is necessary or desirable in conjunction with an energy efficiency improvement, including, but not limited to, structural support improvements and the repair or replacement of any building components, paved surfaces, or fixtures disrupted or altered by the installation of an energy efficiency improvement;

(5) Energy project means the installation or modification of an energy efficiency improvement or the acquisition, installation, or improvement of a renewable energy system;

(6) Municipality means any city or village in this state;

(7) Qualifying property means any of the following types of property located within a municipality:

(a) Commercial property, including multifamily residential property comprised of more than four dwelling units;

(b) Industrial property; or

(c) Single-family residential property, which may include up to four dwelling units;

(8)(a) Renewable energy resource means a resource that naturally replenishes over time and that minimizes the output of toxic material in the conversion to

energy. Renewable energy resource includes, but is not limited to, the following:

- (i) Nonhazardous biomass;
- (ii) Solar and solar thermal energy;
- (iii) Wind energy;
- (iv) Geothermal energy;
- (v) Methane gas captured from a landfill or elsewhere;
- (vi) Photovoltaic systems; and
- (vii) Cogeneration and trigeneration systems; and

(b) Renewable energy resource does not include petroleum, nuclear power, natural gas, coal, or hazardous biomass; and

(9) Renewable energy system means a fixture, product, device, or interacting group of fixtures, products, or devices on the customer's side of the meter that uses one or more renewable energy resources to generate electricity. Renewable energy system includes a biomass stove but does not include an incinerator.

Source: Laws 2016, LB1012, § 3.

Effective date July 21, 2016.

18-3204 Clean energy assessment district; creation; procedures; governing body; public hearing; notice; ordinance; contents; assessment contracts.

(1) Pursuant to the procedures provided in this section, a municipality may, from time to time, create one or more clean energy assessment districts. Such districts may be separate, overlapping, or coterminous. The governing body of the municipality shall be the governing body for any district so created.

(2) Prior to creating any clean energy assessment district, the municipality shall hold a public hearing at which the public may comment on the creation of such district. Notice of the public hearing shall be given by publication in a legal newspaper in or of general circulation in the municipality at least ten days prior to the hearing.

(3) After the public hearing, the municipality may create a clean energy assessment district by ordinance. The ordinance shall include:

(a) A finding that the financing of energy projects is a valid public purpose;

(b) A contract form to be used for assessment contracts between the municipality, the owner of the qualifying property, and, if applicable, a third-party lender governing the terms and conditions of financing and annual assessments;

(c) Identification of an official authorized to enter into assessment contracts on behalf of the municipality;

(d) An application process and eligibility requirements for financing energy projects;

(e) An explanation of how annual assessments will be made and collected;

(f) For energy projects involving residential property, a requirement that any interest rate on assessment installments must be a fixed rate;

(g) For energy projects involving residential property, a requirement that the repayment period for assessments must be according to a fixed repayment schedule;

(h) Information regarding the following, to the extent known, or procedures to determine the following in the future:

(i) Provisions for an adequate debt service reserve fund created under section 18-3209, if applicable;

(ii) Provisions for an adequate loss reserve fund created under section 18-3208; and

(iii) Any application, administration, or other program fees to be charged to owners participating in the program that will be used to finance costs incurred by the municipality as a result of the program;

(i) A requirement that the term of the annual assessments not exceed the weighted average useful life of the energy project paid for by the annual assessments;

(j) A requirement that any energy efficiency improvement that is not permanently affixed to the qualifying property upon which an annual assessment is imposed to repay the cost of such energy efficiency improvement must be conveyed with the qualifying property if a transfer of ownership of the qualifying property occurs;

(k) A requirement that, prior to the effective date of any contract that binds the purchaser to purchase qualifying property upon which an annual assessment is imposed, the owner shall provide notice to the purchaser that the purchaser assumes responsibility for payment of the annual assessment as provided in subdivision (3)(d) of section 18-3205;

(l) Provisions for marketing and participant education;

(m) A requirement that after the energy project is completed, the municipality shall obtain verification that the renewable energy system or energy efficiency improvement was properly installed and is operating as intended;

(n) For an energy project financed with more than two hundred fifty thousand dollars in annual assessments, a requirement for ongoing measurements that establish the savings realized by the record owner of the qualifying property from the energy project; and

(o) A requirement that the clean energy assessment district, with respect to single-family residential property, comply with the Property Assessed Clean Energy Act and with directives or guidelines issued by the Federal Housing Administration and the Federal Housing Finance Agency on or after January 1, 2016, relating to property assessed clean energy financing.

Source: Laws 2016, LB1012, § 4.

Effective date July 21, 2016.

18-3205 Assessment contract; contents; recorded with register of deeds; municipality; duties; annual assessments; copy to county assessor and register of deeds.

(1) After passage of an ordinance under section 18-3204, a municipality may enter into an assessment contract with the record owner of qualifying property within a clean energy assessment district and, if applicable, with a third-party lender to finance an energy project on the qualifying property. The costs financed under the assessment contract may include the cost of materials and labor necessary for installation, permit fees, inspection fees, application and administrative fees, bank fees, and all other fees that may be incurred by the

owner pursuant to the installation. The assessment contract shall provide for the repayment of all such costs through annual assessments upon the qualifying property benefited by the energy project. A municipality may not impose an annual assessment under the Property Assessed Clean Energy Act unless such annual assessment is part of an assessment contract entered into under this section.

(2) Before entering into an assessment contract with an owner and, if applicable, a third-party lender under this section, the municipality shall verify:

(a) In all cases involving qualifying property other than single-family residential property, that the owner has obtained an acknowledged and verified written consent and subordination agreement executed by each mortgage holder or trust deed beneficiary stating that the mortgagee or beneficiary consents to the imposition of the annual assessment and that the priority of the mortgage or trust deed is subordinated to the PACE lien established in section 18-3206. The consent and subordination agreement shall be in a form and substance acceptable to each mortgagee or beneficiary and shall be recorded in the office of the register of deeds of the county in which the qualifying property is located;

(b) That there are no delinquent taxes, special assessments, water or sewer charges, or any other assessments levied on the qualifying property; that there are no involuntary liens, including, but not limited to, construction liens, on the qualifying property; and that the owner of the qualifying property is current on all debt secured by a mortgage or trust deed encumbering or otherwise securing the qualifying property;

(c) That there are no delinquent annual assessments on the qualifying property which were imposed to pay for a different energy project under the Property Assessed Clean Energy Act; and

(d) That there are sufficient resources to complete the energy project and that the estimated economic benefit, including, but not limited to, energy cost savings, maintenance cost savings, and other property operating savings expected from the energy project during the financing period, is equal to or greater than the principal cost of the energy project.

(3) Upon completion of the verifications required under subsection (2) of this section, an assessment contract may be executed by the municipality, the owner of the qualifying property, and, if applicable, a third-party lender and shall provide:

(a) A description of the energy project, including the estimated cost of the energy project and a description of the estimated savings prepared in accordance with standards acceptable to the municipality;

(b) A mechanism for:

(i) Verifying the final costs of the energy project upon its completion; and

(ii) Ensuring that any amounts advanced, financed, or otherwise paid by the municipality toward the costs of the energy project will not exceed the final cost of the energy project;

(c) An agreement by the property owner to pay annual assessments for a period not to exceed the weighted average useful life of the energy project;

(d) A statement that the obligations set forth in the assessment contract, including the obligation to pay annual assessments, are a covenant that shall

run with the land and be obligations upon future owners of the qualifying property; and

(e) An acknowledgment that no subdivision of qualifying property subject to the assessment contract shall be valid unless the assessment contract or an amendment to such contract divides the total annual assessment due between the newly subdivided parcels pro rata to the special benefit realized by each subdivided parcel.

(4) The total annual assessments levied against qualifying property under an assessment contract shall not exceed the sum of the cost of the energy project, including any energy audits or inspections or portion thereof financed by the municipality, plus such administration fees, interest, and other financing costs reasonably required by the municipality.

(5) Nothing in the Property Assessed Clean Energy Act shall be construed to prevent a municipality from entering into more than one assessment contract with respect to a single parcel of real property so long as each assessment contract relates to a separate energy project and subdivision (2)(c) of this section is not violated.

(6) The municipality shall provide a copy of each signed assessment contract to the county assessor and register of deeds of the county in which the qualifying property is located, and the register of deeds shall record the assessment contract with the qualifying property.

(7) Annual assessments agreed to under an assessment contract shall be levied against the qualifying property and collected at the same time and in the same manner as property taxes are levied and collected.

(8) Collection of annual assessments shall only be sought from the original owners or subsequent purchasers of qualifying property subject to an assessment contract.

Source: Laws 2016, LB1012, § 5.
Effective date July 21, 2016.

18-3206 Annual assessment; PACE lien; notice of lien; contents; priority; sale of property; use of proceeds; release of lien; recording.

(1)(a) For qualifying property other than single-family residential property, any annual assessment imposed on such qualifying property that becomes delinquent, including any interest on the annual assessment and any penalty, shall constitute a PACE lien against the qualifying property on which the annual assessment is imposed until the annual assessment, including any interest and penalty, is paid in full. Any annual assessment that is not paid within the time period set forth in the assessment contract shall be considered delinquent. The municipality shall, within fourteen days after an annual assessment becomes delinquent, record a notice of such lien in the office of the register of deeds of the county in which the qualifying property is located.

(b) For qualifying property that is single-family residential property, all annual assessments imposed on such qualifying property, including any interest on the annual assessments and any penalty, shall, upon the initial annual assessment, constitute a PACE lien against the qualifying property on which the annual assessments are imposed until all annual assessments, including any interest and penalty, are paid in full. Any annual assessment that is not paid within the time period set forth in the assessment contract shall be considered

delinquent. The municipality shall, upon imposition of the initial annual assessment, record a notice of such lien in the office of the register of deeds of the county in which the qualifying property is located.

(2) A notice of lien filed under this section shall, at a minimum, include:

(a) The amount of funds disbursed or to be disbursed pursuant to the assessment contract;

(b) The names and addresses of the current owners of the qualifying property subject to the annual assessment;

(c) The legal description of the qualifying property subject to the annual assessment;

(d) The duration of the assessment contract; and

(e) The name and address of the municipality filing the notice of lien.

(3) The PACE lien created under this section shall:

(a) For qualifying property that is single-family residential property, (i) be subordinate to all liens on the qualifying property recorded prior to the time the notice of the PACE lien is recorded, (ii) be subordinate to a first mortgage or trust deed on the qualifying property recorded after the notice of the PACE lien is recorded, and (iii) have priority over any other lien on the qualifying property recorded after the notice of the PACE lien is recorded; and

(b) For qualifying property other than single-family residential property and subject to the requirement in subdivision (2)(a) of section 18-3205 to obtain and record an executed consent and subordination agreement, have the same priority and status as real property tax liens.

(4)(a) Notwithstanding any other provision of law, in the event of a sale pursuant to a foreclosure or a sale pursuant to the exercise of a power of sale under a trust deed relating to qualifying property that is single-family residential property, the holders of any mortgages, trust deeds, or other liens, including delinquent annual assessments secured by PACE liens, shall receive proceeds in accordance with the priorities established under subdivision (3)(a) of this section. In the event there are insufficient proceeds from such a sale, from the loss reserve fund established pursuant to section 18-3208, or from any other means to satisfy the delinquent annual assessments, such delinquent annual assessments shall be extinguished. Any annual assessment that has not yet become delinquent shall not be accelerated or extinguished in the event of a sale pursuant to a foreclosure or a sale pursuant to the exercise of a power of sale under a trust deed relating to qualifying property that is single-family residential property. Upon the transfer of ownership of qualifying property that is single-family residential property, including a sale pursuant to a foreclosure or a sale pursuant to the exercise of a power of sale under a trust deed, the nondelinquent annual assessments shall continue as a lien on the qualifying property, subject to the priorities established under subdivision (3)(a) of this section.

(b) Upon the transfer of ownership of qualifying property other than single-family residential property, including a sale pursuant to a foreclosure or a sale pursuant to the exercise of a power of sale under a trust deed, the obligation to pay annual assessments shall run with the qualifying property.

(5)(a) For qualifying property other than single-family residential property, when the delinquent annual assessment, including any interest and penalty, is paid in full, a release of the PACE lien shall be recorded in the office of the

register of deeds of the county in which the notice of the PACE lien was recorded.

(b) For qualifying property that is single-family residential property, when all annual assessments, including any interest and penalty, are paid in full, a release of the PACE lien shall be recorded in the office of the register of deeds of the county in which the notice of the PACE lien was recorded.

(6) If the holder or loan servicer of any existing mortgage or trust deed that encumbers or that is otherwise secured by the qualifying property has established a payment schedule or escrow account to accrue property taxes or insurance, such holder or loan servicer may increase the required monthly payment, if any, by an amount necessary to pay the annual assessment imposed under the Property Assessed Clean Energy Act.

Source: Laws 2016, LB1012, § 6.

Effective date July 21, 2016.

18-3207 Municipality; raise capital; sources; bonds; issuance; statutory lien; vote; when required.

(1) A municipality may raise capital to finance energy projects undertaken pursuant to an assessment contract entered into under the Property Assessed Clean Energy Act. Such capital may come from any of the following:

(a) The sale of bonds;

(b) Amounts to be advanced by the municipality through funds available to it from any other source; or

(c) Third-party lending.

(2) Bonds issued under subsection (1) of this section shall not be general obligations of the municipality, shall be nonrecourse, and shall not be backed by the full faith and credit of the issuer, the municipality, or the state, but shall only be secured by payments of annual assessments by owners of qualifying property within the clean energy assessment district or districts specified who are subject to an assessment contract under section 18-3205.

(3) Any single bond issuance by a municipality for purposes of the Property Assessed Clean Energy Act shall not exceed five million dollars without a vote of the registered voters of such municipality.

(4) A pledge of annual assessments, funds, or contractual rights made in connection with the issuance of bonds by a municipality constitutes a statutory lien on the annual assessments, funds, or contractual rights so pledged in favor of the person or persons to whom the pledge is given without further action by the municipality. The statutory lien is valid and binding against all other persons, with or without notice.

(5) Bonds of one series issued under the Property Assessed Clean Energy Act may be secured on a parity with bonds of another series issued by the municipality pursuant to the terms of a master indenture or master resolution entered into or adopted by the municipality.

(6) Bonds issued under the act, and interest payable on such bonds, are exempt from all taxation by this state and its political subdivisions.

(7) Bonds issued under the act further essential public and governmental purposes, including, but not limited to, reduced energy costs, reduced green-

house gas emissions, economic stimulation and development, improved property valuation, and increased employment.

(8) The Property Assessed Clean Energy Act shall not be used to finance an energy project on qualifying property owned by a municipality or any other political subdivision of the State of Nebraska without having first been approved by a vote of the registered voters of such municipality or political subdivision owning the qualifying property. Such vote shall be taken at a special election called for such purpose or at an election held in conjunction with a statewide or local primary or general election.

Source: Laws 2016, LB1012, § 7.
Effective date July 21, 2016.

18-3208 Loss reserve fund; created; funding; use.

(1) A municipality that has created a clean energy assessment district shall create a loss reserve fund for:

(a) The payment of any delinquent annual assessments for qualifying property that is single-family residential property in the event that there is a sale pursuant to a foreclosure or a sale pursuant to the exercise of a power of sale under a trust deed of such qualifying property and the proceeds resulting from such a sale are, after all superior liens have been satisfied, insufficient to pay the delinquent annual assessments. Payments from the loss reserve fund under this subdivision may only be made with respect to delinquent annual assessments imposed upon qualifying property that is single-family residential property, with no more than one such payment to be made for the same qualifying property; and

(b) The payment of annual assessments imposed upon qualifying property that is single-family residential property subsequent to a sale pursuant to a foreclosure or a sale pursuant to the exercise of a power of sale under a trust deed in which the mortgagee or beneficiary becomes the owner of such qualifying property. Payments from the loss reserve fund under this subdivision may only be made with respect to annual assessments imposed upon qualifying property that is single-family residential property subsequent to the date on which the mortgagee or beneficiary became the owner of such qualifying property and until the qualifying property is conveyed by the mortgagee or beneficiary, with no more than one such payment to be made for the same qualifying property.

(2) The loss reserve fund may be funded by state and federal sources, the proceeds of bonds issued pursuant to the Property Assessed Clean Energy Act, third-party capital, and participating property owners. The loss reserve fund shall only be used to provide payment of annual assessments as provided in this section and for the costs of administering the loss reserve fund.

(3) The loss reserve fund shall not be funded by, and payment of annual assessments and costs of administering the loss reserve fund shall not be made from, the general fund of any municipality.

Source: Laws 2016, LB1012, § 8.
Effective date July 21, 2016.

18-3209 Debt service reserve fund.

A municipality that has created a clean energy assessment district may create a debt service reserve fund to be used as security for capital raised under section 18-3207.

Source: Laws 2016, LB1012, § 9.
Effective date July 21, 2016.

18-3210 Use of Interlocal Cooperation Act; public hearing; contract authorized.

(1) Two or more municipalities may enter into an agreement pursuant to the Interlocal Cooperation Act for the creation, administration, or creation and administration of clean energy assessment districts.

(2) If the creation of clean energy assessment districts is implemented jointly by two or more municipalities, a single public hearing held jointly by the cooperating municipalities is sufficient to satisfy the requirements of section 18-3204.

(3) A municipality or municipalities may contract with a third party for the administration of clean energy assessment districts.

Source: Laws 2016, LB1012, § 10.
Effective date July 21, 2016.

Cross References

Interlocal Cooperation Act, see section 13-801.

18-3211 Report; contents.

Any municipality that creates a clean energy assessment district under the Property Assessed Clean Energy Act shall, on or before January 31 of each year, electronically submit a report to the Urban Affairs Committee of the Legislature on the following:

(1) The number of clean energy assessment districts in the municipality and their location;

(2) The total dollar amount of energy projects undertaken pursuant to the act;

(3) The total dollar amount of outstanding bonds issued under the act;

(4) The total dollar amount of annual assessments collected as of the end of the most recently completed calendar year and the total amount of annual assessments yet to be collected pursuant to assessment contracts signed under the act; and

(5) A description of the types of energy projects undertaken pursuant to the act.

Source: Laws 2016, LB1012, § 11.
Effective date July 21, 2016.

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.
- 24. Municipal Improvements. (Applicable to cities of the first or second class and villages.) 19-2402 to 19-2427.
- 35. Pension Plans. (Applicable to cities of the first or second class and villages.) 19-3501.
- 40. Business Improvement Districts. (Applicable to all cities.) 19-4015 to 19-4038.
- 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. Standard codes; applicability.

19-922 Standard codes; applicability.

Any code adopted and approved by a city or village as provided in section 18-132 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; Laws 2016, LB704, § 210. Effective date July 21, 2016.

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 24

MUNICIPAL IMPROVEMENTS

(Applicable to cities of the first or second class and villages.)

Section

- 19-2402. Water service; sanitary sewer service; extension districts; ordinance; contents.
 19-2404. Sanitary sewer extension mains; water extension mains; special assessments; maturity; interest; rate.
 19-2407. Water service; sanitary sewer service; extension districts; special assessments; levy; collection.
 19-2418. Sidewalks; construct, replace, repair; districts; special assessments; payment.
 19-2427. Improvement district; adjacent land; how treated; special assessments.

19-2402 Water service; sanitary sewer service; extension districts; ordinance; contents.

(1) Whenever the city council of any city of the first or second class or the board of trustees of a village deems it necessary and advisable to extend municipal water service or municipal sanitary sewer service to territory beyond the existing systems, such municipal officials may, by ordinance, create a district or districts to be known as sanitary sewer extension districts or water extension districts for such purposes, and such district or districts may include properties within the corporate limits of the municipality and the extraterritorial zoning jurisdiction as established pursuant to section 16-901 or 17-1002.

(2) The owners of lots and lands abutting upon a street, avenue, or alley, or part thereof, may petition the council or board to create a sanitary sewer extension district or a water extension district. The petition shall be signed by owners representing at least two-thirds of the front footage abutting upon the street, avenue, or alley, or part thereof, within the proposed district, which will become subject to an assessment for the cost of the improvement.

(3) If creation of the district is not initiated by petition, a vote of at least three-fourths of all the members of the council or board shall be required to adopt the ordinance creating the district.

(4) Such ordinance shall state the size and kind of sewer mains or water mains proposed to be constructed in such district and shall designate the location and terminal points thereof. Such ordinance shall also refer to the plans and specifications for such utility extensions which shall have been made and filed with the municipal clerk by the municipal engineer prior to the introduction of the ordinance, and the city or village engineer at the time of filing such plans and specifications shall make and file an estimate of the total cost of the proposed utility extension. The ordinance shall also state the outer boundaries of the district or districts in which it is proposed to make special assessments.

(5) Upon creation of an extension district, whether by vote of the governing body or by petition, the council or board shall order the sewer extension main or water extension main laid and, to the extent of special benefit, assess the cost thereof against the property which abuts upon the street, avenue, or alley, or part thereof, which is located in the district.

Source: Laws 1961, c. 63, § 1, p. 247; Laws 2001, LB 222, § 3; Laws 2002, LB 649, § 1; Laws 2016, LB704, § 211.
 Effective date July 21, 2016.

19-2404 Sanitary sewer extension mains; water extension mains; special assessments; maturity; interest; rate.

(1) Except as provided in subsection (2) of this section, special assessments for sanitary sewer extension mains or water extension mains in a district shall be levied at one time and shall become delinquent in equal annual installments over a period of years equal to the number of years for which the bonds for such project were issued pursuant to section 19-2405. The first installment becomes delinquent fifty days after the making of such levy. Subsequent installments become delinquent on the anniversary date of the levy. Each installment, except the first, shall draw interest at the rate set by the city council or board of trustees from the time of such levy until such installment becomes delinquent. After an installment becomes delinquent, interest at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, shall be paid thereon until such installment is collected and paid. Such special assessments shall be collected and enforced as in the case of general municipal taxes and shall be a lien on such real estate from and after the date of the levy. If three or more of such installments become delinquent and unpaid on the same property, the city council or the board of trustees may by resolution declare all future installments on such delinquent property to be due on a future fixed date. The resolution shall set forth the description of the property and the name of its record title owner and shall provide that all future installments shall become delinquent upon the date fixed. A copy of such resolution shall be published one time in a legal newspaper of general circulation published in the municipality or, if none is published in such municipality, in a legal newspaper of general circulation in the municipality. After the fixed date such future installments shall be deemed to be delinquent and the municipality may proceed to enforce and collect the total amount due including all future installments.

(2) If the city or village incurs no new indebtedness pursuant to section 19-2405 for any water service extension or sanitary sewer extension in a district, the special assessments for such improvements shall be levied at one time and shall become delinquent in equal annual installments over such period of years as the city council or board of trustees determines at the time of making the levy to be reasonable and fair.

Source: Laws 1961, c. 63, § 3, p. 249; Laws 1969, c. 51, § 76, p. 322; Laws 1980, LB 655, § 1; Laws 1980, LB 933, § 23; Laws 1981, LB 167, § 24; Laws 1986, LB 960, § 16; Laws 2005, LB 161, § 9; Laws 2015, LB361, § 43.

19-2407 Water service; sanitary sewer service; extension districts; special assessments; levy; collection.

Special assessments may be levied by the mayor and city council or chairperson and board of trustees, as the case may be, for the purpose of paying the cost of constructing extension water mains or sanitary service connections, as provided in sections 19-2402 to 19-2407. Such assessments shall be levied on the real property lying and being within the utility main district in which such extension mains may be situated to the extent of benefits to such property by reason of such improvement. The benefits to such property shall be determined by the mayor and council, or chairperson and board of trustees, as the case may be, sitting as a board of equalization after notice to property owners, as

provided in other cases of special assessment. After the mayor and council, or chairperson and board of trustees, sitting as such board of equalization, shall find such benefits to be equal and uniform, such levy may be made according to the front footage of the lots or real estate within such utility district, or according to such other rule as the board of equalization may adopt for the distribution or adjustment of such cost upon the lots or real estate in such district benefited by such improvement. All such special assessments shall be collected in the same manner as general municipal taxes and shall be subject to the same penalty.

Source: Laws 1961, c. 63, § 6, p. 250; Laws 2015, LB361, § 44.

19-2418 Sidewalks; construct, replace, repair; districts; special assessments; payment.

The mayor and city council or board of trustees shall levy special assessments on the lots and parcels of land abutting on or adjacent to the sidewalk improvements specially benefited thereby in such district in proportion to the benefits, to pay the cost of such improvement. All special assessments shall be a lien on the property on which levied from the date of the levy until paid. The special assessment for the sidewalk improvement shall be levied at one time and shall become delinquent as follows: One-seventh of the total assessment shall become delinquent in ten days after such levy; one-seventh in one year; one-seventh in two years; one-seventh in three years; one-seventh in four years; one-seventh in five years; and one-seventh in six years. Each of such installments, except the first, shall draw interest at the rate of not exceeding the rate of interest specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, from the time of the levy until the installment becomes delinquent. If the installment becomes delinquent, interest at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, shall be paid thereon as in the case of other special assessments. All such special assessments shall be made and collected in accordance with the procedure established for paving assessments for the particular city or village.

Source: Laws 1965, c. 80, § 2, p. 316; Laws 1980, LB 933, § 24; Laws 1981, LB 167, § 25; Laws 2015, LB361, § 45.

19-2427 Improvement district; adjacent land; how treated; special assessments.

Any city of the first or second class or village may include land adjacent to such city or village when creating an improvement district, such as a sewer, paving, water, water extension, or sanitary sewer extension district. The city council or board of trustees may levy a special assessment for the costs of such improvements upon the properties found specially benefited thereby, except as provided in sections 19-2428 to 19-2431.

Source: Laws 1979, LB 136, § 4; Laws 1983, LB 94, § 4; Laws 1987, LB 679, § 1; Laws 2015, LB361, § 46.

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.

ARTICLE 40

BUSINESS IMPROVEMENT DISTRICTS

(Applicable to all cities.)

Section	
19-4015.	Act, how cited.
19-4016.	Act, how construed.
19-4017.	Act; purpose.
19-4017.01.	Terms, defined.
19-4018.	Cities; business improvement district; special assessment; business occupation tax; exceptions; use of proceeds.
19-4020.	Business improvement district; created; location.
19-4021.	Business improvement board; membership; powers; duties.
19-4024.	Repealed. Laws 2015, LB 168, § 21.
19-4025.	Transferred to section 19-4029.01.
19-4026.	Hearing to create a district; call by petition.
19-4027.	Hearing to create district; city council; duties; protest; effect.

Section

- 19-4028. Proposed district; boundary amendment; hearing continued; procedure.
 19-4029. City council; ordinance to establish district; when; contents; taxation; basis.
 19-4029.01. Notice of hearing; manner given; contents; notice to neighborhood association.
 19-4029.02. Expansion of boundaries; procedure; ordinance; hearing.
 19-4029.03. Hearing for expansion of boundaries; call by petition.
 19-4029.04. Hearing for expansion of boundaries; city council; duties; protest; effect.
 19-4029.05. Expansion of boundaries; city council; ordinance; when; contents; taxation; basis.
 19-4030. Business improvement district; special assessment; purpose; notice; appeal; lien.
 19-4031. District; general business occupation tax; purpose; exceptions; notice; appeal; collection; basis.
 19-4033. Assessments or taxes; limitations; effect.
 19-4034. Business improvement district; special assessment or business occupation tax; exceptions; maintenance, repair, or reconstruction; levy; procedure.
 19-4037. Funds and grants; use.
 19-4038. Districts created prior to May 23, 1979; governed by act.

19-4015 Act, how cited.

Sections 19-4015 to 19-4038 shall be known and may be cited as the Business Improvement District Act.

Source: Laws 1979, LB 251, § 1; Laws 2015, LB168, § 1.

19-4016 Act, how construed.

The Business Improvement District Act provides a separate and additional method, authority, and procedure for the matters to which it relates and does not affect any other law relating to the same or similar subject. When proceeding under the act, only the provisions of the act need be followed.

Source: Laws 1979, LB 251, § 2; Laws 2015, LB168, § 2.

19-4017 Act; purpose.

Cities of the metropolitan, primary, first, and second class in the state at present have business areas in need of improvement and development, but lack the funds with which to provide and maintain such improvements. The purpose of the Business Improvement District Act is to provide a means by which such cities may raise the necessary funds to be used for the purpose of providing and maintaining the improvements authorized by the act.

Source: Laws 1979, LB 251, § 3; Laws 2015, LB168, § 3.

19-4017.01 Terms, defined.

For purposes of the Business Improvement District Act:

(1) Record owner shall mean the fee owner of real property as shown in the records of the register of deeds office in the county in which the business area is located. A contract purchaser of real property shall be considered the record owner and the only person entitled to petition pursuant to section 19-4026 or 19-4029.03 or protest pursuant to section 19-4027 or 19-4029.04, if the contract is recorded in the register of deeds office in the county in which the business area is located;

(2) Assessable unit shall mean front foot, square foot, equivalent front foot, or other unit of assessment established under the proposed method of assessment set forth in the ordinance creating a business improvement district;

(3) Space shall mean the square foot space wherein customers, patients, clients, or other invitees are received and space from time to time used or available for use in connection with a business or profession of a user, excepting all space owned or used by political subdivisions; and

(4) Business area shall mean an established area of the city zoned for business, public, or commercial purposes.

Source: Laws 1983, LB 22, § 1; Laws 2015, LB168, § 4.

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.

19-4020 Business improvement district; created; location.

A business improvement district may be created as provided by the Business Improvement District Act and shall be within the boundaries of a business area.

Source: Laws 1979, LB 251, § 6; Laws 1983, LB 22, § 2; Laws 2015, LB168, § 5.

19-4021 Business improvement board; membership; powers; duties.

The mayor, with the approval of the city council, shall appoint a business improvement board consisting of property owners, residents, business operators, or users of space within the business area to be improved. The boundaries of the business area shall be declared by resolution of the city council at or prior to the time of the appointment of the board. The board shall make recommendations to the city council for the establishment of a plan or plans for improvements in the business area. If it is found that the improvements to be included in one business area offer benefits that cannot be equitably assessed together under the Business Improvement District Act, more than one business improvement district as part of the same plan for improvements for that business area may be proposed. The board may make recommendations to the city as to the use of any occupation tax funds collected, and may administer such funds if so directed by the mayor and city council. The board shall also review and make recommendations to the city regarding expansion of the

boundaries of the business improvement district under sections 19-4029.02 to 19-4029.05.

Source: Laws 1979, LB 251, § 7; Laws 1983, LB 22, § 3; Laws 2015, LB168, § 6.

19-4024 Repealed. Laws 2015, LB 168, § 21.

19-4025 Transferred to section 19-4029.01.

19-4026 Hearing to create a district; call by petition.

In the event that the city council has not acted to call a hearing to create a district as provided in section 19-4029, it shall do so when presented with a petition signed by the record owners of thirty percent of the assessable front footage in a business area or by the users of thirty percent of space in a business area.

Source: Laws 1979, LB 251, § 12; Laws 1983, LB 22, § 6; Laws 2015, LB168, § 8.

19-4027 Hearing to create district; city council; duties; protest; effect.

Whenever a hearing is held under section 19-4029, the city council shall:

- (1) Hear all protests and receive evidence for or against the proposed action;
- (2) Rule upon all written protests received prior to the close of the hearing, which ruling shall be final; and
- (3) Continue the hearing from time to time as the city council may deem necessary.

If a special assessment is to be used, proceedings shall terminate if written protest is made prior to the close of the hearing by the record owners of over fifty percent of the assessable units in the proposed district. If an occupation tax is to be used, proceedings shall terminate if protest is made by users of over fifty percent of the space in the proposed district.

Source: Laws 1979, LB 251, § 13; Laws 1983, LB 22, § 7; Laws 2015, LB168, § 9.

19-4028 Proposed district; boundary amendment; hearing continued; procedure.

If the city council decides to change the boundaries of the proposed district or to change the proposed modifications to the boundaries of an existing business improvement district or districts from those recommended by the business improvement board, the hearing shall be continued to a time at least fifteen days after such decision and the notice shall be given as prescribed in section 19-4029.01, showing the boundary amendments. The city council may not expand the proposed boundaries recommended by the business improvement board without the council's proposed boundaries being considered by the business improvement board.

Source: Laws 1979, LB 251, § 14; Laws 1983, LB 22, § 8; Laws 2015, LB168, § 10.

19-4029 City council; ordinance to establish district; when; contents; taxation; basis.

Upon receiving the recommendation from the business improvement board, the city council may create one or more business improvement districts. The city council, following a hearing, may establish or reject any proposed district or districts. If the city council decides to establish any district, it shall adopt an ordinance to that effect. This ordinance shall contain the following information:

- (1) A statement that notice of hearing was given, including the date or dates on which it was given, in accordance with section 19-4029.01;
- (2) The time and place the hearing was held concerning the formation of such district;
- (3) A statement that a business improvement district has been established;
- (4) The purposes of the district, and the public improvements and facilities to be included in such district;
- (5) The description of the boundaries of such district;
- (6) A statement that the businesses and users of space in the district shall be subject to the general business occupation tax or that the real property in the district will be subject to the special assessment authorized by the Business Improvement District Act;
- (7) The proposed method of assessment to be imposed within the district or the initial rate of the occupation tax to be imposed; and
- (8) Any penalties to be imposed for failure to pay the tax or special assessment.

The ordinance shall recite that the method of raising revenue shall be fair and equitable. In the use of a general occupation tax, the tax shall be based primarily on the square footage of the owner's and user's place of business. In the use of a special assessment, the assessment shall be based upon the special benefit to the property within the district.

Source: Laws 1979, LB 251, § 15; Laws 1983, LB 22, § 9; Laws 2015, LB168, § 11.

19-4029.01 Notice of hearing; manner given; contents; notice to neighborhood association.

(1) At least ten days prior to the date of any hearing under sections 19-4029, 19-4029.02, and 19-4029.03, notice of such hearing shall be given by:

- (a) One publication of the notice of hearing in a newspaper of general circulation in the city;
- (b) Mailing a copy of the notice of hearing to each owner of taxable property as shown on the latest tax rolls of the county treasurer for such county;
- (c) Providing a copy of the notice of hearing to any neighborhood association registered pursuant to subsection (2) of this section in the manner requested by such neighborhood association; and
- (d) If an occupation tax is to be imposed, mailing a copy of the notice of hearing to each user of space in the proposed district.

(2) The notice required by subdivision (1)(c) of this section shall be provided to any neighborhood association which is registered pursuant to this subsection and whose area of concern is located, in whole or in part, within a one-mile radius of the existing or proposed boundaries of the district. 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.

(3) Any notice of hearing for any hearing required by section 19-4029 shall contain the following information:

(a) A description of the boundaries of the proposed district;

(b) The time and place of a hearing to be held by the city council to consider establishment of the district;

(c) The proposed public facilities and improvements to be made or maintained within any such district; and

(d) The proposed or estimated costs for improvements and facilities within the proposed district and the method by which the revenue shall be raised. If a special assessment is proposed, the notice shall also state the proposed method of assessment.

(4) Any notice of hearing for any hearing required by sections 19-4029.02 and 19-4029.03 shall contain the following information:

(a) A description of the boundaries of the area to be added to the existing business improvement district and a description of the new boundaries of the modified district;

(b) The time and place of a hearing to be held by the city council to consider establishment of the modified district;

(c) The new public facilities and improvements, if any, to be made or maintained within any such district; and

(d) The proposed or estimated costs for new and existing improvements and facilities within the proposed modified district and the method by which the revenue shall be raised. If a special assessment is proposed, the notice shall also state the proposed method of assessment.

Source: Laws 1979, LB 251, § 11; Laws 1983, LB 22, § 5; R.S.1943, (2012), § 19-4025; Laws 2015, LB168, § 7; Laws 2016, LB700, § 2.

Effective date July 21, 2016.

19-4029.02 Expansion of boundaries; procedure; ordinance; hearing.

Upon receiving the recommendation to expand the boundaries of an existing business improvement district from the business improvement board, the city council may expand the boundaries of one or more business improvement districts by adopting an ordinance to expand the boundaries of a district or districts. Prior to adopting the ordinance, a hearing shall be held to consider the ordinance.

Source: Laws 2015, LB168, § 12.

19-4029.03 Hearing for expansion of boundaries; call by petition.

In the event that the city council has not acted to call a hearing to expand district boundaries as provided in section 19-4029.02, it shall do so when presented with a petition signed by the users of thirty percent of space in a business area proposed to be added to an existing business improvement

district where an occupation tax is imposed or by the record owners of thirty percent of the assessable front footage in a portion of a business area proposed to be added to an existing business improvement district.

Source: Laws 2015, LB168, § 13.

19-4029.04 Hearing for expansion of boundaries; city council; duties; protest; effect.

Whenever a hearing is held to expand district boundaries under section 19-4029.02 or 19-4029.03, the city council shall:

- (1) Hear all protests and receive evidence for or against the proposed action;
- (2) Rule upon all written protests received prior to the close of the hearing, which ruling shall be final; and
- (3) Continue the hearing from time to time as the city council may deem necessary.

If a special assessment is to be used, proceedings shall terminate if written protest is made prior to the close of the hearing by the record owners of over fifty percent of the assessable units in the modified district as proposed. If an occupation tax is to be used, proceedings shall terminate if protest is made by users of over fifty percent of space in the modified district as proposed.

Source: Laws 2015, LB168, § 14.

19-4029.05 Expansion of boundaries; city council; ordinance; when; contents; taxation; basis.

The city council, following a hearing under section 19-4029.02 or 19-4029.03, may expand the boundaries of any district or districts. If the city council decides to expand the boundaries, it shall adopt an ordinance to that effect. This ordinance shall contain the following information:

- (1) The name of the district whose boundaries will be expanded;
- (2) A statement that notice of hearing was given, including the date or dates on which it was given, in accordance with section 19-4029.01;
- (3) The time and place the hearing was held concerning the new boundaries of such district;
- (4) The purposes of the boundary expansion and any new public improvements and facilities to be included in such district;
- (5) The description of the new boundaries of such district;
- (6) A statement that the businesses and users of space in the modified district established by the ordinance shall be subject to the general business occupation tax or that the real property in the modified district will be subject to the special assessment authorized by the Business Improvement District Act;
- (7) The proposed method of assessment to be imposed within the district or the initial rate of the occupation tax to be imposed; and
- (8) Any penalties to be imposed for failure to pay the tax or special assessment.

The ordinance shall recite that the method of raising revenue shall be fair and equitable. In the use of a general occupation tax, the tax shall be based primarily on the square footage of the owner's and user's place of business. In

the use of a special assessment, the assessment shall be based upon the special benefit to the property within the district.

Source: Laws 2015, LB168, § 15.

19-4030 Business improvement district; special assessment; purpose; notice; appeal; lien.

A city may levy a special assessment against the real estate located in a business improvement district, to the extent of the special benefit thereto, for the purpose of paying all or any part of the total costs and expenses of performing any authorized work, except maintenance, repair, and reconstruction costs, within such district. The amount of each special assessment shall be determined by the city council sitting as a board of equalization. Assessments shall be levied in accordance with the method of assessment proposed in the ordinance creating the district. If the city council finds that the proposed method of assessment does not provide a fair and equitable method of apportioning costs, then it may assess the costs under such method as the city council finds to be fair and equitable. Notice of a hearing on any special assessments to be levied under the Business Improvement District Act shall be given to the landowners in such district by publication of the description of the land, the amount proposed to be assessed, and the general purpose for which such assessment is to be made one time each week for three weeks in a daily or weekly newspaper of general circulation published in the city. The notice shall provide the date, time, and place of hearing to hear any objections or protests by landowners in the district as to the amount of assessment made against their land. A direct appeal to the district court of the county in which such city is located may be taken from the decision of the city council in the same manner and under like terms and conditions as appeals may be taken from the amount of special assessments levied in street improvement districts in such city as now provided by law. All special assessments levied under the act shall be liens on the property and shall be certified for collection and collected in the same manner as special assessments for improvements and street improvement districts of the city are collected.

Source: Laws 1979, LB 251, § 16; Laws 1983, LB 22, § 10; Laws 2015, LB168, § 16.

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 facilities 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.

19-4033 Assessments or taxes; limitations; effect.

The total amount of assessments or general business occupation taxes levied under the Business Improvement District Act shall not exceed the total costs and expenses of performing the authorized work. The levy of any additional assessment or tax shall not reduce or affect in any manner the assessments previously levied. The assessments or taxes levied must be for the purposes specified in the ordinances and the proceeds shall not be used for any other purpose.

Source: Laws 1979, LB 251, § 19; Laws 1983, LB 22, § 12; Laws 2015, LB168, § 17.

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.

19-4037 Funds and grants; use.

The city is authorized to receive, administer, and disburse donated funds or grants of federal or state funds for the purposes of and in the manner authorized by the Business Improvement District Act.

Source: Laws 1979, LB 251, § 23; Laws 2015, LB168, § 18.

19-4038 Districts created prior to May 23, 1979; governed by act.

Any business improvement district or any downtown improvement and parking district created prior to May 23, 1979, pursuant to sections 19-3401 to 19-3420 or 19-4001 to 19-4014, shall continue in existence and shall hereafter be governed by the Business Improvement District Act.

Source: Laws 1979, LB 251, § 24; Laws 2015, LB168, § 19.

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.

Section

- 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;
 - (iii) One member of the governing body of the municipality that created the land bank, appointed by such governing body, as a nonvoting, ex officio member; and
 - (iv) 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;

(e) The seven voting members of the board shall include:

(i) At least one member representing a chamber of commerce;

(ii) At least one member with experience in banking;

(iii) At least one member with experience in real estate development;

(iv) At least one member with experience as a realtor;

(v) At least one member with experience in nonprofit or affordable housing; and

(vi) At least one member with experience in large-scale residential or commercial property rental; and

(f) A single voting member may satisfy more than one of the requirements provided in subdivision (1)(e) of this section if he or she has the required qualifications. It is not necessary that there be a different member to fulfill each such requirement.

(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;

(iii) One member of the governing body of each municipality that created the land bank, appointed by the governing body on which such member serves, as nonvoting, ex officio members; and

(iv) 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, commer-

cial, 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;

(e) The voting members of the board shall include:

(i) At least one member representing a chamber of commerce;

(ii) At least one member with experience in banking;

(iii) At least one member with experience in real estate development;

(iv) At least one member with experience as a realtor;

(v) At least one member with experience in nonprofit or affordable housing; and

(vi) At least one member with experience in large-scale residential or commercial property rental; and

(f) A single voting member may satisfy more than one of the requirements provided in subdivision (2)(e) of this section if he or she has the required qualifications. It is not necessary that there be a different member to fulfill each such requirement.

(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; Laws 2016, LB699, § 1.
Effective date July 21, 2016.

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, (d) use for urban agricultural activities including the establishment of community gardens as defined in section 2-303, and (e) 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; Laws 2016, LB699, § 2.
Effective date July 21, 2016.

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, the Revenue Committee of the Legislature, and the Urban Affairs Committee of the Legislature by March 1 of each year summarizing the board's activities for the prior calendar year. The reports submitted to the legislative committees shall be submitted electronically.

Source: Laws 2013, LB97, § 13; Laws 2016, LB699, § 3.
Effective date July 21, 2016.

Cross References

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.

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.

1. Individual Rights.
 - (f) Consumer Information. 20-149.
 - (g) Interpreters. 20-150 to 20-159.
5. Racial Profiling. 20-501 to 20-506.

ARTICLE 1

INDIVIDUAL RIGHTS

(f) CONSUMER INFORMATION

Section

20-149. Consumer reporting agency; furnish information; duty; violation; penalty.

(g) INTERPRETERS

20-150. Legislative findings; licensed interpreters; qualified educational interpreters; legislative intent.

20-151. Terms, defined.

20-156. Commission; interpreters; video remote interpreting providers; licensure; requirements; fees; roster; disciplinary actions; review; injunctions authorized.

20-156.01. Prohibited acts without license; licensure; application; civil penalty; commission; powers; acts authorized.

20-159. Fees authorized.

(f) CONSUMER INFORMATION

20-149 Consumer reporting agency; furnish information; duty; violation; penalty.

Any consumer reporting agency doing business in this state which is required to furnish information to a consumer, protected consumer as defined in section 8-2602, or representative as defined in section 8-2602 pursuant to 15 U.S.C. 1681g to 1681j as such sections existed on January 1, 2016, shall, upon the request of such consumer, protected consumer, or representative and at a reasonable charge, provide such consumer, protected consumer, or representative with a typewritten or photostatic copy of any consumer report, investigative report, or any credit report or other file information which it has on file or has prepared concerning such consumer or protected consumer, if such consumer, protected consumer, or representative has complied with 15 U.S.C. 1681h as such section existed on January 1, 2016. If such report uses a code to convey information about such consumer or protected consumer, such consumer, protected consumer, or representative shall be provided with a key to such code. For the purposes of this section, the definitions found in 15 U.S.C. 1681a as such section existed on January 1, 2016, shall apply. Any person violating this section shall be guilty of a Class IV misdemeanor.

Source: Laws 1983, LB 197, § 1; Laws 2016, LB835, § 21.
Operative date January 1, 2017.

Cross References

Credit Report Protection Act, see section 8-2601.

(g) INTERPRETERS

20-150 Legislative findings; licensed interpreters; qualified educational interpreters; legislative intent.

(1) The Legislature hereby finds and declares that it is the policy of the State of Nebraska to secure the rights of deaf and hard of hearing persons who cannot readily understand or communicate in spoken language and who consequently cannot equally participate in or benefit from proceedings, programs, and activities of state agencies and law enforcement personnel unless interpreters are available to assist them. State agencies and law enforcement personnel shall appoint licensed interpreters as provided in sections 20-150 to 20-159, except that courts and probation officials shall appoint interpreters as provided in sections 20-150 to 20-159 and 25-2401 to 25-2407 and public school districts and educational service units shall appoint qualified educational interpreters.

(2) The Commission for the Deaf and Hard of Hearing shall license and evaluate interpreters and video remote interpreting providers pursuant to section 20-156. The commission shall (a) develop licensed interpreter guidelines for distribution, (b) develop training to implement the guidelines, (c) adopt and promulgate rules and regulations to implement the guidelines and requirements for licensed interpreters, and (d) develop a roster of interpreters as required in section 71-4728.

(3) It is the intent of the Legislature to assure that qualified educational interpreters are provided to deaf and hard of hearing children in kindergarten-through-grade-twelve public school districts and educational service units. The State Department of Education shall adopt and promulgate rules and regulations to implement the guidelines and requirements for qualified educational interpreters, and such rules and regulations shall apply to all qualified educational interpreters.

Source: Laws 1987, LB 376, § 1; Laws 1997, LB 851, § 1; Laws 2002, LB 22, § 1; Laws 2006, LB 87, § 1; Laws 2015, LB287, § 1.

Cross References

Legal proceedings, use of interpreters, see section 25-2401 et seq.

20-151 Terms, defined.

For purposes of sections 20-150 to 20-159, unless the context otherwise requires:

(1) Appointing authority means the state agency or law enforcement personnel required to provide a licensed interpreter pursuant to sections 20-150 to 20-159;

(2) Auxiliary aid includes, but is not limited to, sign language interpreters, oral interpreters, tactile interpreters, other interpreters, notetakers, transcription services, written materials, assistive listening devices, assisted listening systems, videotext displays, and other visual delivery systems;

(3) Deaf or hard of hearing person means a person whose hearing impairment, with or without amplification, is so severe that he or she may have

difficulty in auditorily processing spoken language without the use of an interpreter or a person with a fluctuating or permanent hearing loss which may adversely affect the ability to understand spoken language without the use of an interpreter or other auxiliary aid;

(4) Intermediary interpreter means any person, including any deaf or hard of hearing person, who is able to assist in providing an accurate interpretation between spoken English and sign language or between variants of sign language in order to facilitate communication between a deaf or hard of hearing person and an interpreter;

(5) Licensed interpreter means a person who demonstrates proficiencies in interpretation or transliteration as required by the rules and regulations adopted and promulgated by the Commission for the Deaf and Hard of Hearing pursuant to subsection (2) of section 20-150 and who holds a license issued by the commission pursuant to section 20-156. Licensed interpreter includes a licensed video remote interpreting provider;

(6) Oral interpreter means a person who interprets language through facial expression, body language, and mouthing;

(7) State agency means any state entity which receives appropriations from the Legislature and includes the Legislature, legislative committees, executive agencies, courts, and probation officials but does not include political subdivisions;

(8) Tactile interpreter means a person who interprets for a deaf-blind person. The degree of deafness and blindness will determine the mode of communication to be used for each person;

(9) Video remote interpreting services means the use of videoconferencing technology with the intent to provide effective interpreting services; and

(10) Video remote interpreting provider means a person or an entity licensed to provide video remote interpreting services.

Source: Laws 1987, LB 376, § 2; Laws 1997, LB 851, § 2; Laws 2002, LB 22, § 2; Laws 2006, LB 87, § 2; Laws 2015, LB287, § 2.

20-156 Commission; interpreters; video remote interpreting providers; licensure; requirements; fees; roster; disciplinary actions; review; injunctions authorized.

(1) The Commission for the Deaf and Hard of Hearing shall license and evaluate licensed interpreters. The commission shall create the Interpreter Review Board pursuant to section 71-4728.05 to set policies, standards, and procedures for evaluation and licensing of interpreters. The commission may recognize evaluation and certification programs as a means to carry out the duty of evaluating interpreters' skills. The commission may define and establish different levels or types of licensure to reflect different levels of proficiency and different specialty areas.

(2) The commission shall establish and charge reasonable fees for licensure of interpreters and video remote interpreting providers, including applications, initial competency assessments, renewals, modifications, record keeping, approval, conduct, and sponsorship of continuing education, and assessment of continuing competency pursuant to sections 20-150 to 20-159. All fees collected pursuant to this section by the commission shall be remitted to the State

Treasurer for credit to the Commission for the Deaf and Hard of Hearing Fund. Such fees shall be disbursed for payment of expenses related to this section.

(3) The commission shall prepare and maintain a roster of licensed interpreters as provided by section 71-4728. Nothing in sections 20-150 to 20-159 shall be construed to prevent any appointing authority from contracting with a licensed interpreter on a full-time employment basis.

(4) The commission may deny, refuse to renew, limit, revoke, suspend, or take other disciplinary actions against a license when the applicant or licensee is found to have violated any provision of sections 20-150 to 20-159 or 71-4728 to 71-4732, or any rule or regulation of the commission adopted and promulgated pursuant to such sections, including rules and regulations governing unprofessional conduct. The Interpreter Review Board shall investigate complaints regarding the use of interpreters by any appointing authority, or the providing of interpreting services by any interpreter, alleged to be in violation of sections 20-150 to 20-159 or rules and regulations of the commission. The commission shall notify in writing an appointing authority determined to be employing interpreters in violation of sections 20-150 to 20-159 or rules and regulations of the commission and shall monitor such appointing authority to prevent future violations.

(5) Any decision of the commission pursuant to this section shall be subject to review according to the Administrative Procedure Act.

(6) Any person or entity providing interpreting services pursuant to sections 20-150 to 20-159 without a license issued pursuant to this section may be restrained by temporary and permanent injunctions and on and after January 1, 2016, shall be subject to a civil penalty as provided in section 20-156.01.

Source: Laws 1987, LB 376, § 7; Laws 1997, LB 752, § 78; Laws 1997, LB 851, § 8; Laws 2002, LB 22, § 6; Laws 2006, LB 87, § 3; Laws 2010, LB706, § 1; Laws 2015, LB287, § 3.

Cross References

Administrative Procedure Act, see section 84-920.

20-156.01 Prohibited acts without license; licensure; application; civil penalty; commission; powers; acts authorized.

(1) Except as otherwise provided in this section, no person or entity shall (a) practice as an interpreter for the deaf or hard of hearing for compensation, (b) hold himself, herself, or itself out as a licensed interpreter for the deaf or hard of hearing, (c) provide video remote interpreting services, (d) use the title Licensed Interpreter for the Deaf or Licensed Transliterater for the Deaf, or (e) use any other title or abbreviation to indicate that the person or entity is a licensed interpreter unless licensed pursuant to section 20-156.

(2) A person rostered as a qualified interpreter on or before August 30, 2015, may be issued a license pursuant to section 20-156 upon filing an application and paying the fee established by the Commission for the Deaf and Hard of Hearing. Such person shall meet all applicable licensure requirements of sections 20-150 to 20-159 on or before January 1, 2016.

(3)(a) On and after January 1, 2016, any person or entity who practices, offers to practice, or attempts to practice as an interpreter for the deaf or hard of hearing for compensation or as a video remote interpreting provider or holds himself, herself, or itself out as a licensed interpreter without being licensed

pursuant to section 20-156 or exempt under this section shall, in addition to any other penalty provided by law, pay a civil penalty to the commission in an amount not to exceed five hundred dollars for each offense as determined by the commission. The civil penalty shall be assessed by the commission after a hearing is held in accordance with section 20-156 and shall be remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

(b) The civil penalty shall be paid within sixty days after the date of the order imposing the civil penalty. The order shall constitute a judgment and may be filed and executed in the same manner as any judgment from any court of record.

(c) The commission may investigate any actual, alleged, or suspected unlicensed activity.

(4) An unlicensed person or entity providing interpreting services is not in violation of the licensure requirements of this section if the person or entity is:

(a) Providing interpreting services as part of a religious service;

(b) Notwithstanding other state or federal laws or rules regarding emergency treatment, providing interpreting services, until the services of a licensed interpreter can be obtained if there is continued need for an interpreter, in an emergency situation involving health care in which the patient or his or her representative and a health care provider or health care professional agree that the delay necessary to obtain a licensed interpreter is likely to cause injury or loss to the patient;

(c) Currently enrolled in a course of study leading to a certificate or degree in interpreting if such person is under the direct supervision of a licensed interpreter, engages only in activities and services that constitute a part of such course of study, and clearly designates himself or herself as a student, a trainee, or an intern;

(d) Working as an educational interpreter in compliance with rules and regulations adopted and promulgated by the State Department of Education or working for other purposes in a public school or an educational service unit;

(e) Holding either a certificate or a license as an interpreter in his or her state of residence which he or she has submitted to the commission for approval and either (i) providing interpreting services in Nebraska for a period of time not to exceed fourteen days in a calendar year or (ii) providing interpreting services by telecommunicating, or other use of technological means of communication; or

(f) Employed by or under contract with a person or an entity which is a licensed video remote interpreting provider in this state.

Source: Laws 2015, LB287, § 4.

20-159 Fees authorized.

A licensed interpreter appointed pursuant to sections 20-150 to 20-159 is entitled to a fee for professional services and other relevant expenses as agreed between the licensed interpreter and the contracting entity. When the licensed interpreter is appointed by a court, the fee shall be paid out of the General Fund with funds appropriated to the Supreme Court for that purpose or from funds, including grant money, made available to the Supreme Court for such purpose. When the licensed interpreter is appointed by an appointing authority

other than a court, the fee shall be paid out of funds available to the governing body of the appointing authority.

Source: Laws 1987, LB 376, § 10; Laws 1997, LB 851, § 10; Laws 1999, LB 54, § 2; Laws 2002, LB 22, § 7; Laws 2011, LB669, § 1; Laws 2015, LB287, § 5.

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 definitions 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

Article.

1. Nebraska Uniform Limited Liability Company Act.
 - (a) General Provisions. 21-104, 21-114.
 - (b) Formation; Certificate of Organization and Other Filings. 21-125.
 - (g) Dissolution and Winding Up. 21-152.
 - (l) Fees. 21-192.
2. Nebraska Model Business Corporation Act.
 - Part 1—General Provisions.
 - Subpart 1—Short Title and Reservation of Power. 21-201, 21-202.
 - Subpart 2—Filing Documents. 21-203 to 21-212.
 - Subpart 3—Secretary of State. 21-213.
 - Subpart 4—Definitions. 21-214 to 21-218.
 - Part 2—Incorporation. 21-219 to 21-225.
 - Part 3—Purposes and Powers. 21-226 to 21-229.
 - Part 4—Name. 21-230 to 21-232.
 - Part 5—Office and Agent. 21-233 to 21-236.
 - Part 6—Shares and Distributions.
 - Subpart 1—Shares. 21-237 to 21-240.
 - Subpart 2—Issuance of Shares. 21-241 to 21-249.
 - Subpart 3—Subsequent Acquisition of Shares by Shareholders and Corporation. 21-250, 21-251.
 - Subpart 4—Distributions. 21-252.
 - Part 7—Shareholders.
 - Subpart 1—Meetings. 21-253 to 21-261.
 - Subpart 2—Voting. 21-262 to 21-271.
 - Subpart 3—Voting Trusts and Agreements. 21-272 to 21-274.
 - Subpart 4—Derivative Proceedings. 21-275 to 21-282.
 - Subpart 5—Proceeding to Appoint Custodian or Receiver. 21-283.
 - Part 8—Directors and Officers.
 - Subpart 1—Board of Directors. 21-284 to 21-294.
 - Subpart 2—Meetings and Action of the Board. 21-295 to 21-2,101.
 - Subpart 3—Directors. 21-2,102 to 21-2,104.
 - Subpart 4—Officers. 21-2,105 to 21-2,109.
 - Subpart 5—Indemnification and Advance for Expenses. 21-2,110 to 21-2,119.
 - Subpart 6—Directors’ Conflicting Interest Transactions. 21-2,120 to 21-2,123.
 - Subpart 7—Business Opportunities. 21-2,124.
 - Part 9—Domestication and Conversion.
 - Subpart 1—Preliminary Provisions. 21-2,125, 21-2,126.
 - Subpart 2—Domestication. 21-2,127 to 21-2,132.
 - Subpart 3—Nonprofit Conversion. 21-2,133 to 21-2,138.
 - Subpart 4—Foreign Nonprofit Domestication and Conversion. 21-2,139 to 21-2,142.
 - Subpart 5—Entity Conversion. 21-2,143 to 21-2,149.
 - Part 10—Amendment of Articles of Incorporation and Bylaws.
 - Subpart 1—Amendment of Articles of Incorporation. 21-2,150 to 21-2,158.
 - Subpart 2—Amendment of Bylaws. 21-2,159, 21-2,160.
 - Part 11—Mergers and Share Exchanges. 21-2,161 to 21-2,168.
 - Part 12—Disposition of Assets. 21-2,169, 21-2,170.
 - Part 13—Appraisal Rights.

CORPORATIONS AND OTHER COMPANIES

Article.

- Subpart 1—Right to Appraisal and Payment for Shares. 21-2,171 to 21-2,173.
- Subpart 2—Procedure for Exercise of Appraisal Rights. 21-2,174 to 21-2,180.
- Subpart 3—Judicial Appraisal of Shares. 21-2,181, 21-2,182.
- Subpart 4—Other Remedies. 21-2,183.
- Part 14—Dissolution.
 - Subpart 1—Voluntary Dissolution. 21-2,184 to 21-2,192.
 - Subpart 2—Administrative Dissolution. 21-2,193 to 21-2,196.
 - Subpart 3—Judicial Dissolution. 21-2,197 to 21-2,201.
 - Subpart 4—Miscellaneous. 21-2,202.
- Part 15—Foreign Corporations.
 - Subpart 1—Certificate of Authority. 21-2,203 to 21-2,212.
 - Subpart 2—Withdrawal or Transfer of Authority. 21-2,213 to 21-2,216.
 - Subpart 3—Revocation of Certificate of Authority. 21-2,217 to 21-2,220.
 - Subpart 4—Foreign Corporation Domestication. 21-2,220.01 to 21-2,220.04.
- Part 16—Records and Reports.
 - Subpart 1—Records. 21-2,221 to 21-2,226.
 - Subpart 2—Reports. 21-2,227 to 21-2,229.
- Part 17—Transition Provisions. 21-2,230 to 21-2,232.
- 3. Occupation Tax. 21-301 to 21-330.
- 4. Nebraska Benefit Corporation Act. 21-401 to 21-414.
- 6. Charitable and Fraternal Societies. 21-610.
- 13. Cooperative Companies.
 - (a) General Provisions. 21-1301.
- 17. Credit Unions.
 - (a) Credit Union Act. 21-1725.01, 21-17,115.
- 19. Nebraska Nonprofit Corporation Act.
 - (a) General Provisions. 21-1905.
 - (d) Names. 21-1931, 21-1933.
 - (m) Dissolution. 21-19,139.
 - (n) Foreign Corporations. 21-19,151, 21-19,159.
 - (o) Records and Reports. 21-19,172.
- 20. Business Corporation Act.
 - (a) General Provisions. 21-2001 to 21-2016. Repealed.
 - (b) Incorporation. 21-2017 to 21-2023. Repealed.
 - (c) Purposes and Powers. 21-2024 to 21-2027. Repealed.
 - (d) Name. 21-2028 to 21-2030. Repealed.
 - (e) Office and Agent. 21-2031 to 21-2034. Repealed.
 - (f) Shares and Distributions. 21-2035 to 21-2050. Repealed.
 - (g) Shareholders. 21-2051 to 21-2077. Repealed.
 - (h) Directors and Officers. 21-2078 to 21-20,115. Repealed.
 - (i) Amendment of Articles of Incorporation and Bylaws. 21-20,116 to 21-20,127. Repealed.
 - (j) Merger and Share Exchange. 21-20,128 to 21-20,134. Repealed.
 - (k) Sale of Assets. 21-20,135 to 21-20,136. Repealed.
 - (l) Dissenters' Rights. 21-20,137 to 21-20,150. Repealed.
 - (m) Dissolution. 21-20,151 to 21-20,167. Repealed.
 - (n) Foreign Corporations. 21-20,168 to 21-20,181.03. Repealed.
 - (o) Records and Reports. 21-20,182 to 21-20,188. Repealed.
 - (p) Publication. 21-20,189. Repealed.
 - (q) Transition Provisions. 21-20,190 to 21-20,193. Repealed.
 - (r) Conversion. 21-20,194 to 21-20,197. Repealed.
- 21. Nebraska Business Development Corporation Act. 21-2103 to 21-2115.
- 22. Professional Corporations. 21-2203 to 21-2212.
- 24. Shareholders Protection Act. 21-2439.
- 26. Limited Liability Companies. Repealed.
- 29. Nebraska Limited Cooperative Association Act.
 - Part 2—Filing and Reports. 21-2923.
 - Part 7—Directors and Officers. 21-2971.

Article.

Part 8—Indemnification. 21-2976.

Part 11—Dissolution. 21-2995.

ARTICLE 1

NEBRASKA UNIFORM LIMITED LIABILITY COMPANY ACT

(a) GENERAL PROVISIONS

Section

21-104. Nature, purpose and duration of limited liability company; classification for tax purposes.

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.

(g) DISSOLUTION AND WINDING UP

21-152. Reinstatement following administrative dissolution.

(l) FEES

21-192. Fees.

(a) GENERAL PROVISIONS

21-104 Nature, purpose and duration of limited liability company; classification for tax purposes.

(ULLCA 104) (a) A limited liability company is an entity distinct from its members.

(b) A limited liability company may have any lawful purpose, except that a limited liability company may not operate as an insurer as defined in section 44-103.

(c) A limited liability company has perpetual duration.

(d) A limited liability company shall be classified for state income tax purposes in the same manner as it is classified for federal income tax purposes.

Source: Laws 2010, LB888, § 4; Laws 2016, LB758, § 1.

Effective date July 21, 2016.

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.

(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.

(g) DISSOLUTION AND WINDING UP

21-152 Reinstatement following administrative dissolution.

(ULLCA 706) (a) A limited liability company that has been administratively dissolved may apply to the Secretary of State for reinstatement within five years after the effective date of its dissolution. The application must be delivered to the Secretary of State for filing and state:

- (1) the name of the company and the effective date of its dissolution;
- (2) that the grounds for dissolution did not exist or have been eliminated; and
- (3) that the company's name satisfies the requirements of section 21-108.

(b) If the Secretary of State determines that an application under subsection (a) of this section contains the required information and that the information is correct, the Secretary of State shall prepare a declaration of reinstatement that states this determination, sign and file the original of the declaration of reinstatement, and serve the limited liability company with a copy.

(c) A limited liability company that has been administratively dissolved for more than five years may apply to the Secretary of State for late reinstatement. The application must be delivered to the Secretary of State for filing, along with the fee set forth in section 21-192, and state:

- (1) The name of the company and the effective date of its dissolution;
- (2) That the grounds for dissolution did not exist or have been eliminated;
- (3) That the company's name satisfies the requirements of section 21-108;
- (4) That a legitimate reason exists for reinstatement and what such legitimate reason is; and
- (5) That such reinstatement does not constitute fraud on the public.

(d) If the Secretary of State determines that an application under subsection (c) of this section contains the required information and that the information is correct, the Secretary of State shall prepare a declaration of reinstatement that states this determination, sign and file the original of the declaration of reinstatement, and serve the limited liability company with a copy.

(e) When a reinstatement becomes effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the limited liability company may resume its activities as if the dissolution had not occurred.

Source: Laws 2010, LB888, § 52; Laws 2012, LB854, § 1; Laws 2015, LB279, § 1.

(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) The fee for an application for reinstatement more than five years after the effective date of an administrative dissolution shall be five hundred dollars.

(3) 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.

(4) 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; Laws 2015, LB279, § 2.

ARTICLE 2

NEBRASKA MODEL BUSINESS CORPORATION ACT

Note: The Nebraska Model Business Corporation Act was adopted in 2014 by LB749. The operative date provided by LB 749 was January 1, 2016. The operative date was changed by Laws 2015, LB 157, section 10, to January 1, 2017.

PART 1—GENERAL PROVISIONS

SUBPART 1—SHORT TITLE AND RESERVATION OF POWER

Section

21-201. Short title.

21-202. Reservation of power to amend or repeal.

SUBPART 2—FILING DOCUMENTS

21-203. Requirements for documents; extrinsic facts.

21-204. Forms.

21-205. Filing, service, and copying fees.

21-206. Effective time and date of document.

21-207. Correcting filed document.

21-208. Filing duty of Secretary of State.

21-209. Appeal from Secretary of State's refusal to file document.

21-210. Evidentiary effect of copy of filed document.

21-211. Certificate of existence.

21-212. Penalty for signing false document.

SUBPART 3—SECRETARY OF STATE

21-213. Powers.

SUBPART 4—DEFINITIONS

21-214. Act definitions.

21-215. Notices and other communications.

21-216. Number of shareholders.

21-217. Qualified director.

21-218. Householding.

PART 2—INCORPORATION

21-219. Incorporators.

21-220. Articles of incorporation.

21-221. Incorporation.

21-222. Liability for preincorporation transactions.

21-223. Organization of corporation.

21-224. Bylaws.

21-225. Emergency bylaws.

PART 3—PURPOSES AND POWERS

21-226. Purposes.

NEBRASKA MODEL BUSINESS CORPORATION ACT

Section

- 21-227. General powers.
- 21-228. Emergency powers.
- 21-229. Ultra vires.

PART 4—NAME

- 21-230. Corporate name.
- 21-231. Reserved name.
- 21-232. Registered name.

PART 5—OFFICE AND AGENT

- 21-233. Registered office and registered agent.
- 21-234. Change of registered office or registered agent.
- 21-235. Resignation of registered agent.
- 21-236. Service on corporation.

PART 6—SHARES AND DISTRIBUTIONS

SUBPART 1—SHARES

- 21-237. Authorized shares.
- 21-238. Terms of class or series determined by board of directors.
- 21-239. Issued and outstanding shares.
- 21-240. Fractional shares.

SUBPART 2—ISSUANCE OF SHARES

- 21-241. Subscription for shares before incorporation.
- 21-242. Issuance of shares.
- 21-243. Liability of shareholders.
- 21-244. Share dividends.
- 21-245. Share options and other awards.
- 21-246. Form and content of certificates.
- 21-247. Shares without certificates.
- 21-248. Restriction on transfer of shares and other securities.
- 21-249. Expense of issue.

SUBPART 3—SUBSEQUENT ACQUISITION OF SHARES BY SHAREHOLDERS AND CORPORATION

- 21-250. Shareholders' preemptive rights.
- 21-251. Corporation's acquisition of its own shares.

SUBPART 4—DISTRIBUTIONS

- 21-252. Distributions to shareholders.

PART 7—SHAREHOLDERS

SUBPART 1—MEETINGS

- 21-253. Annual meeting.
- 21-254. Special meeting.
- 21-255. Court-ordered meeting.
- 21-256. Action without meeting.
- 21-257. Notice of meeting.
- 21-258. Waiver of notice.
- 21-259. Record date.
- 21-260. Conduct of the meeting.
- 21-261. Remote participation in annual and special meetings.

SUBPART 2—VOTING

- 21-262. Shareholders' list for meeting.
- 21-263. Voting entitlement of shares.
- 21-264. Proxies.
- 21-265. Shares held by nominees.
- 21-266. Corporation's acceptance of votes.
- 21-267. Quorum and voting requirements for voting groups.
- 21-268. Action by single and multiple voting groups.
- 21-269. Greater quorum or voting requirements.

CORPORATIONS AND OTHER COMPANIES

Section

- 21-270. Voting for directors; cumulative voting.
- 21-271. Inspectors of election.

SUBPART 3—VOTING TRUSTS AND AGREEMENTS

- 21-272. Voting trusts.
- 21-273. Voting agreements.
- 21-274. Shareholder agreements.

SUBPART 4—DERIVATIVE PROCEEDINGS

- 21-275. Subpart definitions.
- 21-276. Standing.
- 21-277. Demand.
- 21-278. Stay of proceedings.
- 21-279. Dismissal.
- 21-280. Discontinuance or settlement.
- 21-281. Payment of expenses.
- 21-282. Applicability to foreign corporations.

SUBPART 5—PROCEEDING TO APPOINT CUSTODIAN OR RECEIVER

- 21-283. Shareholder action to appoint custodian or receiver.

PART 8—DIRECTORS AND OFFICERS

SUBPART 1—BOARD OF DIRECTORS

- 21-284. Requirement for and functions of board of directors.
- 21-285. Qualifications of directors.
- 21-286. Number and election of directors.
- 21-287. Election of directors by certain classes of shareholders.
- 21-288. Terms of directors generally.
- 21-289. Staggered terms for directors.
- 21-290. Resignation of directors.
- 21-291. Removal of directors by shareholders.
- 21-292. Removal of directors by judicial proceeding.
- 21-293. Vacancy on board.
- 21-294. Compensation of directors.

SUBPART 2—MEETINGS AND ACTION OF THE BOARD

- 21-295. Meetings.
- 21-296. Action without meeting.
- 21-297. Notice of meeting.
- 21-298. Waiver of notice.
- 21-299. Quorum and voting.
- 21-2,100. Committees.
- 21-2,101. Submission of matters for shareholder vote.

SUBPART 3—DIRECTORS

- 21-2,102. Standards of conduct for directors.
- 21-2,103. Standards of liability for directors.
- 21-2,104. Directors' liability for unlawful distributions.

SUBPART 4—OFFICERS

- 21-2,105. Officers.
- 21-2,106. Functions of officers.
- 21-2,107. Standards of conduct for officers.
- 21-2,108. Resignation and removal of officers.
- 21-2,109. Contract rights of officers.

SUBPART 5—INDEMNIFICATION AND ADVANCE FOR EXPENSES

- 21-2,110. Subpart definitions.
- 21-2,111. Permissible indemnification.
- 21-2,112. Mandatory indemnification.
- 21-2,113. Advance for expenses.
- 21-2,114. Court-ordered indemnification and advance for expenses.

NEBRASKA MODEL BUSINESS CORPORATION ACT

Section

- 21-2,115. Determination and authorization of indemnification.
- 21-2,116. Indemnification of officers.
- 21-2,117. Insurance.
- 21-2,118. Variation by corporate action; application of subchapter.
- 21-2,119. Exclusivity of subpart.

SUBPART 6—DIRECTORS’ CONFLICTING INTEREST TRANSACTIONS

- 21-2,120. Subpart definitions.
- 21-2,121. Judicial action.
- 21-2,122. Directors’ action.
- 21-2,123. Shareholders’ action.

SUBPART 7—BUSINESS OPPORTUNITIES

- 21-2,124. Business opportunities.

PART 9—DOMESTICATION AND CONVERSION

SUBPART 1—PRELIMINARY PROVISIONS

- 21-2,125. Excluded transactions.
- 21-2,126. Required approvals.

SUBPART 2—DOMESTICATION

- 21-2,127. Domestication.
- 21-2,128. Action on a plan of domestication.
- 21-2,129. Articles of domestication.
- 21-2,130. Surrender of charter upon domestication.
- 21-2,131. Effect of domestication.
- 21-2,132. Abandonment of a domestication.

SUBPART 3—NONPROFIT CONVERSION

- 21-2,133. Nonprofit conversion.
- 21-2,134. Action on a plan of nonprofit conversion.
- 21-2,135. Articles of nonprofit conversion.
- 21-2,136. Surrender of charter upon foreign nonprofit conversion.
- 21-2,137. Effect of nonprofit conversion.
- 21-2,138. Abandonment of a nonprofit conversion.

SUBPART 4—FOREIGN NONPROFIT DOMESTICATION AND CONVERSION

- 21-2,139. Foreign nonprofit domestication and conversion.
- 21-2,140. Articles of domestication and conversion.
- 21-2,141. Effect of foreign nonprofit domestication and conversion.
- 21-2,142. Abandonment of a foreign nonprofit domestication and conversion.

SUBPART 5—ENTITY CONVERSION

- 21-2,143. Entity conversion authorized; definitions.
- 21-2,144. Plan of entity conversion.
- 21-2,145. Action on a plan of entity conversion.
- 21-2,146. Articles of entity conversion.
- 21-2,147. Surrender of charter upon conversion.
- 21-2,148. Effect of entity conversion.
- 21-2,149. Abandonment of an entity conversion.

PART 10—AMENDMENT OF ARTICLES OF INCORPORATION AND BYLAWS

SUBPART 1—AMENDMENT OF ARTICLES OF INCORPORATION

- 21-2,150. Authority to amend.
- 21-2,151. Amendment before issuance of shares.
- 21-2,152. Amendment by board of directors and shareholders.
- 21-2,153. Voting on amendments by voting groups.
- 21-2,154. Amendment by board of directors.
- 21-2,155. Articles of amendment.
- 21-2,156. Restated articles of incorporation.
- 21-2,157. Amendment pursuant to reorganization.
- 21-2,158. Effect of amendment.

CORPORATIONS AND OTHER COMPANIES

Section

SUBPART 2—AMENDMENT OF BYLAWS

- 21-2,159. Amendment by board of directors or shareholders.
- 21-2,160. Bylaw increasing quorum or voting requirement for directors.

PART 11—MERGERS AND SHARE EXCHANGES

- 21-2,161. Definitions.
- 21-2,162. Merger.
- 21-2,163. Share exchange.
- 21-2,164. Action on a plan of merger or share exchange.
- 21-2,165. Merger between parent and subsidiary or between subsidiaries.
- 21-2,166. Articles of merger or share exchange.
- 21-2,167. Effect of merger or share exchange.
- 21-2,168. Abandonment of a merger or share exchange.

PART 12—DISPOSITION OF ASSETS

- 21-2,169. Disposition of assets not requiring shareholder approval.
- 21-2,170. Shareholder approval of certain dispositions.

PART 13—APPRAISAL RIGHTS

SUBPART 1—RIGHT TO APPRAISAL AND PAYMENT FOR SHARES

- 21-2,171. Definitions.
- 21-2,172. Right to appraisal.
- 21-2,173. Assertion of rights by nominees and beneficial owners.

SUBPART 2—PROCEDURE FOR EXERCISE OF APPRAISAL RIGHTS

- 21-2,174. Notice of appraisal rights.
- 21-2,175. Notice of intent to demand payment and consequences of voting or consenting.
- 21-2,176. Appraisal notice and form.
- 21-2,177. Perfection of rights; right to withdraw.
- 21-2,178. Payment.
- 21-2,179. After-acquired shares.
- 21-2,180. Procedure if shareholder dissatisfied with payment or offer.

SUBPART 3—JUDICIAL APPRAISAL OF SHARES

- 21-2,181. Court action.
- 21-2,182. Court costs and expenses.

SUBPART 4—OTHER REMEDIES

- 21-2,183. Other remedies limited.

PART 14—DISSOLUTION

SUBPART 1—VOLUNTARY DISSOLUTION

- 21-2,184. Dissolution by incorporators or initial directors.
- 21-2,185. Dissolution by board of directors and shareholders.
- 21-2,186. Articles of dissolution.
- 21-2,187. Revocation of dissolution.
- 21-2,188. Effect of dissolution.
- 21-2,189. Known claims against dissolved corporation.
- 21-2,190. Other claims against dissolved corporation.
- 21-2,191. Court proceedings.
- 21-2,192. Director duties.

SUBPART 2—ADMINISTRATIVE DISSOLUTION

- 21-2,193. Grounds for administrative dissolution.
- 21-2,194. Procedure for and effect of administrative dissolution.
- 21-2,195. Reinstatement following administrative dissolution.
- 21-2,196. Appeal from denial of reinstatement.

SUBPART 3—JUDICIAL DISSOLUTION

- 21-2,197. Grounds for judicial dissolution.

NEBRASKA MODEL BUSINESS CORPORATION ACT

Section

- 21-2,198. Procedure for judicial dissolution.
- 21-2,199. Receivership or custodianship.
- 21-2,200. Decree of dissolution.
- 21-2,201. Election to purchase in lieu of dissolution.

SUBPART 4—MISCELLANEOUS

- 21-2,202. Deposit with State Treasurer.

PART 15—FOREIGN CORPORATIONS

SUBPART 1—CERTIFICATE OF AUTHORITY

- 21-2,203. Authority to transact business required.
- 21-2,204. Consequences of transacting business without authority.
- 21-2,205. Application for certificate of authority.
- 21-2,206. Amended certificate of authority.
- 21-2,207. Effect of certificate of authority.
- 21-2,208. Corporate name of foreign corporation.
- 21-2,209. Registered office and registered agent of foreign corporation.
- 21-2,210. Change of registered office or registered agent of foreign corporation.
- 21-2,211. Resignation of registered agent of foreign corporation.
- 21-2,212. Service on foreign corporation.

SUBPART 2—WITHDRAWAL OR TRANSFER OF AUTHORITY

- 21-2,213. Withdrawal of foreign corporation.
- 21-2,214. Automatic withdrawal upon certain conversions.
- 21-2,215. Withdrawal upon conversion to a nonfiling entity.
- 21-2,216. Transfer of authority.

SUBPART 3—REVOCATION OF CERTIFICATE OF AUTHORITY

- 21-2,217. Grounds for revocation.
- 21-2,218. Procedure for and effect of revocation.
- 21-2,219. Foreign corporation; reinstatement.
- 21-2,220. Appeal from revocation.

SUBPART 4—FOREIGN CORPORATION DOMESTICATION

- 21-2,220.01. Foreign corporation; domestication; procedure.
- 21-2,220.02. Foreign corporation; cessation of domestication.
- 21-2,220.03. Foreign corporation; surrender of foreign charter; effect.
- 21-2,220.04. Foreign corporation; domesticated under prior law; status.

PART 16—RECORDS AND REPORTS

SUBPART 1—RECORDS

- 21-2,221. Corporate records.
- 21-2,222. Inspection of records by shareholders.
- 21-2,223. Scope of inspection right.
- 21-2,224. Court-ordered inspection.
- 21-2,225. Inspection of records by directors.
- 21-2,226. Exception to notice requirements.

SUBPART 2—REPORTS

- 21-2,227. Financial statements for shareholders.
- 21-2,228. Biennial report for Secretary of State.
- 21-2,229. Notice of incorporation, amendment, merger, or share exchange; notice of dissolution.

PART 17—TRANSITION PROVISIONS

- 21-2,230. Application to existing domestic corporations.
- 21-2,231. Application to qualified foreign corporations.
- 21-2,232. Saving provisions.

PART 1—GENERAL PROVISIONS

SUBPART 1—SHORT TITLE AND RESERVATION OF POWER

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; Laws 2016, LB794, § 1.
Operative date January 1, 2017.

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, 2017.

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, 2017.

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, 2017.

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) Application for reinstatement more than five years after the effective date of an administrative dissolution or administrative revocation \$500;

(22) Certificate of reinstatement No fee;

(23) Certificate of judicial dissolution No fee;

(24) Application for certificate of authority \$130;

(25) Application for amended certificate of authority \$25;

(26) Application for certificate of withdrawal \$25;

(27) Application for transfer of authority \$25;

(28) Certificate of revocation of authority to transact business No fee;

(29) Articles of correction \$25;

(30) Application for certificate of existence or authorization \$25;
and

(31) 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; Laws 2015, LB279, § 3.
Operative date January 1, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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; limited liability company; 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; Laws 2016, LB794, § 2.
Operative date January 1, 2017.

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, 2017.

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, limited liability company, 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; Laws 2016, LB794, § 3.

Operative date January 1, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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 statement 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, 2017.

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, 2017.

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, 2017.

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 limited liability company, 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; Laws 2016, LB794, § 4.

Operative date January 1, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017, 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; Laws 2015, LB157, § 1.
Operative date January 1, 2017.

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 expressly 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, 2017.

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, 2017.

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, 2017.

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, 2017.

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. The shareholders of a corporation organized prior to January 1, 1996, shall continue to have a preemptive right to acquire the corporation's unissued shares in the manner provided in this section if the articles of incorporation of the corporation did not on or after January 1, 1996, expressly eliminate such preemptive rights to its shareholders.

(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; Laws 2016, LB794, § 5.
Operative date January 1, 2017.

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, 2017.

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, 2017.

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.

(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; Laws 2016, LB794, § 6.
Operative date January 1, 2017.

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, 2017.

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, 2017.

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; provided that the use of written consent to elect directors must be unanimous. 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; Laws 2016, LB794, § 7.
Operative date January 1, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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 corpora-

tion. 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, 2017.

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, 2017.

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, 2017.

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, 2017.

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 commit-

tee, 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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, member of a limited liability company, 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 limited liability company, 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; Laws 2016, LB794, § 8.

Operative date January 1, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, member, partner, trustee, employee, or agent of another domestic or foreign corporation, limited liability company, 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; Laws 2016, LB794, § 9.
Operative date January 1, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017, 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; Laws 2015, LB157, § 2.
Operative date January 1, 2017.

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, 2017, 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; Laws 2015, LB157, § 3.
Operative date January 1, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017, 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; Laws 2015, LB157, § 4.
Operative date January 1, 2017.

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, 2017, 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; Laws 2015, LB157, § 5.
Operative date January 1, 2017.

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, 2017.

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, 2017.

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 conversion 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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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 corpora-

tion, 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, 2017, 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; Laws 2015, LB157, § 6.
Operative date January 1, 2017.

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, 2017.

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, 2017, 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; Laws 2015, LB157, § 7.
Operative date January 1, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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.

(d) The right to dissent and obtain payment under sections 20-2,171 to 20-2,183 shall not apply to shareholders of a bank, trust company, stock-owned

savings and loan association, or the holding company of any such bank, trust company, or stock-owned savings and loan association.

Source: Laws 2014, LB749, § 172; Laws 2016, LB794, § 10.
Operative date January 1, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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 for reinstatement 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) A corporation that has been administratively dissolved under section 21-2,194 for more than five years may apply to the Secretary of State for late reinstatement. The application, along with the fee set forth in section 21-205, 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;

(3) State that the corporation's name satisfies the requirements of section 21-230;

(4) State that a legitimate reason exists for reinstatement and what such legitimate reason is; and

(5) State that such reinstatement does not constitute fraud on the public.

(d) If the Secretary of State determines (1) that the application for late reinstatement contains the information required by subsection (c) 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 late 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.

(e) 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; Laws 2015, LB279, § 4.
Operative date January 1, 2017.

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, 2017.

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 subsid-

aries, 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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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 depositaries 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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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 29-812 to 29-821, or for any other validly issued and properly served court order or subpoena, including those authorized under sections 86-2,106 and 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 court order, subpoena, or search warrant applies to a foreign corporation that is a party or nonparty to the matter for which the court order, subpoena, or 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; Laws 2015, LB294, § 6.

Operative date January 1, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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 for reinstatement 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) A foreign corporation, the certificate of authority of which has been administratively revoked under section 21-2,218 for more than five years, may apply to the Secretary of State for late reinstatement. The application, along with the fee set forth in section 21-205, 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;

(3) State that the foreign corporation's name satisfies the requirements of section 21-2,208;

(4) State that a legitimate reason exists for reinstatement and what such legitimate reason is; and

(5) State that such reinstatement does not constitute fraud on the public.

(d) If the Secretary of State determines (1) that the application for late reinstatement contains the information required by subsection (c) 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 late 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.

(e) 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; Laws 2015, LB279, § 5.
Operative date January 1, 2017.

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, 2017.

SUBPART 4—FOREIGN CORPORATION DOMESTICATION

21-2,220.01 Foreign corporation; domestication; procedure.

In lieu of compliance with section 21-2,203, relating to the authorization of foreign corporations to transact business in this state, any corporation organized under the laws of any other state or states which has heretofore filed, or which may hereafter file, with the Secretary of State of this state a copy, certified by the Secretary of State or other proper officer of the state or country under the laws of which such foreign corporation is formed, of its charter or articles of association or incorporation, together with all amendments to such date, the street address of its registered office in this state and the name and street address and, if one exists, a post office box number, of its current registered agent at that office, on filing with the Secretary of State a certified copy of a resolution adopted by its board of directors, including the date the resolution was adopted, accepting and agreeing to be bound by the provisions of the Nebraska Model Business Corporation Act with respect to its property and business operations within this state shall become and be a body corporate of this state as a foreign domesticated corporation. If the stock is no par, a resolution of the corporation, signed by an officer of the corporation, shall state the book value of the no par stock, which in no event shall be less than one dollar per share.

Source: Laws 2016, LB794, § 11.

Operative date January 1, 2017.

21-2,220.02 Foreign corporation; cessation of domestication.

Any foreign corporation which has domesticated pursuant to section 21-2,220.01 may cease to be a foreign domesticated corporation by filing with the Secretary of State a certified copy of a resolution adopted by its board of directors renouncing its domestication and withdrawing its acceptance and agreement provided for in section 21-2,220.01.

Source: Laws 2016, LB794, § 12.

Operative date January 1, 2017.

21-2,220.03 Foreign corporation; surrender of foreign charter; effect.

If a foreign corporation which has domesticated pursuant to section 21-2,220.01 surrenders its foreign corporate charter, and files, records, and publishes notice of amended articles of incorporation in the manner, time, and places required by sections 21-219, 21-220, and 21-2,229, such foreign domesticated corporation shall thereupon become and be a domestic corporation organized under the Nebraska Model Business Corporation Act.

Source: Laws 2016, LB794, § 13.

Operative date January 1, 2017.

21-2,220.04 Foreign corporation; domesticated under prior law; status.

Any corporation organized under the laws of any other state which had become, prior to January 1, 2017, a body corporate of this state as a foreign domesticated corporation, shall retain such status for all purposes.

Source: Laws 2016, LB794, § 14.

Operative date January 1, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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 statements 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, 2017.

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, 2017.

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, 2017.

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, 2017, 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; Laws 2015, LB157, § 8.

Operative date January 1, 2017.

21-2,231 Application to qualified foreign corporations.

(MBCA 17.02) A foreign corporation authorized to transact business in this state on January 1, 2017, 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; Laws 2015, LB157, § 9.

Operative date January 1, 2017.

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, 2017.

ARTICLE 3
OCCUPATION TAX

Section

- 21-301. Domestic corporations; biennial report and occupation tax; procedure.
- 21-302. Domestic corporations; biennial report; contents.
- 21-303. 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.
- 21-315. Occupation taxes; collection; venue of action.
- 21-317. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-318. List of corporations; duty of Secretary of State.
- 21-319. Investigation by Secretary of State for collection purposes; duty of county clerk.
- 21-321. Reports and fees; exemptions.
- 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, 2017.

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, 2017.

21-303 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 corporation for profit, 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 pursuant to section 21-2,220.01, 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 pursuant to section 21-2,220.01 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; Laws 2016, LB794, § 15.

Operative date January 1, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

21-317 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

Operative date January 1, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

21-323.01 Domestic corporation administratively dissolved; reinstatement; application; procedure; payment required.

(1)(a) Until January 1, 2017, the provisions of this subsection apply. A corporation automatically dissolved under section 21-323 may apply to the Secretary of State for reinstatement within five years after the effective date of its automatic dissolution. The application shall:

(i) Recite the name of the corporation and the effective date of its automatic dissolution;

(ii) State that the ground or grounds for dissolution either did not exist or have been eliminated;

(iii) State that the corporation's name satisfies the requirements of section 21-2028; and

(iv) Be accompanied by a fee in the amount prescribed in section 21-2005, as such section may from time to time be amended, for an application for reinstatement.

(b) If the Secretary of State determines (i) that the application for reinstatement contains the information required by subdivision (a) of this subsection and that the information is correct and (ii) that the corporation has complied with subdivision (f) of this subsection, 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 21-2034.

(c) A corporation that has been automatically dissolved under section 21-323 for more than five years may apply to the Secretary of State for late reinstatement. The application shall:

(i) Recite the name of the corporation and the effective date of its automatic dissolution;

(ii) State that the ground or grounds for dissolution either did not exist or have been eliminated;

(iii) State that the corporation's name satisfies the requirements of section 21-2028;

(iv) State that a legitimate reason exists for reinstatement and what such legitimate reason is;

(v) State that such reinstatement does not constitute fraud on the public; and

(vi) Be accompanied by a fee in the amount prescribed in section 21-2005, as such section may from time to time be amended, for an application for late reinstatement.

(d) If the Secretary of State determines (i) that an application for late reinstatement contains the information required by subdivision (c) of this subsection and that the information is correct and (ii) that the corporation has complied with subdivision (f) of this subsection, he or she shall cancel the

certificate of dissolution, prepare a certificate of late reinstatement that recites his or her determination and the effective date of the reinstatement, file the original of the certificate, and serve a copy on the corporation under section 21-2034.

(e) When the reinstatement is effective, it shall relate back to and take effect as of the effective date of the automatic dissolution and the corporation shall resume carrying on its business as if the automatic dissolution had never occurred.

(f) A corporation applying for reinstatement under this subsection shall:

(i)(A) Pay to the Secretary of State a sum equal to all occupation taxes delinquent at the time the corporation was automatically dissolved, plus a sum equal to all occupation taxes which would otherwise have been due for the years the corporation was automatically dissolved; and (B) deliver to the Secretary of State a properly executed and signed biennial report for the most recent even-numbered year; and

(ii) 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 automatically dissolved.

(2)(a) Beginning January 1, 2017, the provisions of this subsection apply. 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:

(i) Recite the name of the corporation and the effective date of its administrative dissolution;

(ii) State that the ground or grounds for dissolution either did not exist or have been eliminated;

(iii) State that the corporation's name satisfies the requirements of section 21-230; and

(iv) 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.

(b) If the Secretary of State determines (i) that the application for reinstatement contains the information required by subdivision (a) of this subsection and that the information is correct and (ii) that the corporation has complied with subdivision (f) of this subsection, 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.

(c) A corporation administratively dissolved under section 21-323 for more than five years may apply to the Secretary of State for late reinstatement. The application shall:

(i) Recite the name of the corporation and the effective date of its administrative dissolution;

(ii) State that the ground or grounds for dissolution either did not exist or have been eliminated;

(iii) State that the corporation's name satisfies the requirements of section 21-230;

(iv) State that a legitimate reason exists for reinstatement and what such legitimate reason is;

(v) State that such reinstatement does not constitute fraud on the public; and

(vi) 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 late reinstatement.

(d) If the Secretary of State determines (i) that the application for late reinstatement contains the information required by subdivision (c) of this subsection and that the information is correct and (ii) that the corporation has complied with subdivision (f) of this subsection, he or she shall cancel the certificate of dissolution, prepare a certificate of late 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.

(e) 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.

(f) A corporation applying for reinstatement under this subsection shall:

(i)(A) 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 (B) deliver to the Secretary of State a properly executed and signed biennial report for the most recent even-numbered year; and

(ii) 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; Laws 2015, LB279, § 6.

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, 2017.

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, 2017.

21-325.01 Foreign corporation authority to transact business revoked; reinstatement; procedure.

(1)(a) Until January 1, 2017, the provisions of this subsection apply. A foreign corporation, the certificate of authority of which has been 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:

(i) Recite the name of the foreign corporation and the effective date of the revocation;

(ii) State that the ground or grounds for revocation either did not exist or have been eliminated;

(iii) State that the foreign corporation's name satisfies the requirements of section 21-20,173; and

(iv) Be accompanied by a fee in the amount prescribed in section 21-2005, as such section may from time to time be amended, for an application for reinstatement.

(b) If the Secretary of State determines (i) that the application contains the information required by subdivision (a) of this subsection and that the information is correct and (ii) that the foreign corporation has complied with subdivision (f) of this subsection, 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 21-20,177.

(c) A foreign corporation, the certificate of authority of which has been automatically revoked under section 21-325 for more than five years, may apply to the Secretary of State for late reinstatement. The application shall:

(i) Recite the name of the foreign corporation and the effective date of the revocation;

(ii) State that the ground or grounds for revocation either did not exist or have been eliminated;

(iii) State that the foreign corporation's name satisfies the requirements of section 21-20,173;

(iv) State that a legitimate reason exists for reinstatement and what such legitimate reason is;

(v) State that such reinstatement does not constitute fraud on the public; and

(vi) Be accompanied by a fee in the amount prescribed in section 21-2005, as such section may from time to time be amended, for an application for late reinstatement.

(d) If the Secretary of State determines (i) that the application for late reinstatement contains the information required by subdivision (c) of this subsection and that the information is correct and (ii) that the foreign corporation has complied with subdivision (f) of this subsection, he or she shall cancel the certificate of revocation, prepare a certificate of late 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 21-20,177.

(e) When the reinstatement is effective, it shall relate back to and take 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.

(f) A foreign corporation applying for reinstatement under this subsection shall:

(i)(A) 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 (B) deliver to the Secretary of State a properly executed and signed biennial report for the most recent even-numbered year; and

(ii) 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.

(2)(a) Beginning January 1, 2017, the provisions of this subsection apply. 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:

(i) Recite the name of the foreign corporation and the effective date of the revocation;

(ii) State that the ground or grounds for revocation either did not exist or have been eliminated;

(iii) State that the foreign corporation's name satisfies the requirements of section 21-2,208; and

(iv) 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.

(b) If the Secretary of State determines (i) that the application contains the information required by subdivision (a) of this subsection and that the information is correct and (ii) that the foreign corporation has complied with subdivision (f) of this subsection, 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) A foreign corporation, the certificate of authority of which has been administratively revoked under section 21-325 for more than five years, may apply to the Secretary of State for late reinstatement. The application shall:

(i) Recite the name of the foreign corporation and the effective date of the revocation;

(ii) State that the ground or grounds for revocation either did not exist or have been eliminated;

(iii) State that the foreign corporation's name satisfies the requirements of section 21-2,208;

(iv) State that a legitimate reason exists for reinstatement and what such legitimate reason is;

(v) State that such reinstatement does not constitute fraud on the public; and

(vi) 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 late reinstatement.

(d) If the Secretary of State determines (i) that the application for late reinstatement contains the information required by subdivision (c) of this subsection and that the information is correct and (ii) that the foreign corporation has complied with subdivision (f) of this subsection, he or she shall cancel the certificate of revocation, prepare a certificate of late 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.

(e) 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.

(f) A foreign corporation applying for reinstatement under this subsection shall:

(i)(A) 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 (B) deliver to the Secretary of State a properly executed and signed biennial report for the most recent even-numbered year; and

(ii) 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; Laws 2015, LB279, § 7.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

ARTICLE 4

NEBRASKA BENEFIT CORPORATION ACT

Section

- 21-401. Act, how cited.
- 21-402. Applicability of act; Nebraska Model 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.

21-402 Applicability of act; Nebraska Model 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 Nebraska Model 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 Nebraska Model 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; Laws 2015, LB35, § 1.

Operative date January 1, 2017.

Cross References

Nebraska Model Business Corporation Act, see section 21-201.

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 21-214;

(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; Laws 2015, LB35, § 2.
Operative date January 1, 2017.

21-404 Incorporation; articles of incorporation; statement required.

A benefit corporation shall be incorporated in accordance with the Nebraska Model Business Corporation Act, but its articles of incorporation must also state that it is a benefit corporation.

Source: Laws 2014, LB751, § 4; Laws 2015, LB35, § 3.
Operative date January 1, 2017.

Cross References

Nebraska Model Business Corporation Act, see section 21-201.

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 21-220, 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; Laws 2015, LB35, § 4.
Operative date January 1, 2017.

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.

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 21-226.

(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 21-226 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; Laws 2015, LB35, § 5.
Operative date January 1, 2017.

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 21-2,102.

(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 21-2,102 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; Laws 2015, LB35, § 6.

Operative date January 1, 2017.

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 Nebraska Model 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 21-220, 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; Laws 2015, LB35, § 7.
Operative date January 1, 2017.

Cross References

Nebraska Model Business Corporation Act, see section 21-201.

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 21-2,107.

(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 21-2,107 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; Laws 2015, LB35, § 8.
Operative date January 1, 2017.

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.

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 Nebraska Model 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; Laws 2015, LB35, § 9.
Operative date January 1, 2017.

Cross References

Nebraska Model Business Corporation Act, see section 21-201.

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.

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)(z) of section 21-2005 prior to January 1, 2017, and in the amount prescribed in subdivision (a)(30) of section 21-205 on and after January 1, 2017, 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; Laws 2015, LB35, § 10; Laws 2015, LB279, § 8.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB35, section 10, with LB279, section 8, to reflect all amendments.

Note: Changes made by LB279 became operative March 19, 2015. Changes made by LB35 became operative January 1, 2017.

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, 2017.

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

21-1725.01. New credit union; branch credit union; application; procedure; hearing.

21-17,115. Credit union organized under laws of Nebraska; rights, powers, privileges, and immunities of federal credit union; exception.

(a) CREDIT UNION ACT

21-1725.01 New credit union; branch credit union; application; procedure; hearing.

(1) Upon receiving an application to establish a new credit union, a public hearing shall be held on each application. Notice of the filing of the application shall be published by the department for three weeks in a legal newspaper published in or of general circulation in the county where the applicant proposes to operate the credit union. The date for hearing the application shall be not less than thirty days after the last publication of notice of hearing and not more than ninety days after filing the application unless the applicant agrees to a later date. Notice of the filing of the application shall be sent by the department to all financial institutions located in the county where the applicant proposes to operate.

(2) When application is made to establish a branch of a credit union, the director shall hold a hearing on the matter if he or she determines, in his or her discretion, that the condition of the applicant credit union warrants a hearing. If the director determines that the condition of the credit union does not warrant a hearing, the director shall publish a notice of the filing of the application in a newspaper of general circulation in the county where the proposed branch would be located. If the director receives any substantive objection to the proposed credit union branch within fifteen days after publication of such notice, he or she shall hold a hearing on the application. Notice of a hearing held pursuant to this subsection shall be published for two consecutive weeks in a newspaper of general circulation in the county where the proposed branch would be located. The date for hearing the application shall be not less than thirty days after the last publication of notice of hearing and not more than ninety days after the filing of the application unless the applicant agrees to a later date.

(3) The director may, in his or her discretion, hold a public hearing on amendments to a credit union's articles of association or bylaws which are brought before the department.

(4) The expense of any publication required by this section shall be paid by the applicant but payment shall not be a condition precedent to approval by the director.

Source: Laws 2002, LB 957, § 17; Laws 2003, LB 217, § 30; Laws 2005, LB 533, § 30; Laws 2010, LB890, § 13; Laws 2016, LB751, § 7. Effective date February 25, 2016.

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, 2016, 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; Laws 2015, LB286, § 3; Laws 2016, LB676, § 3.
Effective date March 10, 2016.

ARTICLE 19

NEBRASKA NONPROFIT CORPORATION ACT

(a) GENERAL PROVISIONS

Section
21-1905. Fees.

(d) NAMES

21-1931. Corporate name.
21-1933. Registered name.

(m) DISSOLUTION

21-19,139. Reinstatement following administrative dissolution.

(n) FOREIGN CORPORATIONS

21-19,151. Foreign corporation; corporate name.
21-19,159. Foreign corporation; revoked certificate; application for reinstatement.

(o) RECORDS AND REPORTS

21-19,172. Biennial report; contents.

(a) GENERAL PROVISIONS

21-1905 Fees.

(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered for filing:

- (1)(i) Articles of incorporation or (ii) documents relating to domestication.....\$10.00
- (2) Application for reserved name.....\$25.00
- (3) Notice of transfer of reserved name.....\$25.00
- (4) Application for registered name.....\$25.00
- (5) Application for renewal of registered name.....\$25.00
- (6) Corporation's statement of change of registered agent or registered office or both.....\$5.00
- (7) Agent's statement of change of registered office for each affected corporation.....\$25.00 (not to exceed a total of \$1,000)
- (8) Agent's statement of resignation.....no fee
- (9) Amendment of articles of incorporation.....\$5.00
- (10) Restatement of articles of incorporation with amendments.....\$5.00
- (11) Articles of merger.....\$5.00
- (12) Articles of dissolution.....\$5.00
- (13) Articles of revocation of dissolution.....\$5.00
- (14) Certificate of administrative dissolution.....no fee
- (15) Application for reinstatement following administrative dissolution.....\$5.00
- (16) Application for reinstatement more than five years after the effective date of an administrative dissolution or administrative revocation.....\$500.00
- (17) Certificate of reinstatement.....no fee
- (18) Certificate of judicial dissolution.....no fee
- (19) Certificate of authority.....\$10.00
- (20) Application for amended certificate of authority.....\$5.00
- (21) Application for certificate of withdrawal.....\$5.00
- (22) Certificate of revocation of authority to transact business.....no fee
- (23) Biennial report.....\$20.00
- (24) Articles of correction.....\$5.00
- (25) Application for certificate of good standing.....\$10.00
- (26) Any other document required or permitted to be filed by the Nebraska Nonprofit Corporation Act.....\$5.00
- (i) Amendments.....\$5.00
- (ii) Mergers.....\$5.00
- (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) \$1.00 per page; and
- (2) \$10.00 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 1996, LB 681, § 5; Laws 2008, LB907, § 1; Laws 2015, LB279, § 9.

(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, 2017.

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, 2017.

(m) DISSOLUTION**21-19,139 Reinstatement following administrative dissolution.**

(a) A corporation administratively dissolved under section 21-19,138 may apply to the Secretary of State for reinstatement within five years after the effective date of its administrative 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 21-1931.

(b) If the Secretary of State determines that the application for reinstatement contains the information required by subsection (a) of this section and that the information is correct, the Secretary of State shall cancel the certificate of dissolution and prepare a certificate of reinstatement reciting that determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation under section 21-1937.

(c) A corporation that has been administratively dissolved under section 21-19,138 for more than five years may apply to the Secretary of State for late reinstatement. The application, along with the fee set forth in section 21-1905, 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;

(3) State that the corporation's name satisfies the requirements of section 21-1931;

(4) State that a legitimate reason exists for reinstatement and what such legitimate reason is; and

(5) State that such reinstatement does not constitute fraud on the public.

(d) If the Secretary of State determines that the application for late reinstatement contains the information required by subsection (c) of this section and that the information is correct, the Secretary of State shall cancel the certificate of dissolution and prepare a certificate of late reinstatement reciting that determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation under section 21-1937.

(e) When reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the corporation shall resume carrying on its activities as if the administrative dissolution had never occurred.

Source: Laws 1996, LB 681, § 139; Laws 2012, LB854, § 4; Laws 2015, LB279, § 10.

(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, 2017.

21-19,159 Foreign corporation; revoked certificate; application for reinstatement.

(a) A foreign corporation the certificate of authority of which has been revoked under section 21-19,158 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 21-19,151.

(b) If the Secretary of State determines that the application for reinstatement contains the information required by subsection (a) of this section and that the information is correct, the Secretary of State shall cancel the certificate of revocation and prepare a certificate of reinstatement reciting that determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the foreign corporation under section 21-19,155.

(c) A foreign corporation, the certificate of authority of which has been revoked under section 21-19,158 for more than five years, may apply to the Secretary of State for late reinstatement. The application, along with the fee set forth in section 21-1905, 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;

(3) State that the foreign corporation's name satisfies the requirements of section 21-19,151;

(4) State that a legitimate reason exists for reinstatement and what such legitimate reason is; and

(5) State that such reinstatement does not constitute fraud on the public.

(d) If the Secretary of State determines that the application for late reinstatement contains the information required by subsection (c) of this section and that the information is correct, the Secretary of State shall cancel the certificate of revocation and prepare a certificate of late reinstatement reciting that determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the foreign corporation under section 21-19,155.

(e) When 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 activities as if the revocation had never occurred.

Source: Laws 1996, LB 681, § 159; Laws 2012, LB854, § 5; Laws 2015, LB279, § 11.

(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.

ARTICLE 20 BUSINESS CORPORATION ACT

(a) GENERAL PROVISIONS

Section

- | | |
|----------|--|
| 21-2001. | Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10. |
| 21-2002. | Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10. |
| 21-2003. | Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10. |

CORPORATIONS AND OTHER COMPANIES

Section

- 21-2004. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2005. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10; Laws 2015, LB279, § 19.
21-2006. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2007. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2008. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2009. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2010. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2011. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2012. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2013. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2014. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2015. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2016. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

(b) INCORPORATION

- 21-2017. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2018. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2019. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2020. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2021. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2022. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2023. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

(c) PURPOSES AND POWERS

- 21-2024. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2025. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2026. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2027. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

(d) NAME

- 21-2028. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2029. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2030. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

(e) OFFICE AND AGENT

- 21-2031. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2032. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2033. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2034. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

(f) SHARES AND DISTRIBUTIONS

- 21-2035. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2036. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2037. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2038. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2039. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2040. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2041. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2042. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2043. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2044. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2045. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2046. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2047. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2048. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2049. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2050. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

(g) SHAREHOLDERS

- 21-2051. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2052. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

CORPORATIONS AND OTHER COMPANIES

Section

- 21-20,112. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,113. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,114. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,115. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

(i) AMENDMENT OF ARTICLES OF INCORPORATION AND BYLAWS

- 21-20,116. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,117. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,118. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,119. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,120. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,121. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,122. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,123. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,124. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,125. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,126. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,127. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

(j) MERGER AND SHARE EXCHANGE

- 21-20,128. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,129. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,130. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,131. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,132. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,133. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,134. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

(k) SALE OF ASSETS

- 21-20,135. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,135.01. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,136. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

(l) DISSENTERS' RIGHTS

- 21-20,137. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,138. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,139. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,140. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,141. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,142. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,143. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,144. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,145. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,146. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,147. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,148. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,149. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,150. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

(m) DISSOLUTION

- 21-20,151. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,152. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,153. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,154. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,155. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,156. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,157. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,158. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,159. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,160. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10; Laws
2015, LB279, § 19.
21-20,161. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

Section

- 21-20,162. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
 21-20,163. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
 21-20,164. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
 21-20,165. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
 21-20,166. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
 21-20,167. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- (n) FOREIGN CORPORATIONS
- 21-20,168. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
 21-20,169. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
 21-20,170. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
 21-20,171. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
 21-20,172. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
 21-20,173. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
 21-20,174. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
 21-20,175. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
 21-20,176. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
 21-20,177. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10; Laws 2015, LB294, § 25.
 21-20,178. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
 21-20,179. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
 21-20,180. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
 21-20,180.01. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10; Laws 2015, LB279, § 19.
 21-20,181. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
 21-20,181.01. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
 21-20,181.02. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
 21-20,181.03. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

(o) RECORDS AND REPORTS

- 21-20,182. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
 21-20,183. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
 21-20,184. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
 21-20,185. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
 21-20,186. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
 21-20,187. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
 21-20,188. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

(p) PUBLICATION

- 21-20,189. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

(q) TRANSITION PROVISIONS

- 21-20,190. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
 21-20,191. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
 21-20,192. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
 21-20,193. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

(r) CONVERSION

- 21-20,194. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
 21-20,195. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
 21-20,196. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
 21-20,197. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

(a) GENERAL PROVISIONS

21-2001 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
 Operative date January 1, 2017.

21-2002 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
 Operative date January 1, 2017.

21-2003 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
 Operative date January 1, 2017.

21-2004 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-2005 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10; Laws 2015, LB279, § 19.

Operative date January 1, 2017.

21-2006 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-2007 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-2008 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-2009 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-2010 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-2011 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-2012 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-2013 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-2014 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-2015 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-2016 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

(b) INCORPORATION

21-2017 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-2018 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-2019 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-2020 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-2021 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-2022 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-2023 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

(c) PURPOSES AND POWERS

21-2024 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-2025 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-2026 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-2027 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

(d) NAME

21-2028 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-2029 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-2030 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

(e) OFFICE AND AGENT

21-2031 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-2032 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-2033 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-2034 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

(f) SHARES AND DISTRIBUTIONS

21-2035 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-2036 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-2037 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

- 21-2038 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.**
Operative date January 1, 2017.
- 21-2039 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.**
Operative date January 1, 2017.
- 21-2040 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.**
Operative date January 1, 2017.
- 21-2041 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.**
Operative date January 1, 2017.
- 21-2042 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.**
Operative date January 1, 2017.
- 21-2043 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.**
Operative date January 1, 2017.
- 21-2044 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.**
Operative date January 1, 2017.
- 21-2045 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.**
Operative date January 1, 2017.
- 21-2046 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.**
Operative date January 1, 2017.
- 21-2047 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.**
Operative date January 1, 2017.
- 21-2048 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.**
Operative date January 1, 2017.
- 21-2049 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.**
Operative date January 1, 2017.
- 21-2050 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.**
Operative date January 1, 2017.

(g) SHAREHOLDERS

- 21-2051 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.**
Operative date January 1, 2017.
- 21-2052 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.**
Operative date January 1, 2017.
- 21-2053 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.**
Operative date January 1, 2017.
- 21-2054 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.**
Operative date January 1, 2017.
- 21-2055 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.**
Operative date January 1, 2017.
- 21-2056 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.**
Operative date January 1, 2017.

- 21-2057 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.**
Operative date January 1, 2017.
- 21-2058 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.**
Operative date January 1, 2017.
- 21-2059 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.**
Operative date January 1, 2017.
- 21-2060 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.**
Operative date January 1, 2017.
- 21-2061 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.**
Operative date January 1, 2017.
- 21-2062 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.**
Operative date January 1, 2017.
- 21-2063 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.**
Operative date January 1, 2017.
- 21-2064 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.**
Operative date January 1, 2017.
- 21-2065 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.**
Operative date January 1, 2017.
- 21-2066 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.**
Operative date January 1, 2017.
- 21-2067 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.**
Operative date January 1, 2017.
- 21-2068 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.**
Operative date January 1, 2017.
- 21-2069 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.**
Operative date January 1, 2017.
- 21-2070 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.**
Operative date January 1, 2017.
- 21-2071 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.**
Operative date January 1, 2017.
- 21-2072 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.**
Operative date January 1, 2017.
- 21-2073 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.**
Operative date January 1, 2017.
- 21-2074 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.**
Operative date January 1, 2017.
- 21-2075 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.**
Operative date January 1, 2017.

21-2076 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-2077 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

(h) DIRECTORS AND OFFICERS

21-2078 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-2079 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-2080 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-2081 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-2082 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-2083 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-2084 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-2085 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-2086 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-2087 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-2088 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-2089 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-2090 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-2091 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-2092 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-2093 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

- 21-2094 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.**
Operative date January 1, 2017.
- 21-2095 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.**
Operative date January 1, 2017.
- 21-2096 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.**
Operative date January 1, 2017.
- 21-2097 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.**
Operative date January 1, 2017.
- 21-2098 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.**
Operative date January 1, 2017.
- 21-2099 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.**
Operative date January 1, 2017.
- 21-20,100 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.**
Operative date January 1, 2017.
- 21-20,101 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.**
Operative date January 1, 2017.
- 21-20,102 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.**
Operative date January 1, 2017.
- 21-20,103 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.**
Operative date January 1, 2017.
- 21-20,104 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.**
Operative date January 1, 2017.
- 21-20,105 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.**
Operative date January 1, 2017.
- 21-20,106 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.**
Operative date January 1, 2017.
- 21-20,107 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.**
Operative date January 1, 2017.
- 21-20,108 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.**
Operative date January 1, 2017.
- 21-20,109 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.**
Operative date January 1, 2017.
- 21-20,110 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.**
Operative date January 1, 2017.
- 21-20,111 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.**
Operative date January 1, 2017.
- 21-20,112 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.**
Operative date January 1, 2017.

21-20,113 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-20,114 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-20,115 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

(i) AMENDMENT OF ARTICLES OF INCORPORATION AND BYLAWS

21-20,116 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-20,117 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-20,118 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-20,119 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-20,120 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-20,121 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-20,122 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-20,123 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-20,124 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-20,125 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-20,126 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-20,127 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

(j) MERGER AND SHARE EXCHANGE

21-20,128 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-20,129 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-20,130 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-20,131 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-20,132 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-20,133 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-20,134 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

(k) SALE OF ASSETS

21-20,135 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-20,135.01 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-20,136 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

(l) DISSENTERS' RIGHTS

21-20,137 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-20,138 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-20,139 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-20,140 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-20,141 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-20,142 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-20,143 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-20,144 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-20,145 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-20,146 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-20,147 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-20,148 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-20,149 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-20,150 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

(m) DISSOLUTION

21-20,151 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-20,152 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-20,153 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-20,154 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-20,155 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-20,156 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-20,157 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-20,158 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-20,159 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-20,160 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10;
Laws 2015, LB279, § 19.

Operative date January 1, 2017.

21-20,161 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-20,162 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-20,163 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-20,164 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-20,165 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-20,166 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-20,167 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

(n) FOREIGN CORPORATIONS

21-20,168 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-20,169 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-20,170 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-20,171 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-20,172 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-20,173 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-20,174 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-20,175 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-20,176 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

**21-20,177 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10;
Laws 2015, LB294, § 25.**
Operative date January 1, 2017.

21-20,178 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-20,179 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-20,180 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

**21-20,180.01 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10;
Laws 2015, LB279, § 19.**
Operative date January 1, 2017.

21-20,181 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-20,181.01 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-20,181.02 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-20,181.03 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

(o) RECORDS AND REPORTS

21-20,182 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-20,183 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-20,184 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-20,185 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-20,186 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-20,187 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-20,188 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

(p) PUBLICATION

21-20,189 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

(q) TRANSITION PROVISIONS

21-20,190 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-20,191 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-20,192 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-20,193 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

(r) CONVERSION

21-20,194 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-20,195 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-20,196 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

21-20,197 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
Operative date January 1, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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, 2017.

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 registration 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, 2017.

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, 2017.

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, 2017.

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, 2017.

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.

Section

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.

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.

Section

PART 11—DISSOLUTION

21-2995. Reinstatement following administrative dissolution.

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.

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, 2017.

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, 2017.

Cross References

Nebraska Model Business Corporation Act, see section 21-201.

PART 11—DISSOLUTION

21-2995 Reinstatement following administrative dissolution.

(1) A limited cooperative association that has been administratively dissolved may apply to the Secretary of State for reinstatement within five years after the effective date of its administrative dissolution. The application shall be delivered to the Secretary of State for filing and state:

(a) The name of the limited cooperative association and the effective date of its administrative dissolution;

(b) That the grounds for dissolution either did not exist or have been eliminated; and

(c) That the limited cooperative association's name satisfies the requirements of sections 21-2906 to 21-2908.

(2) If the Secretary of State determines that (a) the application for reinstatement contains the information required by subsection (1) of this section and that the information is correct and (b) the limited cooperative association has paid to the Secretary of State all delinquent occupation taxes and has forwarded to the Secretary of State a properly executed and signed biennial report for the current year, the Secretary of State shall:

(a) Prepare a declaration of reinstatement that states this determination;

(b) Sign and file the original of the declaration of reinstatement; and

(c) Serve the limited cooperative association with a copy.

(3) A limited cooperative association that has been administratively dissolved for more than five years may apply to the Secretary of State for late reinstatement.

ment. The application shall be delivered to the Secretary of State for filing, along with the fee set forth in section 21-2924, and state:

(a) The name of the limited cooperative association and the effective date of its administrative dissolution;

(b) That the grounds for dissolution either did not exist or have been eliminated;

(c) That the limited cooperative association's name satisfies the requirements of sections 21-2906 to 21-2908;

(d) That a legitimate reason exists for reinstatement and what such legitimate reason is; and

(e) That such reinstatement does not constitute fraud on the public.

(4) If the Secretary of State determines that (a) the application for late reinstatement contains the information required by subsection (3) of this section and that the information is correct and (b) the limited cooperative association has paid to the Secretary of State all delinquent occupation taxes and has forwarded to the Secretary of State a properly executed and signed biennial report for the current year, the Secretary of State shall:

(a) Prepare a declaration of late reinstatement that states this determination;

(b) Sign and file the original of the declaration of reinstatement; and

(c) Serve the limited cooperative association with a copy.

(5) When reinstatement becomes effective it relates back to and takes effect as of the effective date of the administrative dissolution and the limited cooperative association may resume or continue its activities as if the administrative dissolution had never occurred.

Source: Laws 2007, LB368, § 95; Laws 2012, LB854, § 8; Laws 2015, LB279, § 15.



CHAPTER 23
COUNTY GOVERNMENT AND OFFICERS

Article.

- 1. General Provisions.
 - (a) Corporate Powers. 23-104.03.
 - (b) Powers and Duties of County Board. 23-135.01.
 - (c) Commissioner System. 23-148 to 23-151.
 - (e) County Zoning. 23-172.
 - (j) Ordinances. 23-187.
- 2. Counties under Township Organization.
 - (b) County Boards in Counties under Township Organization. 23-277.
 - (e) Termination of Township Board. 23-2,100.
- 3. Provisions Applicable to Various Projects.
 - (c) Flood Control. 23-316, 23-317.
- 9. Budget.
 - (a) Applicable Only to Counties. 23-914.
- 11. Salaries of County Officers. 23-1118.
- 12. County Attorney. 23-1201.
- 17. Sheriff.
 - (b) Merit System. 23-1723 to 23-1732.
- 19. County Surveyor and Engineer. 23-1901 to 23-1911.
- 23. County Employees Retirement. 23-2301 to 23-2322.
- 25. Civil Service System.
 - (a) Counties of More than 300,000 Inhabitants. 23-2503.
 - (b) Counties of 150,000 to 300,000 Inhabitants. 23-2517 to 23-2530.
- 34. Public Defender. 23-3406, 23-3408.
- 35. Medical and Multiunit Facilities.
 - (a) General Provisions. 23-3502, 23-3526.
 - (c) Hospital Authorities. 23-3582.
- 39. County Guardian ad Litem Division. 23-3901.

ARTICLE 1
GENERAL PROVISIONS

(a) CORPORATE POWERS

Section

- 23-104.03. Power to provide protective services.
 - (b) POWERS AND DUTIES OF COUNTY BOARD
- 23-135.01. Claims; false statements or representations; penalties.
 - (c) COMMISSIONER SYSTEM
- 23-148. Commissioners; number; election; when authorized.
- 23-150. Commissioners; qualifications.
- 23-151. Commissioner system; districts; number; redistricting; duties of county board; commissioners; election.
 - (e) COUNTY ZONING
- 23-172. Standard codes; adoption; copy; area where applicable.
 - (j) ORDINANCES
- 23-187. Subjects regulated; power to enforce.

(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.

(b) POWERS AND DUTIES OF COUNTY BOARD

23-135.01 Claims; false statements or representations; penalties.

Whoever files any claim against any county as provided in section 23-135, knowing the claim to contain any false statement or representation as to a material fact, or whoever obtains or receives any money or any warrant for money from any county knowing that the claim therefor was based on a false statement or representation as to a material fact, if the amount claimed or money obtained or received or if the face value of the warrant for money shall be one thousand five hundred dollars or more, shall be guilty of a Class IV felony. If the amount is five hundred dollars or more but less than one thousand five hundred dollars, the person so offending shall be guilty of a Class II misdemeanor. If the amount is less than five hundred dollars, the person so offending shall be guilty of a Class III misdemeanor.

Source: Laws 1957, c. 59, § 2, p. 277; Laws 1977, LB 40, § 84; Laws 2015, LB605, § 5.

(c) COMMISSIONER SYSTEM

23-148 Commissioners; number; election; when authorized.

The county board of commissioners in all counties having not more than four hundred thousand inhabitants as determined by the most recent federal decennial census shall consist of three persons except as follows:

(1) The registered voters in any county containing not more than four hundred thousand inhabitants as determined by the most recent federal decennial census may vote at any general election as to whether their county board shall consist of three or five commissioners. Upon the completion of the canvass by the county canvassing board, the proposition shall be decided and, if the number of commissioners is increased from three to five commissioners, vacancies shall be deemed to exist and the procedures set forth in sections 32-567 and 32-574 shall be instituted; and

(2) The registered voters of any county under township organization voting to discontinue township organization may also vote as to the number of county commissioners as provided in sections 23-292 to 23-299.

Source: Laws 1879, § 53, p. 369; Laws 1887, c. 29, § 1, p. 359; Laws 1891, c. 21, § 1, p. 225; Laws 1903, c. 30, § 1, p. 277; R.S.1913, § 978; Laws 1917, c. 16, § 1, p. 77; Laws 1919, c. 69, § 1, p. 182; C.S.1922, § 878; C.S.1929, § 26-132; R.S.1943, § 23-148; Laws 1945, c. 42, § 1, p. 202; Laws 1947, c. 62, § 2, p. 197; Laws 1951, c. 48, § 1, p. 165; Laws 1957, c. 60, § 1, p. 278; Laws 1979, LB 331, § 2; Laws 1985, LB 53, § 1; Laws 1991, LB 789, § 4; Laws 1994, LB 76, § 534; Laws 2008, LB269, § 1; Laws 2015, LB575, § 3; Laws 2016, LB742, § 3.
Effective date July 21, 2016.

Cross References

For discontinuance of township organization, see sections 23-292 to 23-299.

23-150 Commissioners; qualifications.

(1) The commissioners shall be registered voters and residents of their respective districts.

(2) Beginning in 1992, any person seeking nomination or election to the county board of commissioners in a county having more than four hundred thousand inhabitants as determined by the most recent federal decennial census shall have resided within the district he or she seeks to represent for at least six months immediately prior to the date on which he or she is required to file as a candidate for such office. No person shall be eligible to be appointed to the county board in such counties unless he or she has resided in the district he or she would represent for at least six months prior to assuming office.

(3) This section shall be complied with within six months after a determination that the population has reached more than four hundred thousand inhabitants as determined by the most recent federal decennial census.

Source: Laws 1879, § 53, p. 369; Laws 1887, c. 29, § 1, p. 359; Laws 1891, c. 21, § 1, p. 227; Laws 1903, c. 30, § 1, p. 278; R.S.1913, § 978; Laws 1917, c. 16, § 1, p. 78; Laws 1919, c. 69, § 1, p. 183; C.S.1922, § 878; C.S.1929, § 26-132; R.S.1943, § 23-150; Laws 1991, LB 789, § 6; Laws 1994, LB 76, § 535; Laws 2016, LB742, § 4.
Effective date July 21, 2016.

23-151 Commissioner system; districts; number; redistricting; duties of county board; commissioners; election.

(1) Each county under commissioner organization having not more than four hundred thousand inhabitants as determined by the most recent federal decennial census shall be divided into (a) three districts numbered respectively, one, two, and three, (b) five districts as provided for in sections 23-148 and 23-149 numbered respectively, one, two, three, four, and five, or (c) seven districts as provided for in sections 23-292 to 23-299 numbered respectively, one, two, three, four, five, six, and seven. Each county having more than four hundred thousand inhabitants as determined by the most recent federal decennial census shall be divided into seven districts numbered respectively, one, two, three, four, five, six, and seven.

(2) Such districts shall consist of two or more voting precincts comprising compact and contiguous territory and embracing a substantially equal division of the population of the county. District boundary lines shall not be subject to alteration more than once every ten years unless the county has a change in population requiring it to be redistricted pursuant to subdivision (3)(a) of this section or unless there is a vote to change from three to five districts as provided for in sections 23-148 and 23-149.

(3)(a) The establishment of district boundary lines pursuant to subsection (1) of this section shall be completed within one year after a county attains a population of more than four hundred thousand inhabitants as determined by the most recent federal decennial census. Beginning in 2001 and every ten years thereafter, the district boundary lines of any county having more than four hundred thousand inhabitants as determined by the most recent federal decennial census shall be redrawn, if necessary to maintain substantially equal district populations, by the date specified in section 32-553.

(b) The establishment of district boundary lines and any alteration thereof under this subsection shall be done by the county board. If the county board fails to do so by the applicable deadline, district boundaries shall be drawn by the election commissioner within six months after the deadline established for the drawing or redrawing of district boundaries by the county board. If the election commissioner fails to meet such deadline, the remedies established in subsection (3) of section 32-555 shall apply.

(4) The district boundary lines shall not be changed at any session of the county board unless all of the commissioners are present at such session.

(5) Commissioners shall be elected as provided in section 32-528. Elections shall be conducted as provided in the Election Act.

Source: Laws 1879, § 54, p. 369; Laws 1887, c. 29, § 2, p. 359; Laws 1891, c. 21, § 1, p. 227; Laws 1903, c. 30, § 1, p. 278; Laws 1913, c. 150, § 1, p. 386; R.S.1913, § 979; Laws 1915, c. 19, § 1, p. 78; Laws 1917, c. 16, § 2, p. 78; Laws 1919, c. 69, § 2, p. 183; C.S.1922, § 879; C.S.1929, § 26-133; Laws 1931, c. 39, § 1, p. 132; C.S.Supp.,1941, § 26-133; R.S.1943, § 23-151; Laws 1947, c. 62, § 3, p. 198; Laws 1963, c. 111, § 1, p. 439; Laws 1969, c. 148, § 1, p. 706; Laws 1973, LB 552, § 2; Laws 1978, LB 632, § 3; Laws 1979, LB 331, § 3; Laws 1990, LB 81, § 1; Laws 1991, LB 789, § 7; Laws 1994, LB 76, § 536; Laws 2008, LB268, § 1; Laws 2008, LB269, § 3; Laws 2016, LB742, § 5.
Effective date July 21, 2016.

Cross References

Election Act, see section 32-101.

(e) COUNTY ZONING

23-172 Standard codes; adoption; copy; area where applicable.

(1) 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 or construction 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 such resolution, it shall have the same force and effect as though it had been written in its entirety in such resolution without further or additional publication.

(2) Not less than one copy of such code or such standard code or portion thereof shall be kept for use and examination by the public in the office of the clerk of such county prior to the adoption thereof and as long as such standard code is in effect in such county.

(3) Any building or construction code implemented under this section shall be adopted and enforced as provided in section 71-6406.

(4) 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.

(5) 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.

(6) 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; Laws 2016, LB704, § 212.

Effective date July 21, 2016.

(j) ORDINANCES

23-187 Subjects regulated; power to enforce.

(1) In addition to the powers granted by section 23-104, a county may, in the manner specified by sections 23-187 to 23-193, regulate the following subjects by ordinance:

(a) Parking of motor vehicles on public roads, highways, and rights-of-way as it pertains to snow removal for and access by emergency vehicles to areas within the county;

(b) Motor vehicles as defined in section 60-339 that are abandoned on public or private property;

(c) Low-speed vehicles as described and operated pursuant to section 60-6,380;

(d) Golf car vehicles as described and operated pursuant to section 60-6,381;

(e) Graffiti on public or private property;

(f) False alarms from electronic security systems that result in requests for emergency response from law enforcement or other emergency responders;

(g) Violation of the public peace and good order of the county by disorderly conduct, lewd or lascivious behavior, or public nudity;

(h) Peddlers, hawkers, or solicitors operating for commercial purposes. If a county adopts an ordinance under this subdivision, the ordinance shall provide for registration of any such peddler, hawker, or solicitor without any fee and allow the operation or conduct of any registered peddler, hawker, or solicitor in all areas of the county where the county has jurisdiction and where a city or village has not otherwise regulated such operation or conduct; and

(i) Operation of vehicles on any highway or restrictions on the weight of vehicles pursuant to section 60-681.

(2) For the enforcement of any ordinance authorized by this section, a county may impose fines, forfeitures, or penalties and provide for the recovery, collection, and enforcement of such fines, forfeitures, or penalties. A county may also authorize such other measures for the enforcement of ordinances as may be necessary and proper. A fine enacted pursuant to this section shall not exceed five hundred dollars for each offense.

Source: Laws 2009, LB532, § 1; Laws 2011, LB289, § 2; Laws 2012, LB1155, § 1; Laws 2015, LB577, § 1; Laws 2016, LB977, § 4. Operative date July 21, 2016.

ARTICLE 2**COUNTIES UNDER TOWNSHIP ORGANIZATION**

(b) COUNTY BOARDS IN COUNTIES UNDER TOWNSHIP ORGANIZATION

Section

23-277. County supervisors; quorum.

(e) TERMINATION OF TOWNSHIP BOARD

23-2,100. Termination of township board; public hearing; notice; resolution; termination date; conduct of business; disposal of property; discontinuance of township organization of county.

(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.

(e) TERMINATION OF TOWNSHIP BOARD

23-2,100 Termination of township board; public hearing; notice; resolution; termination date; conduct of business; disposal of property; discontinuance of township organization of county.

(1) If a township board has become inactive, the county board of supervisors shall hold a public hearing on the issue of termination of the township board. Notice of the hearing shall be published for two consecutive weeks in a newspaper of general circulation in the county. For purposes of this section, a township board has become inactive when two or more board positions are vacant and the county board has been unable to fill such positions in accordance with sections 32-567 and 32-574 for six or more months.

(2) If no appointment to the township board has been made within thirty days after the public hearing because no resident of the township has provided written notice to the county board that he or she will serve on the township board, the county board may adopt a resolution to terminate the township board. The resolution shall state the effective date of the termination.

(3) Between the date of the public hearing and the date of termination of the township board, the business of the township shall be handled according to this subsection. No tax distributions shall be made to the township. Such funds shall be held by the county board in a separate township fund and disbursed only to pay outstanding obligations of the township board. All claims against the township board shall be filed with the county clerk and heard by the county board. Upon allowance of a claim, the county board shall direct the county clerk to draw a warrant upon the township fund. The warrant shall be signed by the chairperson of the county board and countersigned by the county clerk.

(4) Upon termination of a township board, the county board shall settle all unfinished business of the township board and shall dispose of all property under ownership of the township. Any proceeds of such sale shall first be disbursed to pay any outstanding obligations of the township, and remaining funds shall be credited to the road fund of the county board. Any remaining township board members serving as of the date of termination shall deposit with the county clerk all township records, papers, and documents pertaining to the affairs of the township and shall certify to the county clerk the amount of outstanding indebtedness in existence on the date of termination. The county board shall levy a tax upon the taxable property located within the boundaries of the township to pay for construction and maintenance of township roads within the township and any outstanding indebtedness not paid for under this subsection. The county board shall have continuing authority to construct and maintain township roads within the township and to perform the functions

provided in section 23-224 until such time as the township board is reconstituted by general election that results in the filling of all vacancies on the township board.

(5) If more than fifty percent of the township boards in a county have been terminated, the county board shall file with the election commissioner or county clerk a resolution supporting the discontinuance of the township organization of the county pursuant to subsection (2) of section 23-293.

Source: Laws 2010, LB768, § 1; Laws 2012, LB936, § 1; Laws 2015, LB65, § 1; Laws 2015, LB575, § 4.

ARTICLE 3

PROVISIONS APPLICABLE TO VARIOUS PROJECTS

(c) FLOOD CONTROL

Section

23-316. Levees; dikes; construction; special assessments.

23-317. Levees; dikes; special assessments; entry on tax list; lien.

(c) FLOOD CONTROL

23-316 Levees; dikes; construction; special assessments.

As soon as the contract or contracts are let for the construction of the work as provided in section 23-315, the supervisors or board of county commissioners shall levy a special assessment on all the lands specially benefited in accordance with the benefits received as confirmed and adjudged in a sum as may be necessary to pay for the work and all costs and expenses accrued or to accrue, not exceeding the whole benefit upon any one tract.

Source: Laws 1921, c. 269, § 8, p. 896; C.S.1922, § 1033; C.S.1929, § 26-727; R.S.1943, § 23-316; Laws 2015, LB361, § 47.

23-317 Levees; dikes; special assessments; entry on tax list; lien.

The board of supervisors or county commissioners shall cause the special assessment made upon the lands benefited as provided in section 23-316 to be entered upon the tax lists of the county as provided in cases of special assessments, which assessment shall constitute a lien on the real estate respectively assessed and shall be collected as other special assessments are collected. One-tenth of each assessment shall be collected each year for a period of ten years with interest at the rate of seven percent per annum on deferred payments, unless paid in full as herein provided.

Source: Laws 1921, c. 269, § 9, p. 896; C.S.1922, § 1034; C.S.1929, § 26-728; R.S.1943, § 23-317; Laws 2015, LB361, § 48.

ARTICLE 9

BUDGET

(a) APPLICABLE ONLY TO COUNTIES

Section

23-914. Unexpended balances; expenditure; limitation; county board powers.

(a) APPLICABLE ONLY TO COUNTIES

23-914 Unexpended balances; expenditure; limitation; county board powers.

(1) On and after July 1, and until the adoption of the budget by the county board in September, the county board may expend any balance of cash on hand in any fund for the current expenses of the county payable from such fund. Except as provided in subsection (2) of this section, such expenditures shall not exceed an amount equivalent to the total amount expended under the last budget for such fund in the equivalent period of the prior budget year. Such expenditures shall be charged against the appropriation for such fund as provided in the budget when adopted.

(2) The restriction on expenditures in subsection (1) of this section may be exceeded upon the express finding of the county board that expenditures beyond the amount authorized are necessary to enable the county to meet its statutory duties and responsibilities. The finding and approval of the expenditures in excess of the statutory authorization shall be adopted by the county board in open public session of the county board. Expenditures authorized by this subsection shall be charged against appropriations for each individual fund as provided in the budget when adopted, and nothing in this subsection shall be construed to authorize expenditures by the county in excess of that authorized by any other statutory provision.

Source: Laws 1939, c. 24, § 5, p. 130; C.S.Supp.,1941, § 26-2107; R.S. 1943, § 23-914; Laws 1945, c. 45, § 11, p. 217; Laws 1993, LB 734, § 32; Laws 2016, LB784, § 1.
Effective date April 7, 2016.

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 fifty thousand or more inhabitants but not more than five 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, except that an employee receiving a one hundred fifty percent employer contribution under this subdivision may irrevocably elect to switch to a one hundred percent contribution for all future contributions. The combined contributions of the county or municipal county and its employees to the cost of any such retirement program shall not exceed sixteen 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; Laws 2015, LB41, § 1; Laws 2015, LB126, § 1.

ARTICLE 12
COUNTY ATTORNEY

Section

23-1201. County attorney; duties; services performed at request of Attorney General; additional compensation; reports.

23-1201 County attorney; duties; services performed at request of Attorney General; additional compensation; reports.

(1) Except as provided in subdivision (2) of section 84-205 or if a person is participating in a pretrial diversion program established pursuant to sections 29-3601 to 29-3604 or a juvenile pretrial diversion program established pursuant to sections 43-260.02 to 43-260.07, it shall be the duty of the county attorney, when in possession of sufficient evidence to warrant the belief that a person is guilty and can be convicted of a felony or misdemeanor, to prepare, sign, verify, and file the proper complaint against such person and to appear in the several courts of the county and prosecute the appropriate criminal proceeding on behalf of the state and county. Prior to reaching a plea agreement with defense counsel, the county attorney shall consult with or make a good faith effort to consult with the victim regarding the content of and reasons for such plea agreement. The county attorney shall record such consultation or effort in his or her office file.

(2) It shall be the duty of the county attorney to prosecute or defend, on behalf of the state and county, all suits, applications, or motions, civil or criminal, arising under the laws of the state in which the state or the county is a party or interested. The county attorney may be directed by the Attorney General to represent the state in any action or matter in which the state is interested or a party. When such services require the performance of duties which are in addition to the ordinary duties of the county attorney, he or she shall receive such fee for his or her services, in addition to the salary as county attorney, as (a) the court shall order in any action involving court appearance or (b) the Attorney General shall authorize in other matters, with the amount of such additional fee to be paid by the state. It shall also be the duty of the county attorney to appear and prosecute or defend on behalf of the state and county all such suits, applications, or motions which may have been transferred by change of venue from his or her county to any other county in the state. Any counsel who may have been assisting the county attorney in any such suits, applications, or motions in his or her county may be allowed to assist in any other county to which such cause has been removed. The county attorney shall file the annual inventory statement with the county board of county personal property in his or her possession as provided in sections 23-346 to 23-350. It shall be the further duty of the county attorney of each county, within three days from the calling to his or her attention of any violation of the requirements of the law concerning annual inventory statements from county officers, to institute proceedings against such offending officer and in addition thereto to prosecute the appropriate action to remove such county officer from office. When it is the county attorney who is charged with failure to comply with this section, the Attorney General may bring the action. It shall be the duty of the

county attorney to make a report on the tenth day of each quarter to the county board which shall show final disposition of all criminal cases the previous quarter, criminal cases pending on the last day of the previous quarter, and criminal cases appealed during the past quarter. The county board may waive the duty to make such report.

Source: Laws 1885, c. 40, § 2, p. 216; Laws 1899, c. 6, § 1, p. 56; Laws 1905, c. 7, § 1, p. 59; Laws 1911, c. 6, § 1, p. 73; R.S.1913, § 5596; C.S.1922, § 4913; C.S.1929, § 26-901; Laws 1939, c. 28, § 6, p. 146; C.S.Supp.,1941, § 26-901; R.S.1943, § 23-1201; Laws 1957, c. 71, § 1, p. 305; Laws 1959, c. 87, § 1, p. 396; Laws 1959, c. 82, § 2, p. 373; Laws 1961, c. 98, § 1, p. 328; Laws 1979, LB 573, § 1; Laws 1983, LB 78, § 2; Laws 1990, LB 87, § 1; Laws 1997, LB 758, § 1; Laws 2003, LB 43, § 7; Laws 2016, LB807, § 1.

Effective date July 21, 2016.

Cross References

Definition of terms, see section 29-119.

ARTICLE 17

SHERIFF

(b) MERIT SYSTEM

Section

- 23-1723. Sheriff's office merit commission; county having 400,000 or more population; members; number; appointment; term; vacancy.
- 23-1723.01. Sheriff's office merit commission; county having 25,000 to 400,000 population; members; number; appointment; term; vacancy.
- 23-1732. Deputy sheriffs in active employment; examinations; when required.

(b) MERIT SYSTEM

23-1723 Sheriff's office merit commission; county having 400,000 or more population; members; number; appointment; term; vacancy.

The sheriff's office merit commission in counties having a population of four hundred thousand inhabitants or more as determined by the most recent federal decennial census shall consist of five members. One member shall be a duly elected county official, appointed by the county board. One member shall be a deputy sheriff, elected by the deputy sheriffs. Three members shall be selected by the presiding judge of the judicial district encompassing such county and shall be public representatives who are residents of the county. The terms of office of members initially appointed or elected shall expire on January 1 of the first, second, and third years following their appointment or election, as designated by the county board. As the terms of initial members expire, their successors shall be appointed or elected for three-year terms in the same manner as the initial members. The additional public representative provided for in this section shall serve until January 1, 1984, and thereafter his or her successors shall be appointed or elected for three-year terms. Any vacancy shall be filled by appointment or election in the same manner as appointment or election of initial members. The commission shall have the power to declare

vacant the position of any member who no longer meets the qualifications for election or appointment set out in this section.

Source: Laws 1969, c. 140, § 3, p. 643; Laws 1972, LB 1093, § 3; Laws 1974, LB 782, § 6; Laws 1977, LB 304, § 1; Laws 1983, LB 81, § 1; Laws 2003, LB 222, § 2; Laws 2016, LB742, § 6.
Effective date July 21, 2016.

23-1723.01 Sheriff's office merit commission; county having 25,000 to 400,000 population; members; number; appointment; term; vacancy.

(1) In counties having a population of not less than twenty-five thousand inhabitants and less than four hundred thousand inhabitants as determined by the most recent federal decennial census, the sheriff's office merit commission shall consist of three members, except that the membership of the commission may be increased to five members by unanimous vote of the three-member commission.

(2) If the commission consists of three members, one member shall be a duly elected county official, appointed by the county board, one member shall be a deputy sheriff, elected by the deputy sheriffs, and one member shall be selected by the presiding judge of the judicial district encompassing such county and shall be a public representative who is a resident of the county and neither an official nor employee of the county. If the commission consists of five members, one member shall be a duly elected county official, appointed by the board of county commissioners, two members shall be deputy sheriffs, elected by the deputy sheriffs, and two members shall be selected by the presiding judge of the judicial district encompassing such county and shall be public representatives who are residents of the county and neither officials nor employees of the county.

(3) The terms of office of members initially appointed or elected after March 20, 1982, shall expire on January 1 of the years 1983, 1984, and 1985, as designated by the county board. Thereafter, the terms of the members of the commission shall be three years, except that in a county with a five-member commission, (a) the initial term of the additional deputy sheriff member shall be staggered so that his or her term shall coincide with the term of such county's deputy sheriff elected before August 31, 2003, and (b) the initial term of the additional public representative member shall be staggered so that his or her term shall coincide with the term of such county's public representative member appointed before August 31, 2003. As the terms of initial members expire, their successors shall be appointed or elected in the same manner as the initial members. Any vacancy shall be filled by appointment or election in the same manner as appointment or election of initial members. The commission shall have the power to declare vacant the position of any member who no longer meets the qualifications for election or appointment set out in this section.

Source: Laws 1977, LB 304, § 2; Laws 1982, LB 782, § 3; Laws 2003, LB 40, § 1; Laws 2003, LB 222, § 3; Laws 2016, LB742, § 7.
Effective date July 21, 2016.

23-1732 Deputy sheriffs in active employment; examinations; when required.

(1) All deputy sheriffs in active employment on January 1, 1970, in counties of four hundred thousand inhabitants or more as determined by the most recent

federal decennial census and on January 1, 1973, in counties having a population of more than one hundred fifty thousand but less than four hundred thousand inhabitants as determined by the most recent federal decennial census, and who have been such for more than two years immediately prior thereto, shall hold their positions without examinations until discharged, reduced, promoted, or transferred in accordance with sections 23-1721 to 23-1736.

(2) All deputy sheriffs in active employment on January 1, 1975, in counties having a population of more than sixty thousand but not more than one hundred fifty thousand inhabitants, and who have been deputy sheriffs for more than two years immediately prior thereto, or who have been certified by the Nebraska Law Enforcement Training Center and who have received a certificate of completion shall hold their positions without examinations until discharged, reduced, promoted, or transferred in accordance with sections 23-1721 to 23-1736.

(3) All deputy sheriffs in active employment on January 1, 1977, in counties having a population of more than forty thousand but not more than sixty thousand inhabitants, and who have been deputy sheriffs for more than two years immediately prior thereto, or who have been certified by the Nebraska Law Enforcement Training Center and who have received a certificate of completion shall hold their positions without examinations until discharged, reduced, promoted, or transferred in accordance with sections 23-1721 to 23-1736.

(4) All deputy sheriffs in active employment on January 1, 1982, in counties having a population of twenty-five thousand or more but not more than forty thousand inhabitants, and who have been deputy sheriffs for more than two years immediately prior thereto, or who have been certified by the Nebraska Law Enforcement Training Center, and who have received a certificate of completion shall hold their positions without examinations until discharged, reduced, promoted, or transferred in accordance with sections 23-1721 to 23-1736.

(5) All deputy sheriffs who have been so employed for more than six months and less than two years on such date shall be required to take qualifying examinations, and all such deputy sheriffs who have been so employed for less than six months on such date shall be required to take competitive examinations.

Source: Laws 1969, c. 140, § 12, p. 646; Laws 1972, LB 1093, § 4; Laws 1975, LB 315, § 3; Laws 1977, LB 122, § 3; Laws 1982, LB 782, § 4; Laws 2003, LB 222, § 10; Laws 2016, LB742, § 8.
Effective date July 21, 2016.

ARTICLE 19

COUNTY SURVEYOR AND ENGINEER

Section

- 23-1901. County surveyor; county engineer; qualifications; powers and duties.
- 23-1901.01. County surveyor; residency; appointed from another county; when; term.
- 23-1908. Corners; establishment and restoration; rules governing.
- 23-1911. Surveys; records; contents; available to public.

23-1901 County surveyor; county engineer; qualifications; powers and duties.

(1) It shall be the duty of the county surveyor to make or cause to be made all surveys within his or her county that the county surveyor may be called upon to make and record the same.

(2) In all counties having a population of at least fifty thousand inhabitants but less than one hundred fifty thousand inhabitants, the county surveyor shall be ex officio county engineer and shall be either a professional engineer as provided in the Engineers and Architects Regulation Act or a registered land surveyor as provided in the Land Surveyors Regulation Act or both. In such counties, the office of surveyor shall be full time.

In counties having a population of one hundred fifty thousand inhabitants or more, a county engineer shall be a professional engineer as provided in the act and shall be elected as provided in section 32-526.

(3) The county engineer or ex officio county engineer shall:

(a) Prepare all plans, specifications, and detail drawings for the use of the county in advertising and letting all contracts for the building and repair of bridges, culverts, and all public improvements upon the roads;

(b) Make estimates of the cost of all such contemplated public improvements, make estimates of all material required for such public improvements, inspect the material and have the same measured and ascertained, and report to the county board whether the same is in accordance with its requirements;

(c) Superintend the construction of all such public improvements and inspect and require that the same shall be done according to contract;

(d) Make estimates of the cost of all labor and material which shall be necessary for the construction of all bridges and improvements upon public highways, inspect all of the work and materials placed in any such public improvements, and make a report in writing to the county board with a statement in regard to whether the same comply with the plans, specifications, and detail drawings of the county board prepared for such work or improvements and under which the contract was let; and

(e) Have charge and general supervision of work or improvements authorized by the county board, inspect all materials, direct the work, and make a report of each piece of work to the county board.

The county engineer or surveyor shall also have such other and further powers as are necessarily incident to the general powers granted.

(4) The county surveyor shall prepare and file the required annual inventory statement of county personal property in his or her custody or possession as provided in sections 23-346 to 23-350.

(5) In counties having a population of one hundred fifty thousand inhabitants or more, the county engineer shall appoint a full-time county surveyor. The county surveyor shall perform all the duties prescribed in sections 23-1901 to 23-1913 and any other duties assigned to him or her by the county engineer. The county surveyor shall be a registered land surveyor as provided in the Land Surveyors Regulation Act.

Source: Laws 1879, § 127, p. 386; Laws 1905, c. 50, § 1, p. 295; R.S.1913, § 5685; Laws 1921, c. 141, § 1, p. 606; C.S.1922, § 5015; C.S.1929, § 26-1601; Laws 1939, c. 28, § 16, p. 154; C.S.Supp.,1941, § 26-1601; R.S.1943, § 23-1901; Laws 1969, c.

170, § 1, p. 747; Laws 1982, LB 127, § 2; Laws 1986, LB 512, § 1; Laws 1990, LB 821, § 14; Laws 1994, LB 76, § 543; Laws 1997, LB 622, § 58; Laws 2015, LB138, § 1.

Cross References

Engineers and Architects Regulation Act, see section 81-3401.
Land Surveyors Regulation Act, see section 81-8,108.01.

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.

23-1908 Corners; establishment and restoration; rules governing.

The boundaries of the public lands established by the duly appointed government surveyors, when approved by the Surveyor General and accepted by the government, are unchangeable, and the corners established thereon by them shall be held and considered as the true corners which they were intended to represent, and the restoration of lines and corners of such surveys and the division of sections into their legal subdivisions shall be in accordance with the laws of the United States, the circular of instructions of the United States Department of the Interior, Bureau of Land Management, on the restoration of lost and obliterated section corners and quarter corners, and the circular of instructions to the county surveyors by the State Surveyor under authority of the Board of Educational Lands and Funds. The county surveyor is hereby authorized to restore lost and obliterated corners of original surveys and to establish the subdivisional corners of sections in accordance with the provisions of this section and section 23-1907. Any registered land surveyor registered under the Land Surveyors Regulation Act is hereby authorized to establish any corner not monumented in the original government surveys in accordance with the provisions of this section and section 23-1907. Subdivision shall be executed according to the plan indicated by the original field notes and plats of surveys and governed by the original and legally restored corners. The survey of the

subdivisional lines of sections in violation of this section shall be absolutely void.

Source: Laws 1913, c. 43, § 6, p. 143; R.S.1913, § 5692; Laws 1915, c. 102, § 1, p. 245; Laws 1917, c. 109, § 1, p. 280; Laws 1921, c. 161, § 1, p. 654; C.S.1922, § 5022; C.S.1929, § 26-1608; R.S. 1943, § 23-1908; Laws 1969, c. 171, § 1, p. 748; Laws 1982, LB 127, § 5; Laws 2015, LB138, § 2.

Cross References

Land Surveyors Regulation Act, see section 81-8,108.01.

23-1911 Surveys; records; contents; available to public.

The county surveyor shall record all surveys, for permanent purposes, made by him or her, as required by sections 81-8,121 to 81-8,122.02. Such record shall set forth the names of the persons making the application for the survey, for whom the work was done, and a statement showing it to be an official county survey or resurvey. The official records, other plats, and field notes of the county surveyor’s office shall be deemed and considered public records. Any agent or authority of the United States, the State Surveyor or any deputy state surveyor of Nebraska, or any surveyor registered pursuant to the Land Surveyors Regulation Act shall at all times, within reasonable office or business hours, have free access to the surveys, field notes, maps, charts, records, and other papers as provided for in sections 23-1901 to 23-1913. In all counties, where no regular office is maintained in the county courthouse for the county surveyor of that county, the county clerk shall be custodian of the official record of surveys and all other permanent records pertaining to the office of county surveyor.

Source: Laws 1913, c. 43, § 9, p. 144; R.S.1913, § 5695; C.S.1922; § 5025; C.S.1929, § 26-1611; Laws 1941, c. 44, § 1, p. 227; C.S.Supp.,1941, § 26-1611; R.S.1943, § 23-1911; Laws 1982, LB 127, § 7; Laws 2015, LB138, § 3.

Cross References

Land Surveyors Regulation Act, see section 81-8,108.01.

ARTICLE 23

COUNTY EMPLOYEES RETIREMENT

Section

- 23-2301. Terms, defined.
- 23-2305.01. Board; power to adjust contributions and benefits; overpayment of benefits; investigatory powers; subpoenas.
- 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.

- Section
 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.
- 23-2322. Retirement system; retirement benefits; exemption from legal process; exception.

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 fifty 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; Laws 2015, LB41, § 2.

Cross References

Spousal Pension Rights Act, see section 42-1101.

23-2305.01 Board; power to adjust contributions and benefits; overpayment of benefits; investigatory powers; subpoenas.

(1)(a) If the board determines that the retirement system has previously received contributions or distributed benefits which for any reason are not in accordance with the statutory provisions of the County Employees Retirement Act, the board shall refund contributions, require additional contributions, adjust benefits, credit dividend amounts, or require repayment of benefits paid. In the event of an overpayment of a benefit, the board may, in addition to other remedies, offset future benefit payments by the amount of the prior overpayment, together with regular interest or interest credits, whichever is appropriate, thereon. In the event of an underpayment of a benefit, the board shall immediately make payment equal to the deficit amount plus regular interest or interest credits, whichever is appropriate.

(b) The board shall have the power, through the director of the Nebraska Public Employees Retirement Systems or the director's designee, to make a thorough investigation of any overpayment of a benefit, when in the judgment of the retirement system such investigation is necessary, including, but not limited to, circumstances in which benefit payments are made after the death of a member or beneficiary and the retirement system is not made aware of such member's or beneficiary's death. In connection with any such investigation, the board, through the director or the director's designee, shall have the power to compel the attendance of witnesses and the production of books, papers, records, and documents, whether in hardcopy, electronic form, or otherwise, and issue subpoenas for such purposes. Such subpoenas shall be served in the same manner and have the same effect as subpoenas from district courts.

(2) The board shall adopt and promulgate rules and regulations implementing this section, which shall include, but not be limited to, the following: (a) The procedures for refunding contributions, adjusting future contributions or benefit payments, and requiring additional contributions or repayment of benefits; (b) the process for a member, member's beneficiary, employee, or employer to dispute an adjustment of contributions or benefits; and (c) notice provided to all affected persons. All notices shall be sent prior to an adjustment and shall describe the process for disputing an adjustment of contributions or benefits.

Source: Laws 1996, LB 1076, § 5; Laws 2002, LB 687, § 4; Laws 2006, LB 1019, § 2; Laws 2015, LB40, § 4.

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 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; Laws 2015, LB261, § 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.

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.

23-2322 Retirement system; retirement benefits; exemption from legal process; exception.

Annuities or benefits which any person shall be entitled to receive under the County Employees 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.

Source: Laws 1965, c. 94, § 22, p. 409; Laws 1985, LB 347, § 12; Laws 1986, LB 311, § 8; Laws 1989, LB 506, § 1; Laws 1996, LB 1273, § 18; Laws 2012, LB916, § 12; Laws 2015, LB40, § 5.

Cross References

Spousal Pension Rights Act, see section 42-1101.

ARTICLE 25

CIVIL SERVICE SYSTEM

(a) COUNTIES OF MORE THAN 300,000 INHABITANTS

Section

23-2503. Civil Service Commission; formation.

(b) COUNTIES OF 150,000 TO 300,000 INHABITANTS

23-2517. Act, how cited; purpose of act.

23-2518. Terms, defined.

23-2529. Veterans preference; sections applicable.

23-2530. Compliance with act; when.

(a) COUNTIES OF MORE THAN 300,000 INHABITANTS

23-2503 Civil Service Commission; formation.

In any county having a population of three hundred thousand inhabitants or more as determined by the most recent federal decennial census, there shall be

a Civil Service Commission which shall be formed as provided in sections 23-2501 to 23-2516. A county shall comply with this section within six months after a determination that the population has reached three hundred thousand inhabitants or more as determined by the most recent federal decennial census.

Source: Laws 1971, LB 921, § 3; Laws 2016, LB742, § 9.
Effective date July 21, 2016.

(b) COUNTIES OF 150,000 TO 300,000 INHABITANTS

23-2517 Act, how cited; purpose of act.

(1) Sections 23-2517 to 23-2533 shall be known and may be cited as the County Civil Service Act.

(2) The general purpose of the County Civil Service Act is to establish a system of personnel administration that meets the social, economic, and program needs of county offices. This system shall provide means to recruit, select, develop and maintain an effective and responsive work force, and shall include policies and procedures for employee hiring and advancement, training and career development, position classification, salary administration, fringe benefits, discharge and other related activities. All appointments and promotions under the County Civil Service Act shall be made based on merit and fitness.

Source: Laws 1974, LB 995, § 1; Laws 2006, LB 808, § 7; Laws 2016, LB742, § 10.
Effective date July 21, 2016.

23-2518 Terms, defined.

For purposes of the County Civil Service Act:

(1) Appointing authority means elected officials and appointed department directors authorized to make appointments in the county service;

(2) Board of county commissioners means the board of commissioners of any county with a population of one hundred fifty thousand to three hundred thousand inhabitants as determined by the most recent federal decennial census;

(3) Classified service means the positions in the county service to which the act applies;

(4) County personnel officer means the employee designated by the board of county commissioners to administer the act;

(5) Department means a functional unit of the county government headed by an elected official or established by the board of county commissioners;

(6) Deputy means an individual who serves as the first assistant to and at the pleasure of an elected official;

(7) Elected official means an officer elected by the popular vote of the people and known as the county attorney, public defender, county sheriff, county treasurer, clerk of the district court, register of deeds, county clerk, county assessor, and county surveyor;

(8) Internal Revenue Code means the Internal Revenue Code as defined in section 49-801.01;

(9) Political subdivision means a village, city of the second class, city of the first class, city of the primary class, city of the metropolitan class, county,

school district, public power district, or any other unit of local government including entities created pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act. Political subdivision does not include a contractor with the county;

(10) State means the State of Nebraska;

(11) Straight-time rate of pay means the rate of pay in effect on the date of transfer of employees stated in the resolution by the county board requesting the transfer; and

(12) Transferred employee means an employee of the state or a political subdivision transferred to the county pursuant to a request for such transfer made by the county under section 23-2518.01.

Source: Laws 1974, LB 995, § 2; Laws 1999, LB 272, § 11; Laws 2006, LB 808, § 8; Laws 2016, LB742, § 11.
Effective date July 21, 2016.

Cross References

Interlocal Cooperation Act, see section 13-801.

Joint Public Agency Act, see section 13-2501.

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.

23-2530 Compliance with act; when.

A board of county commissioners shall comply with the County Civil Service Act within six months after a determination that the population requirement as provided in subdivision (2) of section 23-2518 has been attained as determined by the most recent federal decennial census.

Source: Laws 2016, LB742, § 12.
Effective date July 21, 2016.

ARTICLE 34 PUBLIC DEFENDER

Section

23-3406. Public defender; contract; terms.

23-3408. Public defender; second attorney authorized; when; fees.

23-3406 Public defender; contract; terms.

(1) The contract negotiated between the county board and the contracting attorney shall specify the categories of cases in which the contracting attorney is to provide services.

(2) The contract negotiated between the county board and the contracting attorney shall be awarded for at least a two-year term. Removal of the contracting attorney short of the agreed term may be for good cause only.

(3) The contract between the county board and the contracting attorney may specify a maximum allowable caseload for each full-time or part-time attorney who handles cases under the contract. Caseloads shall allow each lawyer to

give every client the time and effort necessary to provide effective representation.

(4) The contract between the county board and the contracting attorney shall provide that the contracting attorney be compensated at a minimum rate which reflects the following factors:

(a) The customary compensation in the community for similar services rendered by a privately retained counsel to a paying client or by government or other publicly paid attorneys to a public client;

(b) The time and labor required to be spent by the attorney; and

(c) The degree of professional ability, skill, and experience called for and exercised in the performance of the services.

(5) The contract between the county board and the contracting attorney shall provide that the contracting attorney may decline to represent clients with no reduction in compensation if the contracting attorney is assigned more cases which require an extraordinary amount of time and preparation than the contracting attorney can competently handle.

(6) The contract between the contracting attorney and the county board shall provide that the contracting attorney shall receive at least ten hours of continuing legal education annually in the area of criminal law. The contract between the county board and the contracting attorney shall provide funds for the continuing legal education of the contracting attorney in the area of criminal law.

(7) The contract between the county board and the contracting attorney shall require that the contracting attorney provide legal counsel to all clients in a professional, skilled manner consistent with minimum standards set forth by the American Bar Association and the Canons of Ethics for Attorneys in the State of Nebraska. The contract between the county board and the contracting attorney shall provide that the contracting attorney shall be available to eligible defendants upon their request, or the request of someone acting on their behalf, at any time the Constitution of the United States or the Constitution of Nebraska requires the appointment of counsel.

(8) The contract between the county board and the contracting attorney shall provide for reasonable compensation over and above the normal contract price for cases which require an extraordinary amount of time and preparation.

Source: Laws 1986, LB 885, § 3; R.S.1943, (1989), § 29-1826; Laws 1990, LB 822, § 6; Laws 2015, LB268, § 1.

Note: Section 23-3406 was amended by Laws 2015, LB 268, section 1. According to Article III, section 3, of the Constitution of Nebraska, the provisions of LB 268 have been suspended due to the certification by the Secretary of State of sufficient signatures on referendum petitions to suspend the taking effect of such act until the same has been approved by the electors of the state. The question will be submitted to the voters at the November 2016 general election. The prior version of section 23-3406 is found in the 2012 Reissue of Volume 1B of the Revised Statutes of Nebraska.

23-3408 Public defender; second attorney authorized; when; fees.

In the event that the contracting attorney is appointed to represent an individual charged with a Class IA felony, the contracting attorney shall immediately apply to the district court for appointment of a second attorney to assist in the case. Upon application from the contracting attorney, the district court shall appoint another attorney with substantial felony trial experience to assist the contracting attorney in the case. Application for fees for the attorney appointed by the district court shall be made to the district court judge who

shall allow reasonable fees. Once approved by the court, such fees shall be paid by the county board.

Source: Laws 1986, LB 885, § 5; R.S.1943, (1989), § 29-1828; Laws 1990, LB 822, § 8; Laws 2015, LB268, § 2.

Note: Section 23-3408 was amended by Laws 2015, LB 268, section 2. According to Article III, section 3, of the Constitution of Nebraska, the provisions of LB 268 have been suspended due to the certification by the Secretary of State of sufficient signatures on referendum petitions to suspend the taking effect of such act until the same has been approved by the electors of the state. The question will be submitted to the voters at the November 2016 general election. The prior version of section 23-3408 is found in the 2012 Reissue of Volume 1B of the Revised Statutes of Nebraska.

ARTICLE 35

MEDICAL AND MULTIUNIT FACILITIES

(a) GENERAL PROVISIONS

Section

23-3502. Board of trustees; membership; vacancy; county board serve as board of trustees; terms; removal.

23-3526. Retirement plan; authorized; reports.

(c) HOSPITAL AUTHORITIES

23-3582. Hospital authority; formation; requirements.

(a) GENERAL PROVISIONS

23-3502 Board of trustees; membership; vacancy; county board serve as board of trustees; terms; removal.

(1) When a county with a population of three thousand six hundred inhabitants or more and less than two hundred thousand inhabitants or with a taxable value of the taxable property of twenty-eight million six hundred thousand dollars or more establishes a facility as provided by section 23-3501, the county board of the county shall appoint a board of trustees.

(2) In counties having a population of two hundred thousand inhabitants or more, the county board of the county having a facility, in lieu of appointing a board of trustees of such facility, may elect to serve as the board of trustees of such facility. If the county board makes such election, the county board shall assume all the duties and responsibilities of the board of trustees of the facility, including those set forth in sections 23-3504 and 23-3505. Such election shall be evidenced by the adoption of a resolution by the county board.

(3)(a) The board of trustees appointed pursuant to this section shall consist of three, five, seven, or nine members as fixed by the county board.

(b) When the board is first established:

(i) If the county provides for a three-member board, one member shall be appointed for a term of two years, one for four years, and one for six years from the date such member is appointed. Thereafter, as the members' terms expire, members shall be appointed for terms of six years;

(ii) If the county board provides for a five-member board, one additional member shall be appointed for four years and one for six years. If the board is changed to a five-member board, the three members who are serving as such trustees at the time of a change from a three-member to a five-member board shall each complete his or her respective term of office. The two additional members shall be appointed by the county board, one for a term of four years and one for a term of six years. Thereafter, as the members' terms expire, members shall be appointed for terms of six years;

(iii) If the county board provides for a seven-member board, one additional member shall be appointed for two years and one for four years. If the board is changed to a seven-member board, the three or five members who are serving as such trustees at the time of the change shall each complete his or her respective term of office. The two or four additional members shall be appointed by the county board. If two additional members are appointed, one shall be appointed for four years and one for six years. If four additional members are appointed, one shall be appointed for two years, two for four years, and one for six years. Thereafter, as the members' terms expire, members shall be appointed for terms of six years; and

(iv) If the county board provides for a nine-member board, one additional member shall be appointed for two years and one for six years. If the board is changed to a nine-member board, the three, five, or seven members who are serving as such trustees at the time of the change shall each complete his or her respective term of office. The two, four, or six additional members shall be appointed by the county board. If two additional members are appointed, one shall be appointed for two years and one for six years. If four additional members are appointed, two shall be appointed for two years, one for four years, and one for six years. If six additional members are appointed, two shall be appointed for two years, two for four years, and two for six years. Thereafter, as the members' terms expire, members shall be appointed for terms of six years.

(4)(a) All members of the board of trustees shall be residents of the county.

(b) In any county having a population of more than four hundred thousand inhabitants as determined by the most recent federal decennial census, a minimum of one member of the board of trustees shall reside outside the corporate limits of the city in which such facility or facilities are located. In any county having a population of more than four hundred thousand inhabitants as determined by the most recent federal decennial census, if only one member of the board of trustees resides outside the corporate limits of the city in which the facility is located and the residence of the member is annexed by the city, he or she shall be allowed to complete his or her term of office but shall not be eligible for reappointment.

(c) The trustees shall, within ten days after their appointment, qualify by taking the oath of county officers as provided in section 11-101 and by furnishing a bond, if required by the county board, in an amount to be fixed by the county board.

(d) Any person who has been excluded from participation in a federally funded health care program or is included in a federal exclusionary data base shall be ineligible to serve as a trustee.

(5) The board of trustees shall elect a trustee to serve as chairperson, one as secretary, and one as treasurer. The board shall make such elections at each annual board meeting.

(6)(a) When a member is absent from three consecutive board meetings, either regular or special, without being excused by the remaining members of the board, his or her office shall become vacant and a new member shall be appointed by the county board to fill the vacancy for the unexpired term of such member pursuant to subdivision (6)(b) of this section.

(b) Any member of such board may at any time be removed from office by the county board for any reason. Vacancies shall be filled in substantially the same

manner as the original appointments are made. The person appointed to fill such a vacancy shall hold office for the unexpired term of the member that he or she has replaced.

(7) The county board shall consult with the existing board of trustees regarding the skills and qualifications of any potential appointees to the board pursuant to this section prior to appointing any new trustee.

Source: Laws 1945, c. 44, § 2, p. 208; Laws 1953, c. 53, § 1, p. 185; Laws 1957, c. 64, § 2, p. 284; Laws 1963, c. 113, § 3, p. 443; Laws 1963, c. 114, § 2, p. 447; Laws 1967, c. 121, § 2, p. 386; Laws 1974, LB 293, § 1; Laws 1977, LB 481, § 1; Laws 1979, LB 187, § 103; Laws 1980, LB 685, § 1; Laws 1981, LB 260, § 1; Laws 1982, LB 703, § 1; Laws 1987, LB 134, § 1; Laws 1991, LB 122, § 1; R.S.Supp.,1991, § 23-343.01; Laws 1992, LB 1063, § 21; Laws 1992, Second Spec. Sess., LB 1, § 21; Laws 1999, LB 212, § 1; Laws 2002, LB 1062, § 1; Laws 2012, LB995, § 3; Laws 2016, LB742, § 13.

Effective date July 21, 2016.

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.

Cross References

County Employees Retirement Act, see section 23-2331.

(c) HOSPITAL AUTHORITIES

23-3582 Hospital authority; formation; requirements.

(1) Whenever the formation of a hospital authority is desired, a petition or petitions stating (a) the general location of the hospital to be maintained by such proposed authority, (b) the territory to be included within it, which territory shall be contiguous, (c) the approximate number of persons believed to reside within the boundaries of the proposed authority, and (d) the names of five or more, but not exceeding eleven, proposed trustees, who shall be electors residing within the boundaries of the proposed authority, to serve as a board of trustees until their successors are appointed and qualified, should the authority be formed, together with a prayer that the same be declared to be a hospital authority under the Hospital Authorities Act may be filed in the office of the county clerk of the county in which the proposed authority is situated.

(2)(a) Each hospital authority established in a county having a total population of four hundred thousand or more, as shown by the most recent federal

decennial census, shall encompass an area in which at least forty thousand persons reside, (b) each hospital authority established in a county having a total population of one hundred fifty thousand to four hundred thousand, as shown by the most recent federal decennial census, shall encompass an area in which at least thirty thousand persons reside, (c) each hospital authority established in a county having a total population of twenty thousand to one hundred fifty thousand, as shown by the most recent federal decennial census, shall encompass an area in which at least twenty thousand persons reside, and (d) no hospital authority shall be established in any county having a total population of less than twenty thousand, as shown by the most recent federal decennial census, unless the hospital authority encompasses the entire county which it is to serve. Such petitions shall be signed by at least one hundred electors who appear to reside within the suggested boundaries of the proposed authority.

Source: Laws 1971, LB 54, § 4; R.S.1943, (1987), § 23-343.77; Laws 1993, LB 815, § 2; Laws 2016, LB742, § 14.
Effective date July 21, 2016.

ARTICLE 39

COUNTY GUARDIAN AD LITEM DIVISION

Section

23-3901. Guardian ad litem division; created; division director; assistant guardians ad litem.

23-3901 Guardian ad litem division; created; division director; assistant guardians ad litem.

(1) A county board may create a county guardian ad litem division to carry out section 43-272.01.

(2) The county board shall appoint a division director for the guardian ad litem division. The division director shall be an attorney admitted to practice law in Nebraska with at least five years of Nebraska juvenile court experience as a guardian ad litem for children, including both trial and appellate practice experience, prior to appointment. The division director may appoint assistant guardians ad litem and other employees as are reasonably necessary to permit him or her to effectively and competently fulfill the responsibilities of the division, subject to the approval and consent of the county board. All assistant guardians ad litem shall be attorneys admitted to practice law in Nebraska and shall comply with all requirements of the Supreme Court relating to guardians ad litem.

(3) All assistant guardians ad litem employed by the division shall devote their full time to the work of the division and shall not engage in the private practice of law so long as each assistant guardian ad litem receives the same annual salary as each deputy county attorney of comparable ability and experience receives in such counties.

(4) The director and any assistant guardian ad litem employed by the division shall not solicit or accept any fee for representing a child in a case in which the director or the assistant guardian ad litem is already acting as the child's court-appointed guardian ad litem.

Source: Laws 2016, LB894, § 14.
Effective date July 21, 2016.

INSURANCE

CHAPTER 44

INSURANCE

Article.

1. Powers of Department of Insurance. 44-102.01 to 44-165.
2. Lines of Insurance, Organization of Companies. 44-201 to 44-224.04.
3. General Provisions Relating to Insurance. 44-301 to 44-3,159.
4. Insurance Reserves; Policy Provisions. 44-402 to 44-416.07.
7. General Provisions Covering Life, Sickness, and Accident Insurance. 44-710 to 44-7,106.
10. Fraternal Insurance. 44-1090, 44-1095.
13. Health Carrier External Review Act. 44-1301 to 44-1318.
15. Unfair Practices.
 - (b) Unfair Insurance Claims Settlement Practices Act. 44-1540.
19. Title Insurance.
 - (b) Title Insurers Act. 44-1981.
21. Holding Companies. 44-2120 to 44-2155.
27. Nebraska Life and Health Insurance Guaranty Association Act. 44-2702 to 44-2719.02.
28. Nebraska Hospital-Medical Liability Act. 44-2825.
29. Nebraska Hospital and Physicians Mutual Insurance Association Act. 44-2916.
31. Nebraska Professional Association Mutual Insurance Company Act. 44-3112.
32. Health Maintenance Organizations. 44-32,115, 44-32,177.
33. Legal Service Insurance Corporations. 44-3312.
35. Service Contracts.
 - (b) Motor Vehicles. 44-3521 to 44-3526.
37. Motor Club Services Act. 44-3719.
38. Dental Services. 44-3812.
39. Education.
 - (a) Continuing Education for Insurance Licensees. 44-3903, 44-3904.
 - (b) Prelicensing Education for Insurance Producers. 44-3909, 44-3910.
40. Insurance Producers Licensing Act. 44-4047 to 44-4068.
42. Comprehensive Health Insurance Pool Act. 44-4217 to 44-4225.
44. Risk Retention Act. 44-4404.
48. Insurers Supervision, Rehabilitation, and Liquidation. 44-4803 to 44-4862.
55. Surplus Lines Insurance. 44-5502 to 44-5515.
57. Producer-Controlled Property and Casualty Insurers. 44-5702.
60. Insurers Risk-Based Capital Act. 44-6007.02 to 44-6016.
73. Health Carrier Grievance Procedure Act. 44-7306 to 44-7311.
75. Property and Casualty Insurance Rate and Form Act. 44-7507.
77. Model Act Regarding Use of Credit Information in Personal Insurance. 44-7703.
81. Nebraska Protection in Annuity Transactions Act. 44-8101 to 44-8109.
82. Captive Insurers Act. 44-8216.
84. Mandate Opt-Out and Insurance Coverage Clarification Act. 44-8401 to 44-8404.
85. Portable Electronics Insurance Act. 44-8501 to 44-8509.
86. Insured Homeowners Protection Act. 44-8601 to 44-8604.
87. Nebraska Exchange Transparency Act. 44-8701 to 44-8706.
88. Health Insurance Exchange Navigator Registration Act. 44-8801 to 44-8808.
89. Standard Valuation Act. 44-8901 to 44-8912.
90. Risk Management and Own Risk and Solvency Assessment Act. 44-9001 to 44-9011.
91. Corporate Governance Annual Disclosure Act. 44-9101 to 44-9109.

ARTICLE 1

POWERS OF DEPARTMENT OF INSURANCE

Section

- 44-102.01. Insurance; service contract excluded.
44-113. Department; report; contents.
44-114. Department; fees for services.
44-154. Director; information; disclosure; confidentiality; privilege.
44-165. Financial conglomerate; supervision on consolidated basis; director; powers; duties; application fee; violation; enforcement powers; administrative penalty; unfair trade practice; criminal penalty; appeal; expenses of supervision.

44-102.01 Insurance; service contract excluded.

For purposes of Chapter 44, insurance does not include a service contract. For purposes of this section, service contract means (1) a motor vehicle service contract as defined in section 44-3521 or (2) a contract or agreement, whether designated as a service contract, maintenance agreement, warranty, extended warranty, or similar term, whereby a person undertakes to furnish, arrange for, or, in limited circumstances, reimburse for service, repair, or replacement of any or all of the components, parts, or systems of any covered residential dwelling or consumer product when such service, repair, or replacement is necessitated by wear and tear, failure, malfunction, inoperability, inherent defect, or failure of an inspection to detect the likelihood of failure.

Source: Laws 1990, LB 1136, § 91; Laws 2011, LB535, § 10.

44-113 Department; report; contents.

The Department of Insurance shall transmit to the Governor, ten days prior to the opening of each session of the Legislature, a report of its official transactions, containing in a condensed form the statements made to the department by every insurance company authorized to do business in this state pursuant to Chapter 44, as audited and corrected by it, arranged in tabular form or in abstracts, in classes according to the kind of insurance, which report shall also contain (1) a statement of all insurance companies authorized to do business in this state during the year ending December 31 next preceding, with their names, locations, amounts of capital, dates of incorporation, and of the commencement of business and kinds of insurance in which they are engaged respectively; and (2) a statement of the insurance companies whose business has been closed since making the last report, and the reasons for closing such businesses, with the amount of their assets and liabilities, so far as the amount of their assets and liabilities are known or can be ascertained by the department. The report shall also be transmitted electronically to the Clerk of the Legislature. Each member of the Legislature shall receive a copy of such report by making a request for it to the director. The department may transmit the report by electronic format through the portal established under section 84-1204 after notification of such type of delivery is given to the recipient. The department shall maintain the report in a form capable of accurate duplication on paper.

Source: Laws 1913, c. 154, § 18, p. 405; R.S.1913, § 3154; Laws 1919, c. 190, tit. V, art. III, § 11, p. 583; C.S.1922, § 7755; C.S.1929,

§ 44-211; R.S.1943, § 44-113; Laws 1969, c. 359, § 2, p. 1268; Laws 1979, LB 322, § 14; Laws 2003, LB 216, § 1; Laws 2012, LB719, § 1; Laws 2012, LB782, § 53.

44-114 Department; fees for services.

In addition to any other fees and charges provided by law, the following shall be due and payable to the Department of Insurance: (1) For filing the documents, papers, statements, and information required by law upon the organization of domestic or the entry of foreign or alien insurers, statistical agents, or advisory organizations, three hundred dollars; (2) for filing each amendment of articles of incorporation, twenty dollars; (3) for filing restated articles of incorporation, twenty dollars; (4) for renewing each certificate of authority of insurers, statistical agents, or advisory organizations, one hundred dollars, except domestic assessment associations, which shall pay twenty dollars; (5) for issuance of an amended certificate of authority, one hundred dollars; (6) for filing a certified copy of articles of merger involving a domestic or foreign insurance corporation holding a certificate of authority to transact insurance business in this state, fifty dollars; (7) for filing an annual statement, two hundred dollars; (8) for each certificate of valuation, deposit, or compliance or other certificate for whomsoever issued, five dollars; (9) for filing any report which may be required by the department from any unincorporated mutual association, no fee shall be due; (10) for copying official records or documents, fifty cents per page; and (11) for a preadmission review of documents required to be filed for the admission of a foreign insurer or for the organization and licensing of a domestic insurer other than an assessment association, a nonrefundable fee of one thousand dollars.

Source: Laws 1913, c. 154, § 19, p. 406; R.S.1913, § 3155; Laws 1919, c. 190, tit. V, art. III, § 12, p. 584; C.S.1922, § 7756; C.S.1929, § 44-212; Laws 1935, c. 101, § 1, p. 330; C.S.Supp.,1941, § 44-212; R.S.1943, § 44-114; Laws 1955, c. 168, § 2, p. 478; Laws 1965, c. 250, § 1, p. 708; Laws 1969, c. 359, § 3, p. 1269; Laws 1969, c. 360, § 1, p. 1282; Laws 1977, LB 333, § 1; Laws 1980, LB 481, § 31; Laws 1984, LB 801, § 46; Laws 1989, LB 92, § 10; Laws 1991, LB 233, § 42; Laws 2003, LB 216, § 2; Laws 2012, LB887, § 1.

44-154 Director; information; disclosure; confidentiality; privilege.

(1) Unless otherwise expressly prohibited by Chapter 44, the director may:

(a) Share documents, materials, or other information, including otherwise confidential and privileged documents, materials, or information, with other state, federal, foreign, and international regulatory and law enforcement agencies, the International Association of Insurance Supervisors, the Bank for International Settlements, and the National Association of Insurance Commissioners and its affiliates and subsidiaries if the recipient agrees to maintain the confidential or privileged status of the document, material, or other information;

(b) Receive documents, materials, or other information, including otherwise confidential and privileged documents, materials, or information, from other state, federal, foreign, or international regulatory and law enforcement agencies, the International Association of Insurance Supervisors, the Bank for

International Settlements, and the National Association of Insurance Commissioners and its affiliates and subsidiaries. The director shall maintain as confidential or privileged any document, material, or other information received pursuant to an information-sharing agreement entered into pursuant to this section with notice or the understanding that the document, material, or other information is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information; and

(c) Enter into agreements governing sharing and use of information consistent with this subsection.

(2)(a) All confidential and privileged information obtained by or disclosed to the director by other state, federal, foreign, or international regulatory and law enforcement agencies, the International Association of Insurance Supervisors, the Bank for International Settlements, or the National Association of Insurance Commissioners and its affiliates and subsidiaries pursuant to this section with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or other information shall:

(i) Be confidential and privileged;

(ii) Not be a public record subject to disclosure by the director pursuant to sections 84-712 to 84-712.09;

(iii) Not be subject to subpoena; and

(iv) Not be subject to discovery or admissible in evidence in any private civil action.

(b) Notwithstanding the provisions of subdivision (2)(a) of this section, the director may use the documents, materials, or other information in any regulatory or legal action brought by the director.

(3) The director, and any other person while acting under the authority of the director who has received information from other state, federal, foreign, or international regulatory and law enforcement agencies, the International Association of Insurance Supervisors, the Bank for International Settlements, or the National Association of Insurance Commissioners or its affiliates and subsidiaries pursuant to this section, may not, and shall not be required to, testify in any private civil action concerning such information.

(4) Nothing in this section shall constitute a waiver of any applicable privilege or claim of confidentiality in the documents, materials, or other information received from state, federal, foreign, or international regulatory and law enforcement agencies, the International Association of Insurance Supervisors, the Bank for International Settlements, or the National Association of Insurance Commissioners or its affiliates and subsidiaries pursuant to this section as a result of disclosure to the director or as a result of information sharing authorized by this section.

Source: Laws 2001, LB 52, § 26; Laws 2012, LB887, § 2.

44-165 Financial conglomerate; supervision on consolidated basis; director; powers; duties; application fee; violation; enforcement powers; administrative penalty; unfair trade practice; criminal penalty; appeal; expenses of supervision.

(1)(a) A financial conglomerate may submit to the jurisdiction of the Director of Insurance for supervision on a consolidated basis under this section. Super-

vision under this section shall be in addition to all statutory and regulatory requirements imposed on domestic insurers and shall be for the purpose of determining how the operations of the financial conglomerate impact insurance operations.

(b) For purposes of this section:

(i) Control has the same meaning as in section 44-2121; and

(ii) Financial conglomerate means either an insurance company domiciled in Nebraska or a person established under the laws of the United States, any state, or the District of Columbia which directly or indirectly controls an insurance company domiciled in Nebraska. Financial conglomerate includes the person applying for supervision under this section and all entities, whether insurance companies or otherwise, to the extent the entities are controlled by such person.

(2) The director may approve any application for supervision under this section that meets the requirements of this section and the rules and regulations adopted and promulgated under this section.

(3)(a) The director may adopt and promulgate rules and regulations for supervision of a financial conglomerate, including all persons controlled by a financial conglomerate, that will permit the director to assess at the level of the financial conglomerate the financial situation of the financial conglomerate, including solvency, risk concentration, and intra-group transactions.

(b) Such rules and regulations shall require the financial conglomerate to:

(i) Have in place sufficient capital adequacy policies at the level of the financial conglomerate;

(ii) Report to the director at least annually any significant risk concentration at the level of the financial conglomerate;

(iii) Report to the director at least annually all significant intra-group transactions of regulated entities within a financial conglomerate. Such reporting shall be in addition to all reports required under any other provision of Chapter 44; and

(iv) Have in place at the level of the financial conglomerate adequate risk management processes and internal control mechanisms, including sound administrative and accounting procedures.

(c) In adopting and promulgating the rules and regulations, the director:

(i) Shall consider the rules and regulations that may be adopted by a member state of the European Union, the European Union, or any other country for the supervision of financial conglomerates;

(ii) Shall require the filing of such information as the director may determine;

(iii) Shall include standards and processes for effective qualitative group assessment, quantitative group assessment including capital adequacy, affiliate transaction, and risk concentration assessment, risks and internal capital assessments, disclosure requirements, and investigation and enforcement powers;

(iv) Shall state that supervision of financial conglomerates concerns how the operations of the financial conglomerate impact the insurance operations;

(v) Shall adopt an application fee in an amount not to exceed the amount necessary to recover the cost of review and analysis of the application; and

(vi) May verify information received under this section.

(4)(a) If it appears to the director that a financial conglomerate that submits to the jurisdiction of the director under this section, or any director, officer, employee, or agent thereof, willfully violates this section or the rules and regulations adopted and promulgated under this section, the director may order the financial conglomerate to cease and desist immediately any such activity. After notice and hearing, the director may order the financial conglomerate to void any contracts between the financial conglomerate and any of its affiliates or among affiliates of the financial conglomerate and restore the status quo if such action is in the best interest of policyholders, creditors, or the public.

(b) If it appears to the director that any financial conglomerate that submits to the jurisdiction of the director under this section, or any director, officer, employee, or agent thereof, has committed or is about to commit a violation of this section or the rules and regulations adopted and promulgated under this section, the director may apply to the district court of Lancaster County for an order enjoining such financial conglomerate, director, officer, employee, or agent from violating or continuing to violate this section or the rules and regulations adopted and promulgated under this section and for such other equitable relief as the nature of the case and the interest of the financial conglomerate's policyholders, creditors, or the public may require.

(c)(i) Any financial conglomerate that fails, without just cause, to provide information which may be required under the rules and regulations adopted and promulgated under this section may be required by the director, after notice and hearing, to pay an administrative penalty of one hundred dollars for each day's delay not to exceed an aggregate penalty of ten thousand dollars. The director may reduce the penalty if the financial conglomerate demonstrates to the director that the imposition of the penalty would constitute a financial hardship to the financial conglomerate.

(ii) Any financial conglomerate that fails to notify the director of any action for which such notification may be required under the rules and regulations adopted and promulgated under this section may be required by the director, after notice and hearing, to pay an administrative penalty of not more than two thousand five hundred dollars per violation.

(iii) Any violation of this section or the rules and regulations adopted and promulgated under this section shall be an unfair trade practice under the Unfair Insurance Trade Practices Act in addition to any other remedies and penalties available under the laws of this state.

(d) Any director or officer of a financial conglomerate that submits to the jurisdiction of the director under this section who knowingly violates or assents to any officer or agent of the financial conglomerate to violate this section or the rules and regulations adopted and promulgated under this section may be required by the director, after notice and hearing, to pay in his or her individual capacity an administrative penalty of not more than five thousand dollars per violation. In determining the amount of the penalty, the director shall take into account the appropriateness of the penalty with respect to the gravity of the violation, the history of previous violations, and such other matters as justice may require.

(e) After notice and hearing, the director may terminate the supervision of any financial conglomerate under this section if it ceases to qualify as a financial conglomerate under this section or the rules and regulations adopted and promulgated under this section.

(f) If it appears to the director that any person has committed a violation of this section or the rules and regulations adopted and promulgated under this section which so impairs the financial condition of a domestic insurer that submits to the jurisdiction of the director under this section as to threaten insolvency or make the further transaction of business by such financial conglomerate hazardous to its policyholders or the public, the director may proceed as provided in the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act to take possession of the property of such domestic insurer and to conduct the business thereof.

(g) If it appears to the director that any person that submits to the jurisdiction of the director under this section has committed a violation of this section or the rules and regulations adopted and promulgated under this section which makes the continued operation of an insurer contrary to the interests of policyholders or the public, the director may, after giving notice and an opportunity to be heard, suspend, revoke, or refuse to renew such insurer's license or authority to do business in this state for such period as the director finds is required for the protection of policyholders or the public. Any such determination shall be accompanied by specific findings of fact and conclusions of law.

(h)(i) Any financial conglomerate that submits to the jurisdiction of the director under this section that willfully violates this section or the rules and regulations adopted and promulgated under this section shall be guilty of a Class IV felony.

(ii) Any director, officer, employee, or agent of a financial conglomerate that submits to the jurisdiction of the director under this section who willfully violates this section or the rules and regulations adopted and promulgated under this section or who willfully and knowingly subscribes to or makes or causes to be made any false statements, false reports, or false filings with the intent to deceive the director in the performance of his or her duties under this section or the rules and regulations adopted and promulgated under this section shall be guilty of a Class IV felony.

(iii) Any person aggrieved by any act, determination, order, or other action of the director pursuant to this section or the rules and regulations adopted and promulgated under this section may appeal. The appeal shall be in accordance with the Administrative Procedure Act.

(iv) Any person aggrieved by any failure of the director to act or make a determination required by this section or the rules and regulations adopted and promulgated under this section may petition the district court of Lancaster County for a writ in the nature of a mandamus or a peremptory mandamus directing the director to act or make such determination forthwith.

(i) The powers, remedies, procedures, and penalties governing financial conglomerates under this section shall be in addition to any other provisions provided by law.

(5)(a) The director may contract with such qualified persons as the director deems necessary to allow the director to perform any duties and responsibilities under this section.

(b) The reasonable expenses of supervision of a financial conglomerate under this section shall be fixed and determined by the director who shall collect the same from the supervised financial conglomerate. The financial conglomerate shall reimburse the amount upon presentation of a statement by the director.

All money collected by the director for supervision of financial conglomerates pursuant to this section shall be remitted in accordance with section 44-116.

(c) All information, documents, and copies thereof obtained by or disclosed to the director pursuant to this section shall be held by the director in accordance with sections 44-154 and 44-2138.

Source: Laws 2008, LB855, § 50; Laws 2014, LB700, § 14.

Cross References

Administrative Procedure Act, see section 84-920.

Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act, see section 44-4862.

Unfair Insurance Trade Practices Act, see section 44-1521.

ARTICLE 2

LINES OF INSURANCE, ORGANIZATION OF COMPANIES

Section

- 44-201. Insurance; lines; enumerated.
- 44-205.01. Articles of incorporation; contents.
- 44-206. Insurance companies; formation; notice; publication.
- 44-208.02. Insurance companies; organization; subscriptions to stock; permit.
- 44-211. Incorporators; manage business until first meeting of shareholders; board of directors; election; number; qualifications; powers.
- 44-224.01. Reinsurance, merger, consolidation; terms, defined.
- 44-224.04. Domestic stock company merger; contract; approval.

44-201 Insurance; lines; enumerated.

An insurance corporation may be formed for the following purposes or may insure the following lines:

(1) **LIFE INSURANCE.** Insurance upon lives of persons, including endowments and annuities, and every insurance pertaining thereto and disability benefits, except that life insurance shall not include variable life insurance specified in subdivision (2) of this section and variable annuities specified in subdivision (3) of this section;

(2) **VARIABLE LIFE INSURANCE.** Insurance on the lives of individuals, the amount or duration of which varies according to the investment experience of any separate account or accounts established and maintained by the insurer as to such insurance;

(3) **VARIABLE ANNUITIES.** Insurance policies issued on an individual or group basis by which an insurer promises to pay a variable sum of money either in a lump sum or periodically for life or for some other specified period;

(4) **SICKNESS AND ACCIDENT INSURANCE.** Insurance against loss or expense resulting from the sickness of the insured, from bodily injury or death of the insured by accident, or both, and every insurance pertaining thereto;

(5) **PROPERTY INSURANCE.** Insurance against loss or damage, including consequential loss or damage, to real or personal property of every kind and any interest in such property from any and all hazards or causes, except that property insurance shall not include title insurance specified in subdivision (15) of this section and marine insurance specified in subdivision (18) of this section;

(6) **CREDIT PROPERTY INSURANCE.** Insurance against loss or damage to personal property used as collateral for securing a loan or to personal property

purchased pursuant to a credit transaction, but only insofar as it applies to property sold to or pledged by individual consumers for personal use;

(7) **GLASS INSURANCE.** Insurance against loss or damage to glass, including its lettering, ornamentation, and fittings;

(8) **BURGLARY AND THEFT INSURANCE.** Insurance against loss or damage by burglary, theft, larceny, robbery, forgery, fraud, vandalism, malicious mischief, confiscation or wrongful conversion, disposal, or concealment or from any attempt at any of the foregoing;

(9) **BOILER AND MACHINERY INSURANCE.** Insurance against any liability and loss or damage to life, person, property, or interest resulting from accidents to or explosions of boilers, pipes, pressure containers, machinery, or apparatus;

(10) **LIABILITY INSURANCE.** Insurance against legal liability for the death, injury, or disability of any person, for injury or damage to any person, or for damage to property, and the providing of medical, hospital, surgical, or disability benefits to injured persons and funeral and death benefits to dependents, beneficiaries, or personal representatives of persons killed, irrespective of legal liability of the insured, when issued as an incidental coverage with or supplemental to liability insurance, except that liability insurance shall not include workers' compensation and employers liability insurance specified in subdivision (11) of this section;

(11) **WORKERS' COMPENSATION AND EMPLOYERS LIABILITY INSURANCE.** Insurance against the legal liability of any employer for the death or disablement of or injury to an employee whether imposed by common law or statute or assumed by contract, except that workers' compensation and employers liability insurance shall not include liability insurance specified in subdivision (10) of this section;

(12) **VEHICLE INSURANCE.** Insurance against any loss or damage to any land vehicle, other than railroad rolling stock, or any draft animal, from any hazard or cause, and against any loss, liability, or expense resulting from or incidental to ownership, maintenance, or use of any such vehicle or animal, together with insurance against accidental injury to or death of any person, irrespective of legal liability of the insured, if such insurance is issued as an incidental part of insurance on the vehicle or draft animal;

(13) **FIDELITY INSURANCE.** Insurance guaranteeing the fidelity of persons holding positions of public or private trust;

(14) **SURETY INSURANCE.** Insurance guaranteeing the performance of contracts other than insurance policies or guaranteeing and executing all bonds, undertakings, and contracts of suretyship, except that surety insurance shall not include title insurance specified in subdivision (15) of this section and financial guaranty insurance specified in subdivision (19) of this section;

(15) **TITLE INSURANCE.** (a) Insurance guaranteeing or indemnifying owners of real property or others interested therein against loss or damage suffered by reason of (i) liens, encumbrances upon, defects in, or the unmarketability of title to such real property, or adverse claim to title in real property with reasonable examination of title guaranteeing, warranting, or otherwise insuring by a title insurer the correctness of searches relating to the title to real property and (ii) defects in the authorization, execution, or delivery of an encumbrance upon such real property, or any share, participation, or other interest in such

encumbrance, guaranteeing, warranting, or otherwise insuring by a title insurer the validity and enforceability of evidences of indebtedness secured by an encumbrance upon or interest in such real property; or

(b) Insurance guaranteeing or indemnifying owners of personal property or secured parties or others interested therein against loss or damage pertaining to adverse claims to title, liens, encumbrances upon, or security interests in personal property or fixtures, including the existence or nonexistence of attachment, perfection, or priority of security interests in personal property or fixtures under the Uniform Commercial Code or other laws, rules, or regulations establishing procedures for the attachment, perfection, or priority of security interests in personal property or fixtures or the accuracy or completeness of the search or filing results obtained from public registries established for determining liens or security interests in personal property or fixtures or the existence or nonexistence of protected purchaser status under the Uniform Commercial Code;

(16) CREDIT INSURANCE. Insurance against loss or damage from the failure of persons indebted to or to become indebted to the insured to meet existing or contemplated liabilities, including agreements to purchase uncollectible debts, except that credit insurance shall not include mortgage guaranty insurance specified in subdivision (17) of this section and financial guaranty insurance specified in subdivision (19) of this section;

(17) MORTGAGE GUARANTY INSURANCE. Insurance against financial loss by lenders by reason of nonpayment of principal, interest, or other sums agreed to be paid under the terms of any note or bond or other evidence of indebtedness secured by a mortgage, deed of trust, or other instrument constituting a lien or charge on real estate;

(18) MARINE INSURANCE. Insurance against loss or damage, including consequential loss or damage, to vessels, craft, aircraft, automobiles, and vehicles of every kind as well as goods, freights, cargoes, merchandise, effects, disbursements, profits, money, bullion, precious stones, securities, choses in action, evidences of debt, valuable papers, bottomry, and respondentia interests, and all kinds of property and interests therein in respect to, pertaining to, or in connection with any or all risks or perils of navigation, transit, or transportation, including war risks, on or under any seas, or waters, on land or in the air, or while being assembled, packed, crated, baled, compressed, or similarly prepared for shipment or while awaiting the same, or during any delays, storage, transshipment, or reshipment incidental thereto; including marine builders' risks and war risks; and against loss or damage to persons or property in connection with or appertaining to marine, inland marine, transit, or transportation insurance, including loss or damage to either, arising out of or in connection with the construction, repair, operation, maintenance, or use of the subject matter of such primary insurance, but not including life insurance or surety bonds; but, except as specified in this subdivision, marine insurance shall not include insurance against loss by reason of bodily injury to the person;

(19) FINANCIAL GUARANTY INSURANCE. (1) Insurance issued in the form of a surety bond, insurance policy, or, when issued by an insurer, an indemnity contract and any guaranty similar to the foregoing types, against financial loss to an insured claimant, obligee, or indemnitee as a result of any of the following events:

(a) Failure of any obligor on any debt instrument or other monetary obligation, including common or preferred stock guaranteed under a surety bond, insurance policy, or indemnity contract, to pay when due principal, interest, premium, dividend, or purchase price of or on such instrument or obligation, when such failure is the result of a financial default or insolvency, regardless of whether such obligation is incurred directly or as guarantor by or on behalf of another obligor that has also defaulted;

(b) Changes in the levels of interest rates, whether short or long term, or the differential in interest rates between various markets or products;

(c) Changes in the rate of exchange of currency;

(d) Inconvertibility of one currency into another for any reason or inability to withdraw funds held in a foreign country resulting from restrictions imposed by a governmental authority;

(e) Changes in the value of specific assets or commodities, financial or commodity indices, or price levels in general; or

(f) Other events which the Director of Insurance determines are substantially similar to any of the events described in subdivisions (a) through (e) of this subdivision.

(2) Financial guaranty insurance shall not include:

(a) Insurance of any loss resulting from any event described in subdivisions (19)(1)(a) through (e) of this section if the loss is payable only upon the occurrence of any of the following, as specified in a surety bond, insurance policy, or indemnity contract:

(i) A fortuitous physical event;

(ii) A failure of or deficiency in the operation of equipment; or

(iii) An inability to extract or recover a natural resource;

(b) Any individual or schedule public official bond;

(c) Any contract bond, including bid, payment, or maintenance bond, or a performance bond when the bond is guarantying the execution of any contract other than a contract of indebtedness or other monetary obligation;

(d) Any court bond required in connection with judicial, probate, bankruptcy, or equity proceedings, including waiver, probate, open estate, and life tenant bond;

(e) Any bond running to the federal, state, county, or municipal government or other political subdivision as a condition precedent to granting of a license to engage in a particular business or of a permit to exercise a particular privilege;

(f) Any loss security bond or utility payment indemnity bond running to a governmental unit, railroad, or charitable organization;

(g) Any lease, purchase, and sale or concessionaire surety bond;

(h) Credit unemployment insurance, meaning insurance on a debtor, in connection with a specific loan or other credit transaction, to provide payments to creditor in the event of unemployment of the debtor for the installments or other periodic payments becoming due while a debtor is unemployed;

(i) Credit insurance, meaning insurance indemnifying manufacturers, merchants, or educational institutions extending credit against loss or damage

resulting from nonpayment of debts owed to them for goods or services provided in the normal course of their business;

(j) Guaranteed investment contracts issued by life insurance companies which provide that the life insurer itself will make specified payments in exchange for specific premiums or contributions;

(k) Funding agreements;

(l) Synthetic guaranteed investment contracts;

(m) Guaranteed interest contracts;

(n) Deposit administration contracts;

(o) Surety insurance as specified in subdivision (14) of this section and mortgage guaranty insurance as specified in subdivision (17) of this section;

(p) Indemnity contracts or similar guaranties to the extent that they are not otherwise limited or proscribed by Chapter 44 in which a life insurer:

(i) Guaranties its obligations or indebtedness or the obligations or indebtedness of a subsidiary of which it owns more than fifty percent, other than a financial guaranty insurance corporation, except that:

(A) To the extent that any such obligations or indebtedness are backed by specific assets, such assets shall at all times be owned by the insurer or the subsidiary; and

(B) In the case of the guaranty of the obligations or indebtedness of the subsidiary that is not backed by specific assets of the life insurer, such guaranty terminates once the subsidiary ceases to be a subsidiary; or

(ii) Guaranties obligations or indebtedness, including the obligation to substitute assets where appropriate, with respect to specific assets acquired by a life insurer in the course of normal investment activities and not for the purpose of resale with credit enhancement, or guaranties obligations or indebtedness acquired by its subsidiary if such assets have been:

(A) Acquired by a special purpose entity, the sole purpose of which is to acquire specific assets of the life insurer or the subsidiary and issue securities or participation certificates backed by such assets; or

(B) Sold to an independent third party; or

(iii) Guaranties obligations or indebtedness of an employee or agent of the life insurer; and

(q) Any other form of insurance covering risks which the director determines to be substantially similar to any of the risks described in subdivisions (a) through (p) of this subdivision; and

(20) MISCELLANEOUS INSURANCE. Insurance upon any risk, including but not limited to legal expense insurance and mechanical breakdown insurance, not included within subdivisions (1) through (19) of this section, and which is a proper subject for insurance, not prohibited by law or contrary to sound public policy, to be determined by the Department of Insurance.

Source: Laws 1913, c. 154, § 78, p. 426; R.S.1913, § 3215; Laws 1917, c. 77, § 1, p. 183; Laws 1919, c. 190, tit. V, art. V, § 1, p. 606; C.S.1922, § 7814; Laws 1925, c. 124, § 1, p. 326; Laws 1927, c. 136, § 1, p. 374; C.S.1929, § 44-401; Laws 1935, c. 96, § 1, p. 319; C.S.Supp.,1941, § 44-401; R.S.1943, § 44-201; Laws 1949, c. 138, § 1, p. 358; Laws 1965, c. 253, § 1, p. 712; Laws 1967, c.

261, § 18, p. 693; Laws 1967, c. 262, § 1, p. 699; Laws 1971, LB 767, § 1; Laws 1973, LB 234, § 1; Laws 1978, LB 767, § 1; Laws 1989, LB 92, § 41; Laws 1991, LB 235, § 2; Laws 2004, LB 1047, § 2; Laws 2015, LB180, § 1.

44-205.01 Articles of incorporation; contents.

(1) The articles of incorporation filed pursuant to section 44-205 shall state (a) the corporate name, which shall not so nearly resemble the name of an existing corporation as, in the opinion of the Director of Insurance, will mislead the public or cause confusion, (b) the place in Nebraska where the registered office and principal office will be located, (c) the purposes, which shall be restricted to the kind or kinds of insurance to be undertaken, such other kinds of business which it shall be empowered to undertake, and the powers necessary and incidental to carrying out such purposes, and (d) such other particulars as are required by the Nebraska Model Business Corporation Act and Chapter 44.

(2) The articles of incorporation may state such other particulars as are permitted by the Nebraska Model Business Corporation Act and Chapter 44, including provisions relating to the management of the business and regulation of the affairs of the corporation and defining, limiting, and regulating the powers of the corporation, its board of directors, and the shareholders of a stock corporation or the members of a mutual or assessment corporation.

Source: Laws 1957, c. 178, § 1, p. 611; Laws 1972, LB 1336, § 2; Laws 1989, LB 92, § 47; Laws 1995, LB 109, § 215; Laws 2014, LB749, § 280.

Operative date January 1, 2017.

Cross References

Nebraska Model Business Corporation Act, see section 21-201.

44-206 Insurance companies; formation; notice; publication.

Within the earlier of thirty days after receiving the certificate of authority to transact business or four months after filing its articles of incorporation, such corporation shall publish a notice in some legal newspaper, which notice shall contain the same information, as far as practicable, as that required under the Nebraska Model Business Corporation Act.

Source: Laws 1913, c. 154, § 81, p. 429; R.S.1913, § 3218; Laws 1919, c. 190, tit. V, art. V, § 4, p. 609; Laws 1921, c. 305, § 1, p. 963; C.S.1922, § 7817; C.S.1929, § 44-404; R.S.1943, § 44-206; Laws 1989, LB 92, § 48; Laws 1995, LB 109, § 216; Laws 2014, LB749, § 281.

Operative date January 1, 2017.

Cross References

Nebraska Model Business Corporation Act, see section 21-201.

44-208.02 Insurance companies; organization; subscriptions to stock; permit.

If the Director of Insurance approves the forms of subscriptions for capital stock or the forms of application for membership or for insurance, the corporate surety on the bond required by section 44-208.01, and, in the case of stock insurers, the application to solicit subscriptions for stock, he or she shall deliver

to the promoter or incorporators a permit in the name of the corporation authorizing it to complete its organization. Upon receiving such permit, the corporation shall have authority to solicit subscriptions and payments for capital stock if a stock insurer and applications and premiums or advance assessments for insurance if other than a stock insurer and to exercise such powers, subject to the limitations imposed by the Nebraska Model Business Corporation Act and Chapter 44, as may be necessary and proper in completing its organization and qualifying for a license to transact the kind or kinds of insurance proposed in its articles of incorporation. No corporation shall issue policies or enter into contracts of insurance until it receives a certificate of authority permitting it to do so.

Source: Laws 1957, c. 178, § 3, p. 613; Laws 1989, LB 92, § 51; Laws 1995, LB 109, § 217; Laws 2014, LB749, § 282.
Operative date January 1, 2017.

Cross References

Nebraska Model Business Corporation Act, see section 21-201.

44-211 Incorporators; manage business until first meeting of shareholders; board of directors; election; number; qualifications; powers.

The business and affairs of an insurance corporation shall be managed by the incorporators until the first meeting of shareholders or members and then and thereafter by a board of directors elected by the shareholders or members and as otherwise provided by law. The board of directors shall consist of not less than five persons, and one of them shall be a resident of the State of Nebraska. At least one-fifth of the directors of an insurance company, which is not subject to section 44-2135, shall be persons who are not officers or employees of such company. A person convicted of a felony may not be a director, and all directors shall be of good moral character and known professional, administrative, or business ability, such business ability to include a practical knowledge of insurance, finance, or investment. No person shall hold the office of director unless he or she is a policyholder, if the company is a mutual company or assessment association. Unless otherwise provided in the articles of incorporation, the board of directors shall make all bylaws. A director shall discharge his or her duties as a director in accordance with section 21-2,102.

Source: Laws 1913, c. 154, § 82, p. 429; R.S.1913, § 3219; Laws 1919, c. 190, tit. V, art. V, § 5, p. 609; C.S.1922, § 7818; C.S.1929, § 44-405; R.S.1943, § 44-211; Laws 1953, c. 145, § 1, p. 469; Laws 1959, c. 195, § 1, p. 702; Laws 1961, c. 212, § 1, p. 630; Laws 1965, c. 255, § 1, p. 722; Laws 1967, c. 263, § 1, p. 706; Laws 1989, LB 92, § 57; Laws 1991, LB 236, § 35; Laws 1999, LB 259, § 2; Laws 2007, LB191, § 2; Laws 2014, LB749, § 283.
Operative date January 1, 2017.

44-224.01 Reinsurance, merger, consolidation; terms, defined.

For purposes of sections 44-224.01 to 44-224.10, unless the context otherwise requires:

(1) Director shall mean the Director of Insurance or his or her authorized representative;

(2) Policyholders shall mean the members of mutual insurance companies, the members of assessment associations, and the subscribers to reciprocal insurance exchanges;

(3) Merger or contract of merger shall mean a merger or consolidation agreement between stock insurance companies as authorized by the Nebraska Model Business Corporation Act;

(4) Consolidation or contract of consolidation shall mean a merger or consolidation agreement between companies operating on other than the stock plan of insurance; and

(5) Bulk reinsurance or contract of bulk reinsurance shall mean an agreement whereby one company cedes by an assumption reinsurance agreement fifty percent or more of its risks and business to another company.

Source: Laws 1957, c. 180, § 1, p. 620; Laws 1969, c. 359, § 10, p. 1271; Laws 1989, LB 92, § 72; Laws 1995, LB 109, § 218; Laws 2014, LB749, § 284.

Operative date January 1, 2017.

Cross References

Nebraska Model Business Corporation Act, see section 21-201.

44-224.04 Domestic stock company merger; contract; approval.

Any domestic stock insurance company may merge with another stock insurer after the contract of merger is approved by the director. The director shall not approve any such contract of merger unless the interests of the policyholders or shareholders of both parties thereto are properly protected. If the director does not approve the contract of merger, he or she shall issue a written order of disapproval setting forth his or her findings. After having obtained the approval of the director, the contract of merger shall be consummated in the manner set forth in the Nebraska Model Business Corporation Act for the merger or consolidation of stock corporations.

Source: Laws 1957, c. 180, § 4, p. 621; Laws 1969, c. 362, § 1, p. 1286; Laws 1976, LB 916, § 1; Laws 1989, LB 92, § 74; Laws 1995, LB 109, § 219; Laws 2014, LB749, § 285.

Operative date January 1, 2017.

Cross References

Nebraska Model Business Corporation Act, see section 21-201.

ARTICLE 3

GENERAL PROVISIONS RELATING TO INSURANCE

Section

- 44-301. Insurance companies; corporation laws apply; exceptions.
- 44-309. Pollutant exclusion; exception for bodily injury.
- 44-310. Individual sickness and accident or medicare supplement policy; death of insured; refund of unearned premium.
- 44-311. Health care sharing ministry; treatment under insurance laws.
- 44-312. Telehealth and telemonitoring services covered under policy, certificate, contract, or plan; insurer; duties.
- 44-313. Insurer; contract for pharmacist professional services; authorized.
- 44-361.01. Rebates; circumventing; presumptions.
- 44-3,143. Life insurance policy proceeds; payment of interest; when.

Section

44-3,159. Health plan; self-funded employee benefit plan; assertion of contractual rights to proceeds; prohibited acts; section; applicability.

44-301 Insurance companies; corporation laws apply; exceptions.

The Nebraska Model Business Corporation Act, except as otherwise provided in Chapter 44, shall apply to all domestic incorporated insurance companies so far as the act is applicable or pertinent to and not in conflict with other provisions of the law relating to such companies. An assessment association that has accumulated and continues to maintain (1) reserves and (2) surplus or contingency funds at least equal to those required of a mutual insurance company shall, unless otherwise provided by law, be deemed to have all the powers and privileges in transacting its business and managing its affairs as those possessed by a mutual insurance company qualified to transact the same line or lines of insurance as the assessment association.

Source: Laws 1913, c. 154, § 30, p. 412; R.S.1913, § 3166; Laws 1919, c. 190, tit. V, art. IV, § 1, p. 590; C.S.1922, § 7766; C.S.1929, § 44-301; R.S.1943, § 44-301; Laws 1955, c. 172, § 1, p. 488; Laws 1989, LB 92, § 92; Laws 1995, LB 109, § 220; Laws 2014, LB749, § 286.

Operative date January 1, 2017.

Cross References

Nebraska Model Business Corporation Act, see section 21-201.

44-309 Pollutant exclusion; exception for bodily injury.

An exclusion in a homeowner's or owner's, landlord's, and tenant's policy of insurance for loss arising out of the discharge, dispersal, release, or escape of pollutants shall include an exception to the exclusion for bodily injury sustained within a building and caused by smoke, fumes, vapor, or soot produced by or originating from a heating system or ventilation system. This section applies to policies issued or delivered in this state on or after January 1, 2015.

Source: Laws 2014, LB876, § 1.

44-310 Individual sickness and accident or medicare supplement policy; death of insured; refund of unearned premium.

In the event of the death of the insured of an individual sickness and accident or medicare supplement policy, the insurer, upon receipt of a request for a pro rata refund by a party legally entitled to claim such a refund, shall refund the unearned premium prorated to the month of the insured's death if the request has been made within one year after the insured's death. The refund of the premium and termination of the coverage shall be without prejudice to any claim originating prior to the date of the insured's death.

Source: Laws 2014, LB735, § 1.

44-311 Health care sharing ministry; treatment under insurance laws.

(1) A health care sharing ministry shall not be considered to be engaging in the business of insurance for purposes of the insurance laws of this state.

(2) For purposes of this section, health care sharing ministry means a faith-based, nonprofit organization that is tax-exempt under the Internal Revenue Code which:

(a) Limits its participants to those who are of a similar faith;

(b) Acts as a facilitator among participants who have financial or medical needs and matches those participants with other participants with the present ability to assist those with financial or medical needs in accordance with criteria established by the health care sharing ministry;

(c) Provides for the financial or medical needs of a participant through contributions from one participant to another;

(d) Provides amounts that participants may contribute with no assumption of risk or promise to pay among the participants and no assumption of risk or promise to pay by the health care sharing ministry to the participants;

(e) Provides a written monthly statement to all participants that lists the total dollar amount of qualified needs submitted to the health care sharing ministry, as well as the amount actually published or assigned to participants for their contribution;

(f) Provides a written disclaimer on or accompanying all applications and guideline materials distributed by or on behalf of the organization that reads, in substance:

IMPORTANT NOTICE. This organization is not an insurance company, and its product should never be considered insurance. If you join this organization instead of purchasing health insurance, you will be considered uninsured. By the terms of this agreement, whether anyone chooses to assist you with your medical bills as a participant of this organization will be totally voluntary, and neither the organization nor any participant can be compelled by law to contribute toward your medical bills. Regardless of whether you receive payment for medical expenses or whether this organization continues to operate, you are always personally responsible for the payment of your own medical bills. This organization is not regulated by the Nebraska Department of Insurance. You should review this organization's guidelines carefully to be sure you understand any limitations that may affect your personal medical and financial needs;

(g) Has participants which retain participation even after they develop a medical condition; and

(h) Conducts an annual audit which is performed by an independent certified public accounting firm in accordance with generally accepted accounting principles and which is made available to the public upon request.

Source: Laws 2014, LB700, § 12.

44-312 Telehealth and telemonitoring services covered under policy, certificate, contract, or plan; insurer; duties.

(1) For purposes of this section:

(a) Telehealth means the use of medical information electronically exchanged from one site to another, whether synchronously or asynchronously, to aid a health care provider in the diagnosis or treatment of a patient. Telehealth includes services originating from a patient's home or any other location where such patient is located, asynchronous services involving the acquisition and

storage of medical information at one site that is then forwarded to or retrieved by a health care provider at another site for medical evaluation, and telemonitoring; and

(b) Telemonitoring means the remote monitoring of a patient's vital signs, biometric data, or subjective data by a monitoring device which transmits such data electronically to a health care provider for analysis and storage.

(2) Any insurer offering (a) any individual or group sickness and accident insurance policy, certificate, or subscriber contract delivered, issued for delivery, or renewed in this state, (b) any hospital, medical, or surgical expense-incurred policy, except for policies that provide coverage for a specified disease or other limited-benefit coverage, or (c) any self-funded employee benefit plan to the extent not preempted by federal law, shall provide upon request to a policyholder, certificate holder, or health care provider a description of the telehealth and telemonitoring services covered under the relevant policy, certificate, contract, or plan.

(3) The description shall include:

(a) A description of services included in telehealth and telemonitoring coverage, including, but not limited to, any coverage for transmission costs;

(b) Exclusions or limitations for telehealth and telemonitoring coverage, including, but not limited to, any limitation on coverage for transmission costs;

(c) Requirements for the licensing status of health care providers providing telehealth and telemonitoring services; and

(d) Requirements for demonstrating compliance with the signed written statement requirement in section 71-8505.

Source: Laws 2015, LB257, § 1.

44-313 Insurer; contract for pharmacist professional services; authorized.

(1) For purposes of this section:

(a) Insurer means any insurer offering any individual or group sickness and accident insurance policy or subscriber contract delivered, issued for delivery, or renewed in this state and any hospital, medical, or surgical expense-incurred policy, except for policies that provide coverage for a specified disease or other limited-benefit coverage, and any self-funded employee benefit plan to the extent not preempted by federal law; and

(b) Pharmacist professional services means professional services provided to patients by licensed pharmacists as allowed by law.

(2) On and after January 1, 2016, an insurer may contract with a licensed pharmacist for pharmacist professional services. Nothing in this section shall prohibit an insurer from contracting with a licensed pharmacist who is not employed or associated with a pharmacy. Nothing in this section shall require a licensed pharmacist to contract with an insurer for pharmacist professional services.

Source: Laws 2015, LB342, § 1.

44-361.01 Rebates; circumventing; presumptions.

(1) A licensed agent whose total commissions and underwriting fees on business written upon the property, life, health, or liability of himself or herself, his or her relatives by consanguinity or affinity, and his or her employer or

employees exceed ten percent of the total commissions or underwriting fees received during any one license year shall be presumed to have obtained a license or renewal thereof primarily to circumvent the enforcement of section 44-361, except that for a licensed agent soliciting crop insurance, the percentage shall be thirty percent for commissions and underwriting fees on crop insurance business.

(2) A licensed agent whose total commissions and underwriting fees on business written upon the property, life, health, or liability of himself or herself, his or her relatives by consanguinity or affinity, and his or her employer or employees exceed thirty percent of the total commissions and underwriting fees received during any one license year shall be conclusively presumed to have obtained a license or renewal thereof primarily to circumvent the enforcement of section 44-361, except that for a licensed agent soliciting crop insurance, the percentage shall be fifty percent for commissions and underwriting fees on crop insurance business.

Source: Laws 1955, c. 175, § 3, p. 503; Laws 2013, LB59, § 1.

44-3,143 Life insurance policy proceeds; payment of interest; when.

(1) Any insurance company authorized to do business in this state shall pay interest on any proceeds due on a life insurance policy if:

(a) The insured was a resident of this state on the date of death;

(b) The date of death was on or after June 6, 1991;

(c) The beneficiary elects in writing to receive the proceeds in a lump-sum payment; and

(d) The proceeds are not paid to the beneficiary within thirty days of receipt of proof of death of the insured by the insurance company.

(2) Interest shall accrue from the date of receipt of proof of death to the date of payment at the rate calculated pursuant to section 45-103 in effect on January 1 of the calendar year in which occurs the date of receipt of proof of death. For purposes of this section, date of payment shall include the date of the postmark stamped on an envelope, properly addressed and postage prepaid, containing the payment.

(3) If an action is commenced to recover the proceeds, this section shall not require the payment of interest for any period of time for which interest is awarded pursuant to sections 45-103 to 45-103.04.

(4) A violation of this section shall be an unfair claims settlement practice subject to the Unfair Insurance Claims Settlement Practices Act.

Source: Laws 1991, LB 419, § 40; Laws 2011, LB72, § 1.

Cross References

Unfair Insurance Claims Settlement Practices Act, see section 44-1536.

44-3,159 Health plan; self-funded employee benefit plan; assertion of contractual rights to proceeds; prohibited acts; section; applicability.

(1) No health plan and no self-funded employee benefit plan to the extent not preempted by federal law shall assert any contractual rights to the proceeds of any resources purchased by or on behalf of the policyholder, subscriber, certificate holder, or enrollee, including medical payments coverage under a motor vehicle insurance policy, uninsured or underinsured motorist coverage,

accident or disability income coverage, specific disease or illness coverage, or hospital indemnity or other fixed indemnity coverage.

(2) This section shall not (a) affect the coordination of benefits between health plans or self-funded employee benefit plans, (b) prevent the coordination of benefits between a health plan or self-funded employee benefit plan and medical payments coverage under a motor vehicle insurance policy if such coordination of benefits applies medical payments coverage to deductible, copayment, and coinsurance amounts after discounts provided through the health plan or self-funded employee benefit plan, or (c) prevent the application of the medical payments coverage under a motor vehicle insurance policy to items not covered by a health plan or self-funded employee benefit plan.

(3) For purposes of this section, health plan means an individual or group sickness and accident insurance policy or subscriber contract delivered, issued for delivery, or renewed in this state except for (a) policies that provide coverage for specified disease or other limited-benefit coverage or hospital indemnity or other fixed indemnity coverage or (b) self-funded employee benefit plans to the extent preempted by federal law.

Source: Laws 2013, LB479, § 1.

ARTICLE 4

INSURANCE RESERVES; POLICY PROVISIONS

Section

- 44-402. Repealed. Laws 2014, LB 755, § 19.
- 44-402.01. Life insurance; reserves; separate accounts; establish; procedure.
- 44-403. Life insurance; standard of valuation; policies issued prior to operative date of law.
- 44-404. Transferred to section 44-8907.
- 44-407.23. Company; when subject to law.
- 44-407.24. Policies issued on or after operative date of law; adjusted premiums; present values; how calculated; filing of election.
- 44-407.26. Policies issued on or after January 1, 1985; cash surrender value; nonforfeiture benefits; determination.
- 44-408. Life insurance companies; ascertainment of condition; assets and liabilities; what considered.
- 44-416.06. Credit for reinsurance; when allowed; suspension or revocation of accreditation or certification; director; powers; notice; hearing; insurer duties.
- 44-416.07. Asset or reduction from liability for reinsurance; limitations; security required.

44-402 Repealed. Laws 2014, LB 755, § 19.

44-402.01 Life insurance; reserves; separate accounts; establish; procedure.

Any domestic life insurance company, including, for the purposes of sections 44-402.01 to 44-402.05, all domestic fraternal benefit societies which operate on a legal reserve basis, may, after adoption of a resolution by its board of directors and upon approval of the Director of Insurance, establish one or more separate accounts and may allocate thereto amounts, including without limitation proceeds applied under optional modes of settlement or under dividend options, to provide for life insurance and benefits incidental thereto, payable in fixed or variable amounts or both, and may, upon approval of the director, guarantee the value of the assets allocated to a separate account.

Source: Laws 1972, LB 771, § 1; Laws 1987, LB 17, § 9; Laws 2005, LB 119, § 6; Laws 2011, LB72, § 2.

44-403 Life insurance; standard of valuation; policies issued prior to operative date of law.

This section shall apply to only those policies and contracts issued prior to the operative date defined in section 44-407.07 (the Standard Nonforfeiture Law for Life Insurance). All such valuations made by the Department of Insurance, or by its authority, shall be according to the standard of valuation adopted by the company, which standard shall be stated in its annual report to the department. Such standard of valuation, whether on the net level premium, preliminary term, any modified preliminary term, or select and ultimate reserve basis, for all such policies issued after July 17, 1913, shall be according to the American Experience or Actuaries' Table of Mortality, with not less than three and not more than four percent compound interest. When the preliminary term basis is used it shall not exceed one year. Insurance against total and permanent mental or physical disability resulting from accident or disease, or against accidental death, combined with a policy of life insurance, shall be valued on the basis of the mean reserve, being one-half of the additional annual premium charged therefor. Except as otherwise provided in subsection (3) of section 44-8907 for all annuities and pure endowments purchased on or after the operative date of such subsection under group annuity and pure endowment contracts, the legal minimum standard for the valuation of annuities shall be McClintock's Table of Mortality Among Annuitants, or the American Experience Table of Mortality, with compound interest at three and one-half percent per annum for individual annuities and five percent per annum for group annuities, but annuities deferred ten or more years, and written in connection with life or term insurance, shall be valued on the same mortality table from which the consideration or premiums were computed, with compound interest not higher than three and one-half percent per annum. The legal standard for the valuation of industrial policies shall be the American Experience Table of Mortality, with compound interest at not less than three nor more than three and one-half percent per annum, except that any life insurance company may voluntarily value its industrial policies written on the weekly payment plan according to the Standard Industrial Mortality Table or the Substandard Industrial Mortality Table. Reserves for all such policies and contracts may be calculated, at the option of the company, according to any standards which produce greater aggregate reserves for all such policies and contracts than the minimum reserves required by this section.

Source: Laws 1913, c. 154, § 94, p. 437; R.S.1913, § 3231; Laws 1919, c. 190, tit. V, art. VI, § 2, p. 618; C.S.1922, § 7830; C.S.1929, § 44-502; Laws 1943, c. 106, § 1(2), p. 355; R.S.1943, § 44-403; Laws 1973, LB 309, § 1; Laws 1979, LB 354, § 1; Laws 2014, LB755, § 13.

44-404 Transferred to section 44-8907.**44-407.23 Company; when subject to law.**

(1) After August 24, 1979, any company may file with the Department of Insurance a written notice of its election to comply with the provisions of sections 44-403, 44-407.08 to 44-407.23, and 44-8907 after a specified date before the second anniversary of August 24, 1979. After the filing of such notice, such specified date shall be the operative date of this act for such company. Annuity contracts thereafter issued by such company shall comply

with such sections. If a company makes no such election, the operative date of this act for such company shall be the second anniversary of August 24, 1979.

(2) After July 16, 2004, a company may elect to apply sections 44-407.08 to 44-407.23 to annuity contracts on a contract-form-by-contract-form basis before the second anniversary of July 16, 2004. In all other instances, sections 44-407.08 to 44-407.23 shall become operative with respect to annuity contracts issued by the company after the second anniversary of July 16, 2004.

(3) The director may adopt and promulgate rules and regulations to carry out sections 44-407.10 to 44-407.23.

Source: Laws 1979, LB 354, § 19; Laws 2004, LB 1047, § 7; Laws 2014, LB755, § 14.

44-407.24 Policies issued on or after operative date of law; adjusted premiums; present values; how calculated; filing of election.

(1) This section shall apply to all policies issued on or after the operative date of this section as defined herein. Except as provided in subsection (7) of this section, the adjusted premiums for any policy shall be calculated on an annual basis and shall be such uniform percentage of the respective premiums specified in the policy for each policy year, excluding amounts payable as extra premiums to cover impairments or special hazards and also excluding any uniform annual contract charge or policy fee specified in the policy in a statement of the method to be used in calculating the cash surrender values and paid-up nonforfeiture benefits, that the present value, at the date of issue of the policy, of all adjusted premiums shall be equal to the sum of (a) the then present value of the future guaranteed benefits provided for by the policy; (b) one percent of either the amount of insurance, if the insurance be uniform in amount, or the average amount of insurance at the beginning of each of the first ten policy years; and (c) one hundred twenty-five percent of the nonforfeiture net level premium as defined in this section. In applying the percentage specified in (c) above no nonforfeiture net level premium shall be deemed to exceed four percent of either the amount of insurance, if the insurance be uniform in amount, or the average amount of insurance at the beginning of each of the first ten policy years. The date of issue of a policy for the purpose of this section shall be the date as of which the rated age of the insured is determined.

(2) The nonforfeiture net level premium shall be equal to the present value, at the date of issue of the policy, of the guaranteed benefits provided for by the policy divided by the present value, at the date of issue of the policy, of an annuity of one percent per annum payable on the date of issue of the policy and on each anniversary of such policy on which a premium falls due.

(3) In the case of policies which cause on a basis guaranteed in the policy unscheduled changes in benefits or premiums, or which provide an option for changes in benefits or premiums other than a change to a new policy, the adjusted premiums and present values shall initially be calculated on the assumption that future benefits and premiums do not change from those stipulated at the date of issue of the policy. At the time of any such change in the benefits or premiums the future adjusted premium, nonforfeiture net level premiums and present values shall be recalculated on the assumption that future benefits and premiums do not change from those stipulated by the policy immediately after the change.

(4) Except as otherwise provided in subsection (7) of this section, the recalculated future adjusted premiums for any such policy shall be such uniform percentage of the respective future premiums specified in the policy for each policy year, excluding amounts payable as extra premiums to cover impairments and special hazards, and also excluding any uniform annual contract charge or policy fee specified in the policy in a statement of the method to be used in calculating the cash surrender values and paid-up nonforfeiture benefits, that the present value, at the time of change to the newly defined benefits or premiums, of all such future adjusted premiums shall be equal to the excess of (a) the sum of (i) the then present value of the then future guaranteed benefits provided for by the policy and (ii) the additional expense allowance, if any, over (b) the then cash surrender value, if any, or present value of any paid-up nonforfeiture benefit under the policy.

(5) The additional expense allowance, at the time of the change to the newly defined benefits or premiums, shall be the sum of (a) one percent of the excess, if positive, of the average amount of insurance at the beginning of each of the first ten policy years subsequent to the change over the average amount of insurance prior to the change at the beginning of each of the first ten policy years subsequent to the time of the most recent previous change, or, if there has been no previous change, the date of issue of the policy; and (b) one hundred twenty-five percent of the increase, if positive, in the nonforfeiture net level premium.

(6) The recalculated nonforfeiture net level premium shall be equal to the result obtained by dividing (a) by (b), where (a) equals the sum of (i) the nonforfeiture net level premium applicable prior to the change times the present value of an annuity of one per annum payable on each anniversary of the policy on or subsequent to the date of the change on which a premium would have fallen due had the change not occurred, and (ii) the present value of the increase in future guaranteed benefits provided for by the policy; and (b) equals the present value of an annuity of one per annum payable on each anniversary of the policy on or subsequent to the date of change on which a premium falls due.

(7) Notwithstanding any other provisions of this section to the contrary, in the case of a policy issued on a substandard basis which provides reduced graded amounts of insurance so that, in each policy year, such policy has the same tabular mortality cost as an otherwise similar policy issued on the standard basis which provides higher uniform amounts of insurance, adjusted premiums and present values for such substandard policy may be calculated as if it were issued to provide such higher uniform amounts of insurance on the standard basis.

(8) All adjusted premiums and present values referred to in sections 44-407 to 44-409 shall for all policies of ordinary insurance be calculated on the basis of (a) the Commissioners 1980 Standard Ordinary Mortality Table or (b) at the election of the company for any one or more specified plans of life insurance, the Commissioners 1980 Standard Ordinary Mortality Table with Ten-Year Select Mortality Factors; shall for all policies of industrial insurance be calculated on the basis of the Commissioners 1961 Standard Industrial Mortality Table; and shall for all policies issued in a particular calendar year be calculated on the basis of a rate of interest not exceeding the nonforfeiture interest rate as defined in this section for policies issued in that calendar year.

At the option of the company, calculations for all policies issued in a particular calendar year may be made on the basis of a rate of interest not exceeding the nonforfeiture interest rate, as defined in this section, for policies issued in the immediately preceding calendar year. Under any paid-up nonforfeiture benefit, including any paid-up dividend additions, any cash surrender value available whether or not required by section 44-407.01, shall be calculated on the basis of the mortality table and rate of interest used in determining the amount of such paid-up nonforfeiture benefit and paid-up dividend additions, if any. A company may calculate the amount of any guaranteed paid-up nonforfeiture benefit including any paid-up additions under the policy on the basis of an interest rate no lower than that specified in the policy for calculating cash surrender values. In calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the Commissioners 1980 Extended Term Insurance Table for policies of ordinary insurance and not more than the Commissioners 1961 Industrial Extended Term Insurance Table for policies of industrial insurance. For insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on appropriate modifications of such tables. For policies issued prior to the operative date of the valuation manual designated in subsection (2) of section 44-8908, any Commissioners Standard ordinary mortality tables, adopted after 1980 by the National Association of Insurance Commissioners, that are approved by regulation promulgated by the Department of Insurance for use in determining the minimum nonforfeiture standard may be substituted for the Commissioners 1980 Standard Ordinary Mortality Table with or without Ten-Year Select Mortality Factors or for the Commissioners 1980 Extended Term Insurance Table. For policies issued on or after the operative date of the valuation manual designated in subsection (2) of section 44-8908, the valuation manual shall provide the Commissioners Standard mortality table for use in determining the minimum nonforfeiture standard that may be substituted for the Commissioners 1980 Standard Ordinary Mortality Table with or without Ten-Year Select Mortality Factors or for the Commissioners 1980 Extended Term Insurance Table. If the Department of Insurance approves by rule and regulation any commissioners standard ordinary mortality table adopted by the National Association of Insurance Commissioners for use in determining the minimum nonforfeiture standard for policies issued on or after the operative date of the valuation manual designated in subsection (2) of section 44-8908, then that minimum nonforfeiture standard supersedes the minimum nonforfeiture standard provided by the valuation manual. For policies issued prior to the operative date of the valuation manual designated in subsection (2) of section 44-8908, any commissioners standard industrial mortality tables, adopted after 1980 by the National Association of Insurance Commissioners, that are approved by regulation promulgated by the Department of Insurance for use in determining the minimum nonforfeiture standard may be substituted for the Commissioners 1961 Standard Industrial Mortality Table or the Commissioners 1961 Industrial Extended Term Insurance Table. For policies issued on or after the operative date of the valuation manual designated in subsection (2) of section 44-8908, the valuation manual shall provide the commissioners standard mortality table for use in determining the minimum nonforfeiture standard that may be substituted for the Commissioners 1961 Standard Industrial Mortality Table or the Commissioners 1961 Industrial Extended Term Insurance Table. If the Department of Insurance

approves by rule and regulation any commissioners standard industrial mortality table adopted by the National Association of Insurance Commissioners for use in determining the minimum nonforfeiture standard for policies issued on or after the operative date of the valuation manual designated in subsection (2) of section 44-8908, then that minimum nonforfeiture standard supersedes the minimum nonforfeiture standard provided by the valuation manual.

(9) For policies issued before the operative date of the valuation manual designated in subsection (2) of section 44-8908, the nonforfeiture interest rate per annum for any policy issued in a particular calendar year shall be equal to one hundred and twenty-five percent of the calendar year statutory valuation interest rate for such policy as defined in section 44-8907, rounded to the nearer one-quarter of one percent, except that the nonforfeiture interest rate shall not be less than four percent. For policies issued on and after the operative date of the valuation manual designated in subsection (2) of section 44-8908, the nonforfeiture interest rate per annum for any policy issued in a particular calendar year shall be provided by the valuation manual.

(10) Notwithstanding any other provision in sections 44-407 to 44-407.06, 44-407.08, 44-407.09, 44-407.24 to 44-407.26, and 44-8907 to the contrary, any refiling of nonforfeiture values or their methods of computation for any previously approved policy form which involves only a change in the interest rate or mortality table used to compute nonforfeiture values shall not require refiling of any other provisions of that policy form.

(11) After the effective date of this section any company may file with the Department of Insurance a written notice of its election to comply with the provisions of this section after a specified date before January 1, 1989, which shall be the operative date of this section for such company. If a company makes no such election, the operative date of this section for such company shall be January 1, 1989, except that the Director of Insurance may advance the operative date of this section for such a company after investigating and finding that (a) it is in the best interests of the policyholders of such company to do so, and (b) a majority of states in which such company is doing business have adopted legislation similar to sections 44-407 to 44-407.06, 44-407.08, 44-407.09, 44-407.24 to 44-407.26, and 44-8907.

Source: Laws 1981, LB 355, § 11; Laws 2014, LB755, § 15.

Cross References

Mortality tables, see Appendix.

44-407.26 Policies issued on or after January 1, 1985; cash surrender value; nonforfeiture benefits; determination.

This section, in addition to all other applicable provisions of sections 44-407 to 44-407.06, 44-407.08, 44-407.09, 44-407.24 to 44-407.26, and 44-8907, shall apply to all policies issued on or after January 1, 1985. Any cash surrender value available under the policy in the event of default in a premium payment due on any policy anniversary shall be in an amount which does not differ by more than two-tenths of one percent of either the amount of insurance, if the insurance be uniform in amount, or the average amount of insurance at the beginning of each of the first ten policy years, from the sum of (a) the greater of zero and the basic cash value specified in this section and (b) the present value of any existing paid-up additions less the amount of any indebtedness to the company under the policy.

The basic cash value shall be equal to the present value, on such anniversary, of the future guaranteed benefits which would have been provided for by the policy, excluding any existing paid-up additions and before deduction of any indebtedness to the company, if there had been no default, less the then present value of the nonforfeiture factors, as hereinafter defined, corresponding to premiums which would have fallen due on and after such anniversary; *Provided, however,* that the effects on the basic cash value of supplemental life insurance or annuity benefits or of family coverage, as described in section 44-407.02 or 44-407.04, whichever is applicable, shall be the same as are the effects specified in section 44-407.02 or 44-407.04, whichever is applicable, on the cash surrender values defined in that section.

The nonforfeiture factor for each policy year shall be an amount equal to a percentage of the adjusted premium for the policy year, as defined in section 44-407.04 or 44-407.24, whichever is applicable. Except as is required by the next succeeding sentence of this paragraph, such percentage (a) must be the same percentage for each policy year between the second policy anniversary and the later of (i) the fifth policy anniversary and (ii) the first policy anniversary at which there is available under the policy a cash surrender value in an amount, before including any paid-up additions and before deducting any indebtedness, of at least two-tenths of one percent of either the amount of insurance, if the insurance be uniform in amount, or the average amount of insurance at the beginning of each of the first ten policy years, and (b) must be such that no percentage after the later of the two policy anniversaries specified in the preceding item (a) may apply to fewer than five consecutive policy years. No basic cash value may be less than the value which would be obtained if the adjusted premiums for the policy, as defined in section 44-407.04 or 44-407.24, whichever is applicable, were substituted for the nonforfeiture factors in the calculation of the basic cash value.

All adjusted premiums and present values referred to in this section shall for a particular policy be calculated on the same mortality and interest bases as are used in demonstrating the policy's compliance with the other sections of this Standard Nonforfeiture Law for Life Insurance. The cash surrender values referred to in this section shall include any endowment benefits provided for by the policy.

Any cash surrender value available other than in the event of default in a premium payment due on a policy anniversary, and the amount of any paid-up nonforfeiture benefit available under the policy in the event of default in a premium payment shall be determined in manners consistent with the manners specified for determining the analogous minimum amounts in sections 44-407.01 to 44-407.03, 44-407.05, and 44-407.24. The amounts of any cash surrender values and of any paid-up nonforfeiture benefits granted in connection with additional benefits such as those listed in section 44-407.05 shall conform with the principles of this section.

Source: Laws 1981, LB 355, § 13; Laws 2014, LB755, § 16.

44-408 Life insurance companies; ascertainment of condition; assets and liabilities; what considered.

In ascertaining the condition of any life insurance company, it shall be allowed as assets only such investments, cash, and accounts as are authorized by the laws of this state or of the state or country in which it is organized at the

date of examination. There shall be charged against it as liabilities in addition to the capital stock, all outstanding indebtedness of the company, and the premium reserve on policies and additions thereto in force, computed according to the tables of mortality and rate of interest prescribed in sections 44-402.01 to 44-407.09.

Source: Laws 1913, c. 154, § 95, p. 439; R.S.1913, § 3232; Laws 1919, c. 190, tit. V, art. VI, § 3, p. 619; C.S.1922, § 7831; C.S.1929, § 44-503; R.S.1943, § 44-408; Laws 1965, c. 262, § 11, p. 742; Laws 2014, LB755, § 17.

44-416.06 Credit for reinsurance; when allowed; suspension or revocation of accreditation or certification; director; powers; notice; hearing; insurer duties.

(1) Credit for reinsurance shall be allowed a domestic ceding insurer as either an asset or a reduction from liability on account of reinsurance ceded only when the reinsurer meets the requirements of subsection (2), (3), (4), (5), (6), or (7) of this section. Except as otherwise provided in section 44-224.11, credit shall be allowed under subsection (2), (3), or (4) of this section only for cessions of those kinds or classes of business which the assuming insurer is licensed or otherwise permitted to write or assume in its state of domicile or, in the case of a United States branch of an alien assuming insurer, in the state through which it is entered and licensed to transact insurance or reinsurance. Credit shall be allowed under subsection (4) or (5) of this section only if the applicable requirements of subsection (8) of this section have been satisfied.

(2) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is licensed to transact insurance in this state.

(3) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is accredited by the Director of Insurance as a reinsurer in this state. In order to be eligible for accreditation, a reinsurer must:

- (a) File with the director evidence of its submission to this state's jurisdiction;
- (b) Submit to this state's authority to examine its books and records;
- (c) Be licensed to transact insurance or reinsurance in at least one state, or in the case of a United States branch of an alien assuming insurer, be entered through and licensed to transact insurance or reinsurance in at least one state;
- (d) File annually with the director a copy of its annual statement filed with the insurance department of its state of domicile and a copy of its most recent audited financial statement; and

(e) Demonstrate to the satisfaction of the director that it has adequate financial capacity to meet its reinsurance obligations and is otherwise qualified to assume reinsurance from domestic insurers. An assuming insurer is deemed to meet this requirement as of the time of its application if it maintains a surplus as regards policyholders in an amount not less than twenty million dollars and its accreditation has not been denied by the director within ninety days after submission of its application.

(4)(a) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is domiciled in, or in the case of a United States branch of an alien assuming insurer is entered through, a state that employs standards regarding credit for reinsurance substantially similar to those applicable under this section and the assuming insurer or United States branch of an alien assuming insurer:

(i) Maintains a surplus as regards policyholders in an amount not less than twenty million dollars; and

(ii) Submits to the authority of this state to examine its books and records.

(b) The requirement of subdivision (4)(a)(i) of this section does not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system.

(5)(a) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that maintains a trust fund in a qualified United States financial institution for the payment of the valid claims of its United States ceding insurers and their assigns and successors in interest. To enable the director to determine the sufficiency of the trust fund, the assuming insurer shall report annually to the director information substantially the same as that required to be reported on the National Association of Insurance Commissioners Annual Statement form by licensed insurers. The assuming insurer shall submit to examination of its books and records by the director and bear the expense of examination.

(b)(i) Credit for reinsurance shall not be granted under this subsection unless the form of the trust and any amendments to the trust have been approved by:

(A) The commissioner of the state where the trust is domiciled; or

(B) The commissioner of another state who, pursuant to the terms of the trust instrument, has accepted principal regulatory oversight of the trust.

(ii) The form of the trust and any trust amendments also shall be filed with the commissioner of every state in which the ceding insurer beneficiaries of the trust are domiciled. The trust instrument shall provide that contested claims shall be valid and enforceable upon the final order of any court of competent jurisdiction in the United States. The trust shall vest legal title to its assets in its trustees for the benefit of the assuming insurer's United States ceding insurers, their assigns, and successors in interest. The trust and the assuming insurer shall be subject to examination as determined by the director.

(iii) The trust shall remain in effect for as long as the assuming insurer has outstanding obligations due under the reinsurance agreements subject to the trust. No later than February 28 of each year the trustee of the trust shall report to the director in writing the balance of the trust and listing the trust's investments at the preceding year end and shall certify the date of termination of the trust, if so planned, or certify that the trust will not expire prior to the following December 31.

(c) The following requirements apply to the following categories of assuming insurer:

(i) The trust fund for a single assuming insurer shall consist of funds in trust in an amount not less than the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers and, in addition, the assuming insurer shall maintain a trusteed surplus of not less than twenty million dollars except as provided in subdivision (5)(c)(ii) of this section;

(ii) At any time after the assuming insurer has permanently discontinued underwriting new business secured by the trust for at least three full years, the commissioner with principal regulatory oversight of the trust may authorize a reduction in the required trusteed surplus, but only after a finding, based on an assessment of the risk, that the new required surplus level is adequate for the protection of United States ceding insurers, policyholders, and claimants in

light of reasonably foreseeable adverse loss development. The risk assessment may involve an actuarial review, including an independent analysis of reserves and cash flows, and shall consider all material risk factors, including when applicable the lines of business involved, the stability of the incurred loss estimates, and the effect of the surplus requirements on the assuming insurer's liquidity or solvency. The minimum required trusteed surplus may not be reduced to an amount less than thirty percent of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers covered by the trust; and

(iii)(A) In the case of a group including incorporated and individual unincorporated underwriters:

(I) For reinsurance ceded under reinsurance agreements with an inception, amendment, or renewal date on or after January 1, 1993, the trust shall consist of a trusteed account in an amount not less than the respective underwriters' several liabilities attributable to business ceded by United States domiciled ceding insurers to any underwriter of the group;

(II) For reinsurance ceded under reinsurance agreements with an inception date on or before December 31, 1992, and not amended or renewed after that date, notwithstanding the other provisions of sections 44-416.05 to 44-416.10, the trust shall consist of a trusteed account in an amount not less than the respective underwriters' several insurance and reinsurance liabilities attributable to business written in the United States; and

(III) In addition to these trusts, the group shall maintain in trust a trusteed surplus of which one hundred million dollars shall be held jointly for the benefit of the United States domiciled ceding insurers of any member of the group for all years of account;

(B) The incorporated members of the group shall not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of regulation and solvency control by the group's domiciliary regulator as are the unincorporated members; and

(C) Within ninety days after its financial statements are due to be filed with the group's domiciliary regulator, the group shall provide to the director an annual certification by the group's domiciliary regulator of the solvency of each underwriter member, or if a certification is unavailable, financial statements, prepared by independent public accountants, of each underwriter member of the group.

(6)(a) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that has been certified by the director as a reinsurer in this state and secures its obligations in accordance with the requirements of this subsection.

(b) In order to be eligible for certification, the assuming insurer shall meet the following requirements:

(i) The assuming insurer must be domiciled and licensed to transact insurance or reinsurance in a qualified jurisdiction, as determined by the director pursuant to subdivision (6)(d) of this section;

(ii) The assuming insurer must maintain minimum capital and surplus, or its equivalent, in an amount to be determined by the director pursuant to rules and regulations;

(iii) The assuming insurer must maintain financial strength ratings from two or more rating agencies deemed acceptable by the director pursuant to rules and regulations;

(iv) The assuming insurer must agree to submit to the jurisdiction of this state, appoint the director as its agent for service of process in this state, and agree to provide security for one hundred percent of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers if it resists enforcement of a final United States judgment;

(v) The assuming insurer must agree to meet applicable information filing requirements as determined by the director, both with respect to an initial application for certification and on an ongoing basis; and

(vi) The assuming insurer must satisfy any other requirements for certification deemed relevant by the director.

(c) An association including incorporated and individual unincorporated underwriters may be a certified reinsurer. In order to be eligible for certification, in addition to satisfying requirements of subdivision (6)(b) of this section:

(i) The association shall satisfy its minimum capital and surplus requirements through the capital and surplus equivalents, net of liabilities, of the association and its members, which shall include a joint central fund that may be applied to any unsatisfied obligation of the association or any of its members, in an amount determined by the director to provide adequate protection;

(ii) The incorporated members of the association shall not be engaged in any business other than underwriting as a member of the association and shall be subject to the same level of regulation and solvency control by the association's domiciliary regulator as are the unincorporated members; and

(iii) Within ninety days after its financial statements are due to be filed with the association's domiciliary regulator, the association shall provide to the director an annual certification by the association's domiciliary regulator of the solvency of each underwriter member or, if a certification is unavailable, financial statements, prepared by independent public accountants, of each underwriter member of the association.

(d)(i) The director shall create and publish a list of qualified jurisdictions under which an assuming insurer licensed and domiciled in such jurisdiction is eligible to be considered for certification by the director as a certified reinsurer.

(ii) In order to determine whether the domiciliary jurisdiction of a non-United-States assuming insurer is eligible to be recognized as a qualified jurisdiction, the director shall evaluate the appropriateness and effectiveness of the reinsurance supervisory system of the jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits, and the extent of reciprocal recognition afforded by the non-United-States jurisdiction to reinsurers licensed and domiciled in the United States. A qualified jurisdiction must agree to share information and cooperate with the director with respect to all certified reinsurers domiciled within that jurisdiction. A jurisdiction may not be recognized as a qualified jurisdiction if the director has determined that the jurisdiction does not adequately and promptly enforce final United States judgments and arbitration awards. Additional factors may be considered in the discretion of the director.

(iii) A list of qualified jurisdictions shall be published through the National Association of Insurance Commissioners committee process. The director shall

consider this list in determining qualified jurisdictions. If the director approves a jurisdiction as qualified that does not appear on the list of qualified jurisdictions, the director shall provide thoroughly documented justification in accordance with criteria to be developed under rules and regulations.

(iv) United States jurisdictions that meet the requirement for accreditation under the National Association of Insurance Commissioners financial standards and accreditation program shall be recognized as qualified jurisdictions.

(v) If a certified reinsurer's domiciliary jurisdiction ceases to be a qualified jurisdiction, the director has the discretion to suspend the reinsurer's certification indefinitely, in lieu of revocation.

(e) The director shall assign a rating to each certified reinsurer, giving due consideration to the financial strength ratings that have been assigned by rating agencies deemed acceptable to the director pursuant to rules and regulations. The director shall publish a list of all certified reinsurers and their ratings.

(f)(i) A certified reinsurer shall secure obligations assumed from United States ceding insurers under this subsection at a level consistent with its rating, as specified in rules and regulations adopted and promulgated by the director.

(ii) In order for a domestic ceding insurer to qualify for full financial statement credit for reinsurance ceded to a certified reinsurer, the certified reinsurer shall maintain security in a form acceptable to the director and consistent with the provisions of section 44-416.07 or in a multibeneficiary trust in accordance with subsection (5) of this section, except as otherwise provided in this subsection.

(iii) If a certified reinsurer maintains a trust to fully secure its obligations subject to subsection (5) of this section and chooses to secure its obligations incurred as a certified reinsurer in the form of a multibeneficiary trust, the certified reinsurer shall maintain separate trust accounts for its obligations incurred under reinsurance agreements issued or renewed as a certified reinsurer with reduced security as permitted by this subsection or comparable laws of other United States jurisdictions and for its obligations subject to subsection (5) of this section. It shall be a condition to the grant of certification under this subsection that the certified reinsurer shall have bound itself, by the language of the trust and agreement with the commissioner with principal regulatory oversight of each such trust account, to fund, upon termination of any such trust account, out of the remaining surplus of such trust any deficiency of any other such trust account.

(iv) The minimum trustee surplus requirements provided in subsection (5) of this section are not applicable with respect to a multibeneficiary trust maintained by a certified reinsurer for the purpose of securing obligations incurred under this subsection, except that such trust shall maintain a minimum trustee surplus of ten million dollars.

(v) With respect to obligations incurred by a certified reinsurer under this subsection, if the security is insufficient, the director shall reduce the allowable credit by an amount proportionate to the deficiency and has the discretion to impose further reductions in allowable credit upon finding that there is a material risk that the certified reinsurer's obligations will not be paid in full when due.

(vi)(A) For purposes of this subsection, a certified reinsurer whose certification has been terminated for any reason shall be treated as a certified reinsurer required to secure one hundred percent of its obligations.

(B) As used in subdivision (6)(f)(vi)(A) of this section, the term “terminated” refers to revocation, suspension, voluntary surrender, and inactive status.

(C) If the director continues to assign a higher rating as permitted by other provisions of this section, the requirement in subdivision (6)(f)(vi)(A) of this section does not apply to a certified reinsurer in inactive status or to a reinsurer whose certification has been suspended.

(g) If an applicant for certification has been certified as a reinsurer in a National Association of Insurance Commissioners-accredited jurisdiction, the director has the discretion to defer to that jurisdiction’s certification and has the discretion to defer to the rating assigned by that jurisdiction, and such assuming insurer shall be considered to be a certified reinsurer in this state.

(h) A certified reinsurer that ceases to assume new business in this state may request to maintain its certification in inactive status in order to continue to qualify for a reduction in security for its in-force business. An inactive certified reinsurer shall continue to comply with all applicable requirements of this subsection, and the director shall assign a rating that takes into account, if relevant, the reasons why the reinsurer is not assuming new business.

(7) Credit shall be allowed when the reinsurance is ceded to an assuming insurer not meeting the requirements of subsection (2), (3), (4), (5), or (6) of this section, but only as to the insurance of risks located in jurisdictions where the reinsurance is required by applicable law or regulation of that jurisdiction.

(8) If the assuming insurer is not licensed, accredited, or certified to transact insurance or reinsurance in this state, the credit permitted by subsections (4) and (5) of this section shall not be allowed unless the assuming insurer agrees in the reinsurance agreements:

(a)(i) That in the event of the failure of the assuming insurer to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer, shall submit to the jurisdiction of any court of competent jurisdiction in any state of the United States, will comply with all requirements necessary to give the court jurisdiction, and will abide by the final decision of the court or of any appellate court in the event of an appeal; and

(ii) To designate the director or a designated attorney as its true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the ceding insurer.

(b) This subsection is not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if this obligation is created in the agreement.

(9) If the assuming insurer does not meet the requirements of subsection (2), (3), or (4) of this section, the credit permitted by subsection (5) or (6) of this section shall not be allowed unless the assuming insurer agrees in the trust agreements to the following conditions:

(a) Notwithstanding any other provisions in the trust instrument, if the trust fund is inadequate because it contains an amount less than the amount required by subdivision (5)(c) of this section, or if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation,

or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the commissioner with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the state insurance commissioner with regulatory oversight all of the assets of the trust fund;

(b) The assets shall be distributed by and claims shall be filed with and valued by the state insurance commissioner with regulatory oversight in accordance with the laws of the state in which the trust is domiciled that are applicable to the liquidation of domestic insurance companies;

(c) If the state insurance commissioner with regulatory oversight determines that the assets of the trust fund or any part thereof are not necessary to satisfy the claims of the United States ceding insurers of the grantor of the trust, the assets or part thereof shall be returned by the state insurance commissioner with regulatory oversight to the trustee for distribution in accordance with the trust agreement; and

(d) The grantor shall waive any right otherwise available to it under United States law that is inconsistent with this provision.

(10)(a) If an accredited or certified reinsurer ceases to meet the requirements for accreditation or certification, the director may suspend or revoke the reinsurer's accreditation or certification.

(b) The director must give the reinsurer notice and opportunity for hearing. The suspension or revocation may not take effect until after the director's order on hearing unless:

(i) The reinsurer waives its right to hearing;

(ii) The director's order is based on regulatory action by the reinsurer's domiciliary jurisdiction or the voluntary surrender or termination of the reinsurer's eligibility to transact insurance or reinsurance business in its domiciliary jurisdiction or in the primary certifying state of the reinsurer under subdivision (6)(g) of this section; or

(iii) The director finds that an emergency requires immediate action and a court of competent jurisdiction has not stayed the director's action.

(c) While a reinsurer's accreditation or certification is suspended, no reinsurance contract issued or renewed after the effective date of the suspension qualifies for credit except to the extent that the reinsurer's obligations under the contract are secured in accordance with section 44-416.07. If a reinsurer's accreditation or certification is revoked, no credit for reinsurance may be granted after the effective date of the revocation except to the extent that the reinsurer's obligations under the contract are secured in accordance with subdivision (6)(f) of this section or section 44-416.07.

(11)(a) A ceding insurer shall take steps to manage its reinsurance recoverables proportionate to its own book of business. A domestic ceding insurer shall notify the director within thirty days after reinsurance recoverables from any single assuming insurer, or group of affiliated assuming insurers, exceeds fifty percent of the domestic ceding insurer's last reported surplus to policyholders, or after it is determined that reinsurance recoverables from any single assuming insurer, or group of affiliated assuming insurers, is likely to exceed this limit. The notification shall demonstrate that the exposure is safely managed by the domestic ceding insurer.

(b) A ceding insurer shall take steps to diversify its reinsurance program. A domestic ceding insurer shall notify the director within thirty days after ceding to any single assuming insurer, or group of affiliated assuming insurers, more than twenty percent of the ceding insurer's gross written premium in the prior calendar year, or after it has determined that the reinsurance ceded to any single assuming insurer, or group of affiliated assuming insurers, is likely to exceed this limit. The notification shall demonstrate that the exposure is safely managed by the domestic ceding insurer.

Source: Laws 2005, LB 119, § 31; Laws 2015, LB298, § 1.

44-416.07 Asset or reduction from liability for reinsurance; limitations; security required.

An asset or a reduction from liability for the reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of section 44-416.06 shall be allowed in an amount not exceeding the liabilities carried by the ceding insurer. The reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the ceding insurer, under a reinsurance contract with the assuming insurer as security for the payment of obligations thereunder, if the security is held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer, or, in the case of a trust, held in a qualified United States financial institution. This security may be in the form of:

(1) Cash;

(2) Securities approved by the Director of Insurance. The director may use the list of securities furnished by the Securities Valuation Office of the National Association of Insurance Commissioners, including those deemed exempt from filing as defined by the Purposes and Procedures Manual of the Securities Valuation Office, and qualifying as admitted assets;

(3)(a) Clean, irrevocable, unconditional letters of credit, issued or confirmed by a qualified United States financial institution effective no later than December 31 of the year for which the filing is being made, and in the possession of, or in trust for, the ceding insurer on or before the filing date of its annual statement; or

(b) Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance or confirmation shall, notwithstanding the issuing or confirming institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification, or amendment, whichever first occurs; or

(4) Any other form of security acceptable to the director.

Source: Laws 2005, LB 119, § 32; Laws 2015, LB298, § 2.

ARTICLE 7

**GENERAL PROVISIONS COVERING LIFE, SICKNESS,
AND ACCIDENT INSURANCE**

Section

44-710. Sickness and accident insurance policy; form; approval; exception; premium rates and classification of risks; filing requirements.

44-710.01. Sickness and accident insurance; standard policy provisions; requirements; enumeration.

Section

- 44-710.03. Sickness and accident insurance; standard policy form; mandatory provisions.
- 44-710.04. Sickness and accident insurance; permissive provisions; standard policy form; requirements.
- 44-7,104. Coverage for orally administered anticancer medication; requirements; applicability.
- 44-7,105. Fees charged for dental services; prohibited acts.
- 44-7,106. Coverage for screening, diagnosis, and treatment of autism spectrum disorder; requirements.

44-710 Sickness and accident insurance policy; form; approval; exception; premium rates and classification of risks; filing requirements.

(1) Except as otherwise provided by the Director of Insurance and subsection (2) of this section, no policy of sickness and accident insurance shall be delivered or issued for delivery in this state, nor shall any endorsement, rider, or application which becomes a part of any such policy be used, until a copy of the form and of the premium rates and of the classification of risks pertaining thereto has been filed with the Director of Insurance. No policy, endorsement, rider, or application shall be used until the expiration of thirty days after the form has been received by the director unless the director gives his or her written approval thereto prior to the expiration of the thirty-day period. The thirty-day period may be extended by the director for an additional period not to exceed thirty days. Notice of such extension shall be sent to the insurer involved. The director shall notify in writing the insurer which has filed any such form if it contains benefits that are unreasonable in relation to the premium charged or any provision which is unjust, unfair, inequitable, misleading, or contrary to the law of this state, specifying the reasons for his or her opinion, and it shall thereafter be unlawful for such insurer to use such form in this state. In such notice, the director shall state that a hearing will be granted within thirty days upon written request of the insurer. In all other cases the director shall give his or her approval. The decision of the director may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

(2) No sickness and accident insurance policy subject to the federal Patient Protection and Affordable Care Act, Public Law 111-148, shall be delivered or issued for delivery in this state, including any policy or certificate of sickness and accident insurance issued to or for associations not domiciled in this state other than a certificate issued to an employee under an employee benefit plan of an employer headquartered in another state where the policy is lawfully issued in that state, nor shall any endorsement, rider, certificate, or application which becomes a part of any such policy be used until a copy of the form and of the premium rates and of the classification of risks pertaining thereto has been filed with and approved by the Director of Insurance. No policy, endorsement, rider, or application shall be used until the expiration of thirty days after the form has been received by the director unless the director gives his or her written approval thereto prior to the expiration of the thirty-day period. The thirty-day period may be extended by the director for an additional period not to exceed thirty days. Notice of such extension shall be sent to the insurer involved. The director shall notify in writing the insurer which has filed any such form if it contains benefits that are unreasonable in relation to the premium charged or any provision which is unjust, unfair, inequitable, misleading, or contrary to the law of this state, specifying the reasons for his or her

opinion, and it shall thereafter be unlawful for such insurer to use such form in this state. In such notice, the director shall state that a hearing will be granted within thirty days upon written request of the insurer. In all other cases the director shall give his or her approval. The decision of the director may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1947, c. 164, § 2(1), p. 452; Laws 1951, c. 143, § 1, p. 581; Laws 1959, c. 209, § 1, p. 728; Laws 1969, c. 359, § 21, p. 1276; Laws 1989, LB 6, § 5; Laws 1989, LB 92, § 130; Laws 2013, LB336, § 1.

Cross References

Administrative Procedure Act, see section 84-920.

44-710.01 Sickness and accident insurance; standard policy provisions; requirements; enumeration.

No policy of sickness and accident insurance shall be delivered or issued for delivery to any person in this state unless (1) the entire money and other considerations therefor are expressed therein, (2) the time at which the insurance takes effect and terminates is expressed therein, (3) it purports to insure only one person, except that a policy may insure, originally or by subsequent amendment, upon the application of an adult member of a family who shall be deemed the policyholder, any two or more eligible members of that family, including husband, wife, dependent children, any children enrolled on a full-time basis in any college, university, or trade school, or any children under a specified age which shall not exceed thirty years and any other person dependent upon the policyholder; any individual policy hereinafter delivered or issued for delivery in this state which provides that coverage of a dependent child shall terminate upon the attainment of the limiting age for dependent children specified in the policy shall also provide in substance that attainment of such limiting age shall not operate to terminate the coverage of such child during the continuance of such policy and while the child is and continues to be both (a) incapable of self-sustaining employment by reason of an intellectual disability or a physical disability and (b) chiefly dependent upon the policyholder for support and maintenance, if proof of such incapacity and dependency is furnished to the insurer by the policyholder within thirty-one days of the child's attainment of the limiting age and subsequently as may be required by the insurer but not more frequently than annually after the two-year period following the child's attainment of the limiting age; such insurer may charge an additional premium for and with respect to any such continuation of coverage beyond the limiting age of the policy with respect to such child, which premium shall be determined by the insurer on the basis of the class of risks applicable to such child, (4) it contains a title on the face of the policy correctly describing the policy, (5) the exceptions and reductions of indemnity are set forth in the policy and, except those which are set forth in sections 44-710.03 and 44-710.04, are printed, at the insurer's option, either included with the benefit provision to which they apply or under an appropriate caption such as EXCEPTIONS, or EXCEPTIONS AND REDUCTIONS; if an exception or reduction specifically applies only to a particular benefit of the policy, a statement of such exception or reduction shall be included with the benefit provision to which it applies, (6) each such form, including riders and endorsements, shall be identified by a form number in the lower left-hand corner of the first page

thereof, (7) it contains no provision purporting to make any portion of the charter, rules, constitution, or bylaws of the insurer a part of the policy unless such portion is set forth in full in the policy, except in the case of the incorporation of, or reference to, a statement of rates or classification of risks, or short-rate table filed with the Director of Insurance, and (8) on or after January 1, 1999, any restrictive rider contains a notice of the existence of the Comprehensive Health Insurance Pool if the policy provides health insurance as defined in section 44-4209.

Source: Laws 1957, c. 188, § 2, p. 643; Laws 1969, c. 374, § 1, p. 1333; Laws 1989, LB 92, § 131; Laws 1998, LB 1063, § 1; Laws 2009, LB551, § 1; Laws 2013, LB23, § 11.

44-710.03 Sickness and accident insurance; standard policy form; mandatory provisions.

Except as provided in section 44-710.05, each policy of sickness and accident insurance delivered or issued for delivery to any person in this state shall contain the provisions specified in this section in the words in which the provisions appear in this section, except that the insurer may, at its option, substitute for one or more of such provisions corresponding provisions of different wording approved by the Director of Insurance which are in each instance not less favorable in any respect to the insured or the beneficiary. Such provisions shall be preceded individually by the caption appearing in this section or, at the option of the insurer, by such appropriate individual or group captions or subcaptions as the Director of Insurance may approve.

(1) A provision as follows: ENTIRE CONTRACT: CHANGES: This policy, including the endorsements and the attached papers, if any, constitutes the entire contract of insurance. No change in this policy shall be valid until approved by an executive officer of the insurer and unless such approval be endorsed hereon or attached hereto. No agent has authority to change this policy or to waive any of its provisions.

(2) A provision as follows: TIME LIMIT ON CERTAIN DEFENSES: (a) After two years from the date of issue of this policy no misstatements, except fraudulent misstatements, made by the applicant in the application for such policy shall be used to void the policy or to deny a claim for loss incurred or disability, as defined in the policy, commencing after the expiration of such two-year period. The foregoing policy provision shall not be so construed as to affect any legal requirement for avoidance of a policy or denial of a claim during such initial two-year period nor to limit the application of subdivisions (1) through (5) of section 44-710.04 in the event of misstatement with respect to age or occupation or other insurance. A policy which the insured has the right to continue in force subject to its terms by the timely payment of premium until at least age fifty or, in the case of a policy issued after age forty-four, for at least five years from its date of issue, may contain in lieu of the foregoing the following provision, from which the clause "as defined in the policy" may be omitted at the insurer's option, under the caption INCONTESTABLE: After this policy has been in force for a period of two years during the lifetime of the insured, excluding any period during which the insured is disabled, it shall become incontestable as to the statements contained in the application. (b) No claim for loss incurred or disability, as defined in the policy, commencing after two years from the date of issue of this policy shall be reduced or denied on the

ground that disease or physical condition not excluded from coverage by name or specific description effective on the date of loss had existed prior to the effective date of coverage of this policy.

(3) A provision as follows: **GRACE PERIOD:** A grace period of (insert a number not less than 7 for weekly premium policies, 10 for monthly premium policies, and 31 for all other policies) days will be granted for the payment of each premium falling due after the first premium, during which grace period the policy shall continue in force. A policy which contains a cancellation provision may add, at the end of the above provision: Subject to the right of the insurer to cancel in accordance with the cancellation provision hereof. A policy in which the insurer reserves the right to refuse any renewal shall have, at the beginning of the above provision: Unless not less than thirty days prior to the premium due date the insurer has delivered to the insured or has mailed to his or her last address as shown by the records of the insurer written notice of its intention not to renew this policy beyond the period for which the premium has been accepted.

(4) A provision as follows: **REINSTATEMENT:** If any renewal premium be not paid within the time granted the insured for payment, a subsequent acceptance of premium by the insurer or by any agent duly authorized by the insurer to accept such premium, without requiring in connection therewith an application for reinstatement, shall reinstate the policy, except that if the insurer or such agent requires an application for reinstatement and issues a conditional receipt for the premium tendered, the policy will be reinstated upon approval of such application by the insurer or, lacking such approval, upon the forty-fifth day following the date of such conditional receipt unless the insurer has previously notified the insured in writing of its disapproval of such application. The reinstated policy shall cover only loss resulting from such accidental injury as may be sustained after the date of reinstatement and loss due to such sickness as may begin more than ten days after such date. In all other respects the insured and insurer shall have the same rights thereunder as they had under the policy immediately before the due date of the defaulted premium, subject to any provisions endorsed hereon or attached hereto in connection with the reinstatement. Any premium accepted in connection with a reinstatement shall be applied to a period for which premium has not been previously paid but not to any period more than sixty days prior to the date of reinstatement. (The last sentence of the above provision may be omitted from any policy which the insured has the right to continue in force subject to its terms by the timely payment of premiums (a) until at least age fifty or (b) in the case of a policy issued after age forty-four, for at least five years from its date of issue.)

(5) A provision as follows: **NOTICE OF CLAIM:** Written notice of claim must be given to the insurer within twenty days after the occurrence or commencement of any loss covered by the policy or as soon thereafter as is reasonably possible. Notice given by or on behalf of the insured or the beneficiary to the insurer at (insert the location of such office as the insurer may designate for the purpose), or to any authorized agent of the insurer, with information sufficient to identify the insured, shall be deemed notice to the insurer. In a policy providing a loss-of-time benefit which may be payable for at least two years, an insurer may at its option insert the following between the first and second sentences of the above provision: Subject to the qualifications set forth below, if the insured suffers loss of time on account of disability for

which indemnity may be payable for at least two years, he or she shall, at least once in every six months after having given notice of claim, give to the insurer notice of continuance of such disability, except in the event of legal incapacity. The period of six months following any filing of proof by the insured or any payment by the insurer on account of such claim or any denial of liability in whole or in part by the insurer shall be excluded in applying this provision. Delay in the giving of such notice shall not impair the insured's right to any indemnity which would otherwise have accrued during the period of six months preceding the date on which such notice is actually given.

(6) A provision as follows: **CLAIM FORMS:** The insurer, upon receipt of a notice of claim, will furnish to the claimant such forms as are usually furnished by it for filing proofs of loss. If such forms are not furnished within fifteen days after the giving of such notice, the claimant shall be deemed to have complied with the requirements of this policy as to proof of loss upon submitting, within the time fixed in the policy for filing proofs of loss, written proof covering the occurrence, the character, and the extent of the loss for which claim is made.

(7) A provision as follows: **PROOFS OF LOSS:** Written proof of loss must be furnished to the insurer at its office in case of claim for loss for which the policy provides any periodic payment contingent upon continuing loss within ninety days after the termination of the period for which the insurer is liable and in case of claim for any other loss within ninety days after the date of such loss. Failure to furnish such proof within the time required shall not invalidate nor reduce any claim if it was not reasonably possible to give proof within such time and if such proof is furnished as soon as reasonably possible and in no event, except in the absence of legal capacity, later than one year from the time proof is otherwise required.

(8) A provision as follows: **TIME OF PAYMENT OF CLAIMS:** Indemnities payable under this policy for any loss other than loss for which this policy provides any periodic payment will be paid immediately upon receipt of due written proof of such loss. Subject to due written proof of loss, all accrued indemnities for loss for which this policy provides periodic payment will be paid (insert period for payment which must not be less frequently than monthly) and any balance remaining unpaid upon the termination of liability will be paid immediately upon receipt of due written proof.

(9) A provision as follows: **PAYMENT OF CLAIMS:** Indemnity for loss of life will be payable in accordance with the beneficiary designation and the provisions respecting such payment which may be prescribed herein and effective at the time of payment. If no such designation or provision is then effective, such indemnity shall be payable to the estate of the insured. Any other accrued indemnities unpaid at the insured's death may, at the option of the insurer, be paid either to such beneficiary or to such estate. All other indemnities will be payable to the insured. The following provisions, or either of them, may be included with the foregoing provision at the option of the insurer: (a) If any indemnity of this policy shall be payable to the estate of the insured, or to an insured or beneficiary who is a minor or otherwise not competent to give a valid release, the insurer may pay such indemnity, up to an amount not exceeding \$. (insert an amount which shall not exceed five thousand dollars), to any relative by blood or connection by marriage of the insured or beneficiary who is deemed by the insurer to be equitably entitled thereto. Any payment made by the insurer in good faith pursuant to this provision shall fully discharge the insurer to the extent of such payment. (b) Subject to any written

direction of the insured in the application or otherwise all or a portion of any indemnities provided by this policy on account of hospital, nursing, medical, or surgical services may, at the insurer's option and unless the insured requests otherwise in writing not later than the time of filing proofs of such loss, be paid directly to the hospital or person rendering such services; but it is not required that the service be rendered by a particular hospital or person.

(10) A provision as follows: **PHYSICAL EXAMINATIONS AND AUTOPSY:** The insurer at its own expense shall have the right and opportunity to examine the person of the insured when and as often as it may reasonably require during the pendency of a claim hereunder and to make an autopsy in case of death where it is not forbidden by law.

(11) A provision as follows: **LEGAL ACTIONS:** No action at law or in equity shall be brought to recover on this policy prior to the expiration of sixty days after written proof of loss has been furnished in accordance with the requirements of this policy. No such action shall be brought after the expiration of three years after the time written proof of loss is required to be furnished.

(12) A provision as follows: **CHANGE OF BENEFICIARY:** Unless the insured makes an irrevocable designation of beneficiary, the right to change of beneficiary is reserved to the insured and the consent of the beneficiary or beneficiaries shall not be requisite to surrender or assignment of this policy, to any change of beneficiary or beneficiaries, or to any other changes in this policy. The first clause of this provision, relating to the irrevocable designation of beneficiary, may be omitted at the insurer's option.

(13) A provision as follows: **CONFORMITY WITH STATE AND FEDERAL LAW:** Any provision of this policy which, on its effective date, is in conflict with the law of the federal government or the state in which the insured resides on such date is hereby amended to conform to the minimum requirements of such law.

Source: Laws 1957, c. 188, § 4, p. 644; Laws 1989, LB 92, § 133; Laws 2011, LB72, § 3.

44-710.04 Sickness and accident insurance; permissive provisions; standard policy form; requirements.

Except as provided in sections 44-710.05 and 44-787, no policy of sickness and accident insurance delivered or issued for delivery to any person in this state shall contain provisions respecting the matters set forth below unless such provisions are in the words in which the provisions appear in this section, except that the insurer may, at its option, use in lieu of any such provision a corresponding provision of different wording approved by the Director of Insurance which is not less favorable in any respect to the insured or the beneficiary. Any such provision contained in the policy shall be preceded individually by the appropriate caption appearing in this section or, at the option of the insurer, by such appropriate individual or group captions or subcaptions as the Director of Insurance may approve.

(1) A provision as follows: **CHANGE OF OCCUPATION:** If the insured be injured or contract sickness after having changed his or her occupation to one classified by the insurer as more hazardous than that stated in this policy or while doing for compensation anything pertaining to an occupation so classified, the insurer will pay only such portion of the indemnities provided in this policy as the premium paid would have purchased at the rates and within the

limits fixed by the insurer for such more hazardous occupation. If the insured changes his or her occupation to one classified by the insurer as less hazardous than that stated in this policy, the insurer, upon receipt of proof of such change of occupation, will reduce the premium rate accordingly and will return the excess pro rata unearned premium from the date of change of occupation or from the policy anniversary date immediately preceding receipt of such proof, whichever is the more recent. In applying this provision, the classification of occupational risk and the premium rates shall be such as have been last filed by the insurer prior to the occurrence of the loss for which the insurer is liable or prior to date of proof of change in occupation with the state official having supervision of insurance in the state where the insured resided at the time this policy was issued; but if such filing was not required, then the classification of occupational risk and the premium rates shall be those last made effective by the insurer in such state prior to the occurrence of the loss or prior to the date of proof of change of occupation.

(2) A provision as follows: **MISSTATEMENT OF AGE:** If the age of the insured has been misstated, all amounts payable under this policy shall be such as the premium paid would have purchased at the correct age.

(3) Except as provided in subdivision (6) of this section, a provision as follows: **OTHER INSURANCE IN THIS INSURER:** If an accident or sickness or accident and sickness policy or policies previously issued by the insurer to the insured be in force concurrently herewith, making the aggregate indemnity for (insert type of coverage or coverages) in excess of \$. (insert maximum limit of indemnity or indemnities), the excess insurance shall be void and all premiums paid for such excess shall be returned to the insured or to his or her estate; or in lieu thereof: Insurance effective at any one time on the insured under a like policy or policies in this insurer is limited to the one such policy elected by the insured, his or her beneficiary, or his or her estate, as the case may be, and the insurer will return all premiums paid for all other such policies.

(4) Except as provided in subdivision (6) of this section, a provision as follows: **INSURANCE WITH OTHER INSURERS:** If there be other valid coverage, not with this insurer, providing benefits for the same loss on a provision-of-service basis or on an expense-incurred basis and of which this insurer has not been given written notice prior to the occurrence or commencement of loss, the only liability under any expense-incurred coverage of this policy shall be for such proportion of the loss as the amount which would otherwise have been payable hereunder plus the total of the like amounts under all such other valid coverages for the same loss of which this insurer had notice bears to the total like amounts under all valid coverages for such loss and for the return of such portion of the premiums paid as shall exceed the pro rata portion for the amount so determined. For the purpose of applying this provision when other coverage is on a provision-of-service basis, the like amount of such other coverage shall be taken as the amount which the services rendered would have cost in the absence of such coverage. If the foregoing policy provision is included in a policy which also contains the next following policy provision there shall be added to the caption of the foregoing provision the phrase **EXPENSE-INCURRED BENEFITS.** The insurer may, at its option, include in this provision a definition of other valid coverage, approved as to form by the Director of Insurance, which definition shall be limited in subject matter to coverage provided by organizations subject to regulation by

insurance law or by insurance authorities of this or any other state of the United States or any province of Canada and by hospital or medical service organizations and to any other coverage the inclusion of which may be approved by the Director of Insurance. In the absence of such definition such term shall not include group insurance, automobile medical payments insurance, or coverage provided by hospital or medical service organizations or by union welfare plans or employer or employee benefit organizations. For the purpose of applying the foregoing policy provision with respect to any insured, any amount of benefit provided for such insured pursuant to any compulsory benefit statute, including any workers' compensation or employers liability statute, whether provided by a governmental agency or otherwise shall in all cases be deemed to be other valid coverage of which the insurer has had notice. In applying the foregoing policy provision no third-party liability coverage shall be included as other valid coverage.

(5) Except as provided in subdivision (6) of this section, a provision as follows: **INSURANCE WITH OTHER INSURERS:** If there be other valid coverage, not with this insurer, providing benefits for the same loss on other than an expense-incurred basis and of which this insurer has not been given written notice prior to the occurrence or commencement of loss, the only liability for such benefits under this policy shall be for such proportion of the indemnities otherwise provided hereunder for such loss as the like indemnities of which the insurer had notice (including the indemnities under this policy) bear to the total amount of all like indemnities for such loss, and for the return of such portion of the premium paid as shall exceed the pro rata portion for the indemnities thus determined. If the foregoing policy provision is included in a policy which also contains the next preceding policy provision, there shall be added to the caption of the foregoing provision the phrase **OTHER BENEFITS.** The insurer may, at its option, include in this provision a definition of other valid coverage, approved as to form by the Director of Insurance, which definition shall be limited in subject matter to coverage provided by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada and to any other coverage the inclusion of which may be approved by the Director of Insurance. In the absence of such definition such term shall not include group insurance or benefits provided by union welfare plans or by employer or employee benefit organizations. For the purpose of applying the foregoing policy provision with respect to any insured, any amount of benefit provided for such insured pursuant to any compulsory benefit statute, including any workers' compensation or employers liability statute, whether provided by a governmental agency or otherwise shall in all cases be deemed to be other valid coverage of which the insurer has had notice. In applying the foregoing policy provision no third-party liability coverage shall be included as other valid coverage.

(6) In lieu of the provisions set forth in subdivisions (3) through (5) of this section but subject to section 44-3,159, the insurer may at its option include a provision entitled **COORDINATION OF BENEFITS** which provides for nonduplication and coordination between two or more coverages based on rules and regulations adopted and promulgated by the director.

(7) A provision as follows: **RELATION OF EARNINGS TO INSURANCE:** If the total monthly amount of loss-of-time benefits promised for the same loss under all valid loss-of-time coverage upon the insured, whether payable on a

weekly or monthly basis, shall exceed the monthly earnings of the insured at the time disability commenced or his or her average monthly earnings for the period of two years immediately preceding a disability for which claim is made, whichever is the greater, the insurer will be liable only for such proportionate amount of such benefits under this policy as the amount of such monthly earnings or such average monthly earnings of the insured bears to the total amount of monthly benefits for the same loss under all such coverage upon the insured at the time such disability commences and for the return of such part of the premiums paid during such two years as shall exceed the pro rata amount of the premiums for the benefits actually paid hereunder; but this shall not operate to reduce the total monthly amount of benefits payable under all such coverage upon the insured below the sum of two hundred dollars or the sum of the monthly benefits specified in such coverages, whichever is the lesser, nor shall it operate to reduce benefits other than those payable for loss of time. The foregoing policy provision may be inserted only in a policy which the insured has the right to continue in force subject to its terms by the timely payment of premiums (a) until at least age fifty or (b) in the case of a policy issued after age forty-four for at least five years from its date of issue. The insurer may, at its option, include in this provision a definition of valid loss-of-time coverage, approved as to form by the Director of Insurance, which definition shall be limited in subject matter to coverage provided by governmental agencies or by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada or to any other coverage the inclusion of which may be approved by the Director of Insurance or any combination of such coverages. In the absence of such definition such term shall not include any coverage provided for such insured pursuant to any compulsory benefit statute, including any workers' compensation or employers liability statute, or benefits provided by union welfare plans or by employer or employee benefit organizations.

(8) A provision as follows: **UNPAID PREMIUM:** Upon the payment of a claim under this policy, any premium then due and unpaid or covered by any note or written order may be deducted therefrom.

(9) A provision as follows: **CANCELLATION:** The insurer may cancel this policy at any time by written notice delivered to the insured which shall be effective only if mailed by certified or registered mail to the named insured at his or her last-known address, as shown by the records of the insurer, at least thirty days prior to the effective date of cancellation, except that cancellation due to failure to pay the premium or in cases of fraud or misrepresentation shall not require that such notice be given at least thirty days prior to cancellation. Subject to any provisions in the policy or a grace period, cancellation for failure to pay a premium shall be effective as of midnight of the last day for which the premium has been paid. In cases of fraud or misrepresentation, coverage shall be canceled upon the date of the notice or any later date designated by the insurer. After the policy has been continued beyond its original term the insured may cancel this policy at any time by written notice delivered or mailed to the insurer, effective upon receipt or on such later date as may be specified in such notice. In the event of cancellation, the insurer will return promptly the unearned portion of any premium paid. If the insured cancels, the earned premium shall be computed by the use of the short-rate table last filed with the state official having supervision of insurance in the state where the insured resided when the policy was issued. If the insurer cancels,

the earned premium shall be computed pro rata. Cancellation shall be without prejudice to any claim originating prior to the effective date of cancellation.

(10) A provision as follows: **ILLEGAL OCCUPATION:** The insurer shall not be liable for any loss to which a contributing cause was the insured's commission of or attempt to commit a felony or to which a contributing cause was the insured's being engaged in an illegal occupation.

(11) A provision as follows: **INTOXICANTS AND NARCOTICS:** The insurer shall not be liable for any loss sustained or contracted in consequence of the insured's being intoxicated or under the influence of any narcotic unless administered on the advice of a physician.

Source: Laws 1957, c. 188, § 5, p. 650; Laws 1985, LB 76, § 1; Laws 1989, LB 92, § 134; Laws 1997, LB 55, § 2; Laws 2011, LB72, § 4; Laws 2013, LB479, § 2.

44-7,104 Coverage for orally administered anticancer medication; requirements; applicability.

(1) Notwithstanding section 44-3,131, (a) any individual or group sickness and accident insurance policy, certificate, or subscriber contract delivered, issued for delivery, or renewed in this state and any hospital, medical, or surgical expense-incurred policy, except for policies that provide coverage for a specified disease or other limited-benefit coverage, and (b) any self-funded employee benefit plan to the extent not preempted by federal law that provides coverage for cancer treatment shall provide coverage for a prescribed, orally administered anticancer medication that is used to kill or slow the growth of cancerous cells on a basis no less favorable than intravenously administered or injected anticancer medications that are covered as medical benefits by the policy, certificate, contract, or plan.

(2) This section does not prohibit such policy, certificate, contract, or plan from requiring prior authorization for a prescribed, orally administered anticancer medication. If such medication is authorized, the cost to the covered individual shall not exceed the coinsurance or copayment that would be applied to any other cancer treatment involving intravenously administered or injected anticancer medications.

(3) A policy, certificate, contract, or plan provider shall not reclassify any anticancer medication or increase a coinsurance, copayment, deductible, or other out-of-pocket expense imposed on any anticancer medication to achieve compliance with this section. Any change that otherwise increases an out-of-pocket expense applied to any anticancer medication shall also be applied to the majority of comparable medical or pharmaceutical benefits under the policy, certificate, contract, or plan.

(4) This section does not prohibit a policy, certificate, contract, or plan provider from increasing cost-sharing for all benefits, including cancer treatments.

(5) This section shall apply to any policy, certificate, contract, or plan that is delivered, issued for delivery, or renewed in this state on or after October 1, 2012.

Source: Laws 2012, LB882, § 1; Laws 2014, LB254, § 1.

44-7,105 Fees charged for dental services; prohibited acts.

Notwithstanding section 44-3,131, (1) an individual or group sickness or accident policy, certificate, or subscriber contract delivered, issued for delivery, or renewed in this state and a hospital, medical, or surgical expense-incurred policy, (2) a self-funded employee benefit plan to the extent not preempted by federal law, and (3) a certificate, agreement, or contract to provide limited health services issued by a prepaid limited health service organization as defined in section 44-4702 shall not include a provision, stipulation, or agreement establishing or limiting any fees charged for dental services that are not covered by the policy, certificate, contract, agreement, or plan.

Source: Laws 2012, LB810, § 1.

44-7,106 Coverage for screening, diagnosis, and treatment of autism spectrum disorder; requirements.

(1) For purposes of this section:

(a) Applied behavior analysis means the design, implementation, and evaluation of environmental modifications, using behavioral stimuli and consequences, to produce socially significant improvement in human behavior, including the use of direct observation, measurement, and functional analysis of the relationship between environment and behavior;

(b) Autism spectrum disorder means any of the pervasive developmental disorders or autism spectrum disorder as defined by the Diagnostic and Statistical Manual of Mental Disorders, as the most recent edition of such manual existed on July 18, 2014;

(c) Behavioral health treatment means counseling and treatment programs, including applied behavior analysis, that are: (i) Necessary to develop, maintain, or restore, to the maximum extent practicable, the functioning of an individual; and (ii) provided or supervised, either in person or by telehealth, by a behavior analyst certified by a national certifying organization or a licensed psychologist if the services performed are within the boundaries of the psychologist's competency;

(d) Diagnosis means a medically necessary assessment, evaluation, or test to diagnose if an individual has an autism spectrum disorder;

(e) Pharmacy care means a medication that is prescribed by a licensed physician and any health-related service deemed medically necessary to determine the need or effectiveness of the medication;

(f) Psychiatric care means a direct or consultative service provided by a psychiatrist licensed in the state in which he or she practices;

(g) Psychological care means a direct or consultative service provided by a psychologist licensed in the state in which he or she practices;

(h) Therapeutic care means a service provided by a licensed speech-language pathologist, occupational therapist, or physical therapist; and

(i) Treatment means evidence-based care, including related equipment, that is prescribed or ordered for an individual diagnosed with an autism spectrum disorder by a licensed physician or a licensed psychologist, including:

- (i) Behavioral health treatment;
- (ii) Pharmacy care;
- (iii) Psychiatric care;
- (iv) Psychological care; and

(v) Therapeutic care.

(2) Notwithstanding section 44-3,131, (a) any individual or group sickness and accident insurance policy or subscriber contract delivered, issued for delivery, or renewed in this state and any hospital, medical, or surgical expense-incurred policy, except for policies that provide coverage for a specified disease or other limited-benefit coverage, and (b) any self-funded employee benefit plan to the extent not preempted by federal law, including any such plan provided for employees of the State of Nebraska, shall provide coverage for the screening, diagnosis, and treatment of an autism spectrum disorder in an individual under twenty-one years of age. To the extent that the screening, diagnosis, and treatment of autism spectrum disorder are not already covered by such policy or contract, coverage under this section shall be included in such policies or contracts that are delivered, issued for delivery, amended, or renewed in this state or outside this state if the policy or contract insures a resident of Nebraska on or after January 1, 2015. No insurer shall terminate coverage or refuse to deliver, issue for delivery, amend, or renew coverage of the insured as a result of an autism spectrum disorder diagnosis or treatment. Nothing in this subsection applies to non-grandfathered plans in the individual and small group markets that are required to include essential health benefits under the federal Patient Protection and Affordable Care Act or to medicare supplement, accident-only, specified disease, hospital indemnity, disability income, long-term care, or other limited benefit hospital insurance policies.

(3) Except as provided in subsection (4) of this section, coverage for an autism spectrum disorder shall not be subject to any limits on the number of visits an individual may make for treatment of an autism spectrum disorder, nor shall such coverage be subject to dollar limits, deductibles, copayments, or coinsurance provisions that are less favorable to an insured than the equivalent provisions that apply to a general physical illness under the policy.

(4) Coverage for behavioral health treatment, including applied behavior analysis, shall be subject to a maximum benefit of twenty-five hours per week until the insured reaches twenty-one years of age. Payments made by an insurer on behalf of a covered individual for treatment other than behavioral health treatment, including applied behavior analysis, shall not be applied to any maximum benefit established under this section.

(5) Except in the case of inpatient service, if an individual is receiving treatment for an autism spectrum disorder, an insurer shall have the right to request a review of that treatment not more than once every six months unless the insurer and the individual's licensed physician or licensed psychologist execute an agreement that a more frequent review is necessary. Any such agreement regarding the right to review a treatment plan more frequently shall apply only to a particular individual being treated for an autism spectrum disorder and shall not apply to all individuals being treated for autism spectrum disorder by a licensed physician or licensed psychologist. The cost of obtaining a review under this subsection shall be borne by the insurer.

(6) This section shall not be construed as limiting any benefit that is otherwise available to an individual under a hospital, surgical, or medical expense-incurred policy or health maintenance organization contract. This section shall not be construed as affecting any obligation to provide services to

an individual under an individualized family service plan, individualized education program, or individualized service plan.

Source: Laws 2014, LB254, § 2.

ARTICLE 10 FRATERNAL INSURANCE

Section

44-1090. Benefit contract; contents.

44-1095. Funds and property; exempt from taxation.

44-1090 Benefit contract; contents.

(1) Every society authorized to do business in this state shall issue to each owner of a benefit contract a certificate specifying the amount of benefits provided by the contract. The certificate, together with any riders or endorsements attached thereto, the laws of the society, the application for membership, the application for insurance and declaration of insurability, if any, signed by the applicant, and all amendments to each thereof, shall constitute the benefit contract, as of the date of issuance, between the society and the owner, and the certificate shall so state. A copy of the application for insurance and declaration of insurability, if any, shall be endorsed upon or attached to the certificate. All statements on the application shall be representations and not warranties. Any waiver of this subsection shall be void.

(2) Any changes, additions, or amendments to the laws of the society duly made or enacted subsequent to the issuance of the certificate shall bind the owner and the beneficiaries and shall govern and control the benefit contract in all respects the same as though such changes, additions, or amendments had been made prior to and were in force at the time of the application for insurance, except that no change, addition, or amendment shall destroy or diminish benefits which the society contracted to give the owner as of the date of issuance of the contract.

(3) Any person upon whose life a benefit contract is issued prior to attaining the age of majority shall be bound by the terms of the application and certificate and by all the laws and rules of the society to the same extent as though the age of majority had been attained at the time of application.

(4) A society shall provide in its laws that if its reserves as to all or any class of certificates become impaired its board of directors or corresponding body may require that there shall be paid by the owner to the society the amount of the owner's equitable proportion of such deficiency as ascertained by its board and that if the payment is not made either (a) it shall stand as an indebtedness against the certificate and draw interest not to exceed the rate specified for certificate loans under the certificates or (b) in lieu of or in combination with subdivision (a) of this subsection, the owner may accept a proportionate reduction in benefits under the certificate. The society may specify the manner of the election and which alternative is to be presumed if no election is made.

(5) A domestic society may assess owners as described in subsection (4) of this section only after such assessment is filed with the Director of Insurance and approved by him or her. In the case of a foreign or alien society, notice of an assessment shall be provided to the director at least thirty days before the effective date of the assessment. The director shall have the authority to

prohibit any foreign or alien society that has assessed its owners from issuing any new contracts of insurance in this state.

(6) Copies of any of the documents mentioned in this section, certified by the secretary or corresponding officer of the society, shall be received in evidence of the terms and conditions thereof.

(7) No certificate shall be delivered or issued for delivery in this state unless a copy of the form has been filed with the Director of Insurance in the manner provided for like policies issued by life insurers in this state. Every life, accident, health, or disability insurance certificate and every annuity certificate issued on or after one year from September 6, 1985, shall meet the standard contract provision requirements not inconsistent with sections 44-1072 to 44-10,109 for like policies issued by life insurers in this state, except that a society may provide for a grace period for payment of premiums of one full month in its certificates. The certificate shall also contain a provision stating the amount of premiums which are payable under the certificate and a provision reciting or setting forth the substance of any sections of the society's laws or rules in force at the time of issuance of the certificate which, if violated, will result in the termination or reduction of benefits payable under the certificate. If the laws of the society provide for expulsion or suspension of a member, the certificate shall also contain a provision that any member so expelled or suspended, except for nonpayment of a premium or within the contestable period for material misrepresentation in the application for membership or insurance, shall have the privilege of maintaining the certificate in force by continuing payment of the required premium.

(8) Benefit contracts issued on the lives of persons younger than the society's minimum age for adult membership may provide for transfer of control or ownership to the insured at an age specified in the certificate. A society may require approval of an application for membership in order to effect this transfer and may provide in all other respects for the regulation, government, and control of such certificates and all rights, obligations, and liabilities incident thereto and connected therewith. Ownership rights prior to such transfer shall be specified in the certificate.

(9) A society may specify the terms and conditions on which benefit contracts may be assigned.

Source: Laws 1985, LB 508, § 19; Laws 2013, LB426, § 1.

44-1095 Funds and property; exempt from taxation.

Every society organized or licensed under sections 44-1072 to 44-10,109 shall be a charitable and benevolent institution, and all of its funds and property shall be exempt from all and every state, county, district, municipal, and school tax.

Source: Laws 1985, LB 508, § 24; Laws 2015, LB414, § 1.

ARTICLE 13

HEALTH CARRIER EXTERNAL REVIEW ACT

Section

44-1301. Act, how cited.

44-1302. Purpose of act.

44-1303. Terms, defined.

44-1304. Applicability of act.

Section

- 44-1305. Health carrier; covered person; notification; when; written notice; contents; health carrier; duties.
- 44-1306. Request for external review.
- 44-1307. Request for external review; exhaustion of internal grievance process; request for expedited external review of adverse determination; independent review organization; duties.
- 44-1308. Request for external review; filing; director; duties; health carrier; duties; preliminary review; contents; director; powers; notice of initial determination; contents; independent review organization; powers; duties; decision; notice; contents.
- 44-1309. Request for expedited external review; director; duties; health carrier; duties; notice of initial determination; contents; expedited external review; independent review organization; powers; duties; decision; notice; contents.
- 44-1310. Review of denial of coverage for service or coverage determined experimental or investigational; external review; expedited external review; director; duties; health carrier; duties; notice of initial determination; contents; appeal; clinical reviewer; duties; independent review organization; powers; duties; decision; notice; contents.
- 44-1311. External review decision; how treated; limitation on subsequent request.
- 44-1312. Independent review organizations; approval; qualifications; application; contents; fee; termination of approval; director; powers and duties.
- 44-1313. Independent review organization; minimum qualifications; clinical reviewers; qualifications; limitation on ownership or control; conflict of interests; presumption of compliance; director; powers; duties.
- 44-1314. Liability for damages.
- 44-1315. Records; report; contents.
- 44-1316. Health carrier; cost.
- 44-1317. Health carrier; disclosure; format; contents.
- 44-1318. Applicability of act.

44-1301 Act, how cited.

Sections 44-1301 to 44-1318 shall be known and may be cited as the Health Carrier External Review Act.

Source: Laws 2013, LB147, § 1.

44-1302 Purpose of act.

The purpose of the Health Carrier External Review Act is to provide uniform standards for the establishment and maintenance of external review procedures to assure that covered persons have the opportunity for an independent review of an adverse determination or final adverse determination.

Source: Laws 2013, LB147, § 2.

44-1303 Terms, defined.

For purposes of the Health Carrier External Review Act:

(1) Adverse determination means a determination by a health carrier or its designee utilization review organization that an admission, the availability of care, a continued stay, or other health care service that is a covered benefit has been reviewed and, based upon the information provided, does not meet the health carrier's requirements for medical necessity, appropriateness, health care setting, level of care, or effectiveness, and the requested service or payment for the service is therefor denied, reduced, or terminated;

(2) Ambulatory review means the utilization review of health care services performed or provided in an outpatient setting;

(3) Authorized representative means:

(a) A person to whom a covered person has given express written consent to represent the covered person in an external review;

(b) A person authorized by law to provide substituted consent for a covered person; or

(c) A family member of the covered person or the covered person's treating health care professional only when the covered person is unable to provide consent;

(4) Benefits or covered benefits means those health care services to which a covered person is entitled under the terms of a health benefit plan;

(5) Best evidence means evidence based on:

(a) Randomized clinical trials;

(b) If randomized clinical trials are not available, cohort studies or case-control studies;

(c) If the criteria described in subdivisions (5)(a) and (b) of this section are not available, case-series; or

(d) If the criteria described in subdivisions (5)(a), (b), and (c) of this section are not available, expert opinions;

(6) Case-control study means a retrospective evaluation of two groups of patients with different outcomes to determine which specific interventions the patients received;

(7) Case management means a coordinated set of activities conducted for individual patient management of serious, complicated, protracted, or other health conditions;

(8) Case-series means an evaluation of a series of patients with a particular outcome, without the use of a control group;

(9) Certification means a determination by a health carrier or its designee utilization review organization that an admission, the availability of care, a continued stay, or other health care service has been reviewed and, based upon the information provided, satisfies the health carrier's requirements for medical necessity, appropriateness, health care setting, level of care, and effectiveness;

(10) Clinical review criteria means the written screening procedures, decision abstracts, clinical protocols, and practice guidelines used by a health carrier to determine the necessity and appropriateness of health care services;

(11) Cohort study means a prospective evaluation of two groups of patients with only one group of patients receiving a specific intervention;

(12) Concurrent review means a utilization review conducted during a patient's hospital stay or course of treatment;

(13) Covered person means a policyholder, subscriber, enrollee, or other individual participating in a health benefit plan;

(14) Director means the Director of Insurance;

(15) Discharge planning means the formal process for determining, prior to discharge from a facility, the coordination and management of the care that a patient receives following discharge from a facility;

(16) Disclose means to release, transfer, or otherwise divulge protected health information to any person other than the individual who is the subject of the protected health information;

(17) Emergency medical condition means the sudden and, at the time, unexpected onset of a health condition or illness that requires immediate medical attention if failure to provide such medical attention would result in a serious impairment to bodily functions or serious dysfunction of a bodily organ or part or would place the person's health in serious jeopardy;

(18) Emergency services means health care items and services furnished or required to evaluate and treat an emergency medical condition;

(19) Evidence-based standard means the conscientious, explicit, and judicious use of the current best evidence based on the overall systematic review of the research in making decisions about the care of an individual patient;

(20) Expert opinion means a belief or an interpretation by a specialist with experience in a specific area about the scientific evidence pertaining to a particular service, intervention, or therapy;

(21) Facility means an institution providing health care services or a health care setting, including, but not limited to, hospitals and other licensed inpatient centers, ambulatory surgical or treatment centers, skilled nursing centers, residential treatment centers, diagnostic, laboratory and imaging centers, and rehabilitation and other therapeutic health settings;

(22) Final adverse determination means an adverse determination involving a covered benefit that has been upheld by a health carrier, or its designee utilization review organization, at the completion of the health carrier's internal grievance process procedures as set forth in the Health Carrier Grievance Procedure Act;

(23) Health benefit plan means a policy, contract, certificate, or agreement offered or issued by a health carrier to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services;

(24) Health care professional means a physician or other health care practitioner licensed, accredited, or certified to perform specified health care services consistent with state law;

(25) Health care provider or provider means a health care professional or a facility;

(26) Health care services means services for the diagnosis, prevention, treatment, cure, or relief of a health condition, illness, injury, or disease;

(27) Health carrier means an entity subject to the insurance laws and regulations of this state, or subject to the jurisdiction of the director, that contracts or offers to contract to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services, including a sickness and accident insurance company, a health maintenance organization, a nonprofit hospital and health service corporation, or any other entity providing a plan of health insurance, health benefits, or health care services;

(28) Health information means information or data, whether oral or recorded in any form or medium, and personal facts or information about events or relationships that relates to:

(a) The past, present, or future physical, mental, or behavioral health or condition of an individual or a member of the individual's family;

(b) The provision of health care services to an individual; or

(c) Payment for the provision of health care services to an individual;

(29) Independent review organization means an entity that conducts independent external reviews of adverse determinations and final adverse determinations;

(30) Medical or scientific evidence means evidence found in the following sources:

(a) Peer-reviewed scientific studies published in or accepted for publication by medical journals that meet nationally recognized requirements for scientific manuscripts and that submit most of their published articles for review by experts who are not part of the editorial staff;

(b) Peer-reviewed medical literature, including literature relating to therapies reviewed and approved by a qualified institutional review board, biomedical compendia, and other medical literature that meet the criteria of the National Institutes of Health's United States National Library of Medicine for indexing in Index Medicus, known as Medline, and Elsevier Science Ltd. for indexing in Excerpta Medica, known as Embase;

(c) Medical journals recognized by the Secretary of Health and Human Services under section 1861(t)(2) of the federal Social Security Act;

(d) The following standard reference compendia:

(i) The AHFS Drug Information;

(ii) Drug Facts and Comparisons;

(iii) The American Dental Association Guide to Dental Therapeutics; and

(iv) The United States Pharmacopoeia Drug Information;

(e) Findings, studies, or research conducted by or under the auspices of federal government agencies and nationally recognized federal research institutes, including:

(i) The federal Agency for Healthcare Research and Quality of the United States Department of Health and Human Services;

(ii) The National Institutes of Health;

(iii) The National Cancer Institute;

(iv) The National Academy of Sciences;

(v) The Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services;

(vi) The federal Food and Drug Administration; and

(vii) Any national board recognized by the National Institutes of Health for the purpose of evaluating the medical value of health care services; or

(f) Any other medical or scientific evidence that is comparable to the sources listed in subdivisions (30)(a) through (e) of this section;

(31) Prospective review means a utilization review conducted prior to an admission or a course of treatment;

(32) Protected health information means health information:

(a) That identifies an individual who is the subject of the information; or

(b) With respect to which there is a reasonable basis to believe that the information could be used to identify an individual;

(33) Randomized clinical trial means a controlled, prospective study of patients that have been randomized into an experimental group and a control group at the beginning of the study with only the experimental group of

patients receiving a specific intervention, which includes study of the groups for variables and anticipated outcomes over time;

(34) Retrospective review means a review of medical necessity conducted after health care services have been provided to a patient, but does not include the review of a claim that is limited to an evaluation of reimbursement levels, veracity of documentation, accuracy of coding, or adjudication for payment;

(35) Second opinion means an opportunity or requirement to obtain a clinical evaluation by a provider other than the one originally making a recommendation for a proposed health care service to assess the clinical necessity and appropriateness of the initial proposed health care service;

(36) Utilization review means a set of formal techniques designed to monitor the use or evaluate the clinical necessity, appropriateness, efficacy, or efficiency of health care services, procedures, or settings. Techniques may include ambulatory review, prospective review, second opinion, certification, concurrent review, case management, discharge planning, or retrospective review; and

(37) Utilization review organization means an entity that conducts a utilization review, other than a health carrier performing a review for its own health benefit plans.

Source: Laws 2013, LB147, § 3.

Cross References

Health Carrier Grievance Procedure Act, see section 44-7301.

44-1304 Applicability of act.

(1) Except as provided in subsection (2) of this section, the Health Carrier External Review Act shall apply to all health carriers.

(2)(a) The act shall not apply to a policy or certificate that provides coverage for:

- (i) A specified disease, specified accident, or accident-only coverage;
- (ii) Credit;
- (iii) Dental;
- (iv) Disability income;
- (v) Hospital indemnity;
- (vi) Long-term care insurance as defined in section 44-4509;
- (vii) Vision care; or
- (viii) Any other limited supplemental benefit.

(b) The act shall not apply to:

- (i) A medicare supplement policy of insurance as defined in section 44-3602;
- (ii) Coverage under a plan through medicare, medicaid, or the Federal Employees Health Benefits Program;
- (iii) Any coverage issued under Chapter 55 of Title 10 of the United States Code and any coverage issued as a supplement to that coverage;
- (iv) Any coverage issued as supplemental to liability insurance;
- (v) Workers' compensation or similar insurance;
- (vi) Automobile medical-payment insurance; or

(vii) Any insurance under which benefits are payable with or without regard to fault, whether written on a group blanket or individual basis.

Source: Laws 2013, LB147, § 4.

44-1305 Health carrier; covered person; notification; when; written notice; contents; health carrier; duties.

(1)(a) A health carrier shall notify the covered person in writing of the covered person's right to request an external review to be conducted pursuant to section 44-1308, 44-1309, or 44-1310 and include the appropriate statements and information as set forth in subsection (2) of this section at the same time that the health carrier sends written notice of:

(i) An adverse determination upon completion of the health carrier's utilization review process set forth in the Utilization Review Act; and

(ii) A final adverse determination.

(b) As part of the written notice required under subdivision (1)(a) of this section, a health carrier shall include the following, or substantially equivalent, language: We have denied your request for the provision of or payment for a health care service or course of treatment. You may have the right to have our decision reviewed by health care professionals who have no association with us if our decision involved making a judgment as to the medical necessity, appropriateness, health care setting, level of care, or effectiveness of the health care service or treatment you requested by submitting a request for external review to the Director of Insurance (insert address and telephone number of the office of the director).

(c) The director may prescribe by rule and regulation the form and content of the notice required under this section.

(2)(a) The health carrier shall include in the notice required under subsection (1) of this section:

(i) For a notice related to an adverse determination, a statement informing the covered person that:

(A) If the covered person has a medical condition in which the timeframe for completion of an expedited review of a grievance involving an adverse determination as set forth in section 44-7311 would seriously jeopardize the life or health of the covered person or would jeopardize the covered person's ability to regain maximum function, the covered person or the covered person's authorized representative may file a request for an expedited external review to be conducted pursuant to section 44-1309 or 44-1310 if the adverse determination involves a denial of coverage based on a determination that the recommended or requested health care service or treatment is experimental or investigational and the covered person's treating physician certifies in writing that the recommended or requested health care service or treatment that is the subject of the adverse determination would be significantly less effective if not promptly initiated, at the same time the covered person or the covered person's authorized representative files a request for an expedited review of a grievance involving an adverse determination as set forth in section 44-7311, but that the independent review organization assigned to conduct the expedited external review will determine whether the covered person shall be required to complete the expedited review of the grievance prior to conducting the expedited external review; and

(B) The covered person or the covered person's authorized representative may file a grievance under the health carrier's internal grievance process as set forth in section 44-7308, but if the health carrier has not issued a written decision to the covered person or his or her authorized representative within the time allowed for an internal grievance pursuant to section 44-7308 and the covered person or his or her authorized representative has not requested or agreed to a delay, the covered person or his or her authorized representative may file a request for external review pursuant to section 44-1306 and shall be considered to have exhausted the health carrier's internal grievance process for purposes of section 44-1307; and

(ii) For a notice related to a final adverse determination, a statement informing the covered person that:

(A) If the covered person has a medical condition in which the timeframe for completion of a standard external review pursuant to section 44-1308 would seriously jeopardize the life or health of the covered person or would jeopardize the covered person's ability to regain maximum function, the covered person or the covered person's authorized representative may file a request for an expedited external review pursuant to section 44-1309; or

(B) If the final adverse determination concerns:

(I) An admission, availability of care, continued stay, or health care service for which the covered person received emergency services, but has not been discharged from a facility, the covered person or the covered person's authorized representative may request an expedited external review pursuant to section 44-1309; or

(II) A denial of coverage based on a determination that the recommended or requested health care service or treatment is experimental or investigational, the covered person or the covered person's authorized representative may file a request for a standard external review to be conducted pursuant to section 44-1310 or if the covered person's treating physician certifies in writing that the recommended or requested health care service or treatment that is the subject of the request would be significantly less effective if not promptly initiated, the covered person or his or her authorized representative may request an expedited external review to be conducted under section 44-1310.

(b) In addition to the information to be provided pursuant to subdivision (2)(a) of this section, the health carrier shall include a copy of the description of both the standard and expedited external review procedures that the health carrier is required to provide pursuant to section 44-1317 and shall highlight the provisions in the external review procedures that give the covered person or the covered person's authorized representative the opportunity to submit additional information and include any forms used to process an external review.

(c) As part of any forms provided under subdivision (2)(b) of this section, the health carrier shall include an authorization form or other document approved by the director that complies with the requirements of 45 C.F.R. 164.508, by which the covered person, for purposes of conducting an external review under the Health Carrier External Review Act, authorizes the health carrier and the covered person's treating health care provider to disclose protected health information, including medical records, concerning the covered person that are pertinent to the external review.

Source: Laws 2013, LB147, § 5; Laws 2016, LB840, § 1.
Effective date July 21, 2016.

Utilization Review Act, see section 44-5416.

44-1306 Request for external review.

(1)(a) Except for a request for an expedited external review as set forth in section 44-1309, all requests for external review shall be made in writing to the director.

(b) The director may prescribe by rule and regulation the form and content of external review requests required to be submitted under this section.

(2) A covered person or the covered person's authorized representative may make a request for an external review of an adverse determination or final adverse determination.

Source: Laws 2013, LB147, § 6.

44-1307 Request for external review; exhaustion of internal grievance process; request for expedited external review of adverse determination; independent review organization; duties.

(1)(a) Except as provided in subsection (2) of this section, a request for an external review pursuant to section 44-1308, 44-1309, or 44-1310 shall not be made until the covered person has exhausted the health carrier's internal grievance process as set forth in the Health Carrier Grievance Procedure Act.

(b) A covered person shall be considered to have exhausted the health carrier's internal grievance process for purposes of this section if the covered person or the covered person's authorized representative:

(i) Has filed a grievance involving an adverse determination pursuant to section 44-7308; and

(ii) Except to the extent that the covered person or the covered person's authorized representative requested or agreed to a delay, has not received a written decision on the grievance from the health carrier within the time allowed for an internal grievance pursuant to section 44-7308.

(c) Notwithstanding subdivision (1)(b) of this section, a covered person or the covered person's authorized representative may not make a request for an external review of an adverse determination involving a retrospective review determination made pursuant to the Utilization Review Act until the covered person has exhausted the health carrier's internal grievance process.

(2)(a)(i) At the same time that a covered person or the covered person's authorized representative files a request for an expedited review of a grievance involving an adverse determination as set forth in section 44-7311, the covered person or his or her authorized representative may file a request for an expedited external review of the adverse determination:

(A) Under section 44-1309 if the covered person has a medical condition in which the timeframe for completion of an expedited review of the grievance involving an adverse determination set forth in section 44-7311 would seriously jeopardize the life or health of the covered person or would jeopardize the covered person's ability to regain maximum function; or

(B) Under section 44-1310 if the adverse determination involves a denial of coverage based upon a determination that the recommended or requested health care service or treatment is experimental or investigational and the covered person's treating physician certifies in writing that the recommended

or requested health care service or treatment that is the subject of the adverse determination would be significantly less effective if not promptly initiated.

(ii) Upon receipt of a request for an expedited external review under subdivision (2)(a)(i) of this section, the independent review organization conducting the external review in accordance with the provisions of section 44-1309 or 44-1310 shall determine whether the covered person shall be required to complete the expedited grievance review process set forth in section 44-7311 before it conducts the expedited external review.

(iii) Upon a determination made pursuant to subdivision (2)(a)(ii) of this section that the covered person must first complete the expedited grievance review process set forth in section 44-7311, the independent review organization shall immediately notify the covered person and, if applicable, the covered person's authorized representative of such determination and the fact that it will not proceed with the expedited external review set forth in section 44-1309 until completion of the expedited grievance review process and the covered person's grievance at the completion of the expedited grievance review process remains unresolved.

(b) A request for an external review of an adverse determination may be made before the covered person has exhausted the health carrier's internal grievance procedures as set forth in section 44-7308 if the health carrier agrees to waive the exhaustion requirement.

(3) If the requirement to exhaust the health carrier's internal grievance procedures is waived under subdivision (2)(b) of this section, the covered person or the covered person's authorized representative may file a request in writing for a standard external review as set forth in section 44-1308 or 44-1310.

Source: Laws 2013, LB147, § 7; Laws 2016, LB840, § 2.
Effective date July 21, 2016.

Cross References

Health Carrier Grievance Procedure Act, see section 44-7301.

Utilization Review Act, see section 44-5416.

44-1308 Request for external review; filing; director; duties; health carrier; duties; preliminary review; contents; director; powers; notice of initial determination; contents; independent review organization; powers; duties; decision; notice; contents.

(1)(a) Within four months after the date of receipt of a notice of an adverse determination or final adverse determination pursuant to section 44-1305, a covered person or the covered person's authorized representative may file a request for an external review with the director.

(b) Within one business day after the date of receipt of a request for an external review pursuant to subdivision (1)(a) of this section, the director shall send a copy of the request to the health carrier.

(2) Within five business days following the date of receipt of the copy of the external review request from the director under subdivision (1)(b) of this section, the health carrier shall complete a preliminary review of the request to determine whether:

(a) The individual is or was a covered person in the health benefit plan at the time that the health care service was requested or, in the case of a retrospective

review, was a covered person in the health benefit plan at the time that the health care service was provided;

(b) The health care service that is the subject of the adverse determination or the final adverse determination is a covered service under the covered person's health benefit plan, but for a determination by the health carrier that the health care service is not covered because it does not meet the health carrier's requirements for medical necessity, appropriateness, health care setting, level of care, or effectiveness;

(c) The covered person has exhausted the health carrier's internal grievance process as set forth in the Health Carrier Grievance Procedure Act unless the covered person is not required to exhaust the health carrier's internal grievance process pursuant to section 44-1307; and

(d) The covered person has provided all the information and forms required to process an external review, including the release form provided under subsection (2) of section 44-1305.

(3)(a) Within one business day after completion of the preliminary review, the health carrier shall notify the director and covered person and, if applicable, the covered person's authorized representative, in writing whether:

- (i) The request is complete; and
 - (ii) The request is eligible for external review.
- (b) If the request:

(i) Is not complete, the health carrier shall inform the covered person and, if applicable, the covered person's authorized representative and the director in writing and include in the notice what information or materials are needed to make the request complete; or

(ii) Is not eligible for external review, the health carrier shall inform the covered person and, if applicable, the covered person's authorized representative and the director in writing and include in the notice the reasons for its ineligibility.

(c)(i) The director may specify the form for the health carrier's notice of initial determination under this subsection and any supporting information to be included in the notice.

(ii) The notice of initial determination shall include a statement informing the covered person and, if applicable, the covered person's authorized representative that a health carrier's initial determination that the external review request is ineligible for review may be appealed to the director.

(d)(i) The director may determine that a request is eligible for external review under subsection (2) of this section notwithstanding a health carrier's initial determination that the request is ineligible and require that it be referred for external review.

(ii) In making a determination under subdivision (3)(d)(i) of this section, the director's decision shall be made in accordance with the terms of the covered person's health benefit plan and shall be subject to all applicable provisions of the Health Carrier External Review Act.

(4)(a) Whenever the director receives a notice that a request is eligible for external review following the preliminary review conducted pursuant to subsection (3) of this section, the director shall, within one business day after the date of receipt of the notice:

(i) Assign an independent review organization from the list of approved independent review organizations compiled and maintained by the director pursuant to section 44-1312 to conduct the external review and notify the health carrier of the name of the assigned independent review organization; and

(ii) Notify in writing the covered person and, if applicable, the covered person's authorized representative of the request's eligibility and acceptance for external review.

(b) In reaching a decision, the assigned independent review organization is not bound by any decisions or conclusions reached during the health carrier's utilization review process as set forth in the Utilization Review Act or the health carrier's internal grievance process as set forth in the Health Carrier Grievance Procedure Act.

(c) The director shall include in the notice provided to the covered person and, if applicable, the covered person's authorized representative a statement that the covered person or his or her authorized representative may submit in writing to the assigned independent review organization within five business days following the date of receipt of the notice provided pursuant to subdivision (4)(a) of this section additional information that the independent review organization shall consider when conducting the external review. The independent review organization is not required to but may accept and consider additional information submitted after five business days.

(5)(a) Within five business days after the date of receipt of the notice provided pursuant to subdivision (4)(a) of this section, the health carrier or its designee utilization review organization shall provide to the assigned independent review organization the documents and any information considered in making the adverse determination or final adverse determination.

(b) Except as provided in subdivision (5)(c) of this section, failure by the health carrier or its utilization review organization to provide the documents and information within the time specified in subdivision (5)(a) of this section shall not delay the conduct of the external review.

(c)(i) If the health carrier or its utilization review organization fails to provide the documents and information within the time specified in subdivision (5)(a) of this section, the assigned independent review organization may terminate the external review and make a decision to reverse the adverse determination or final adverse determination.

(ii) Within one business day after making the decision under subdivision (5)(c)(i) of this section, the independent review organization shall notify the covered person and, if applicable, the covered person's authorized representative, the health carrier, and the director.

(6)(a) The assigned independent review organization shall review all of the information and documents received pursuant to subsection (5) of this section and any other information submitted in writing to the independent review organization by the covered person or the covered person's authorized representative pursuant to subdivision (4)(c) of this section.

(b) Upon receipt of any information submitted by the covered person or the covered person's authorized representative pursuant to subdivision (4)(c) of this section, the assigned independent review organization shall forward the information to the health carrier within one business day.

(7)(a) Upon receipt of the information, if any, required to be forwarded pursuant to subdivision (6)(b) of this section, the health carrier may reconsider its adverse determination or final adverse determination that is the subject of the external review.

(b) Reconsideration by the health carrier of its adverse determination or final adverse determination pursuant to subdivision (7)(a) of this section shall not delay or terminate the external review.

(c) The external review may only be terminated if the health carrier decides, upon completion of its reconsideration, to reverse its adverse determination or final adverse determination and provide coverage or payment for the health care service that is the subject of the adverse determination or final adverse determination.

(d)(i) Within one business day after making the decision to reverse its adverse determination or final adverse determination as provided in subdivision (7)(c) of this section, the health carrier shall notify the covered person and, if applicable, the covered person's authorized representative, the assigned independent review organization, and the director in writing of its decision.

(ii) The assigned independent review organization shall terminate the external review upon receipt of the notice from the health carrier sent pursuant to subdivision (7)(d)(i) of this section.

(8) In addition to the documents and information provided pursuant to subsection (5) of this section, the assigned independent review organization, to the extent the information or documents are available and the independent review organization considers them appropriate, shall consider the following in reaching a decision:

(a) The covered person's medical records;

(b) The attending health care professional's recommendation;

(c) Consulting reports from appropriate health care professionals and other documents submitted by the health carrier, covered person, the covered person's authorized representative, or the covered person's treating provider;

(d) The terms of coverage under the covered person's health benefit plan with the health carrier to ensure that the independent review organization's decision is not contrary to the terms of coverage under the covered person's health benefit plan with the health carrier;

(e) The most appropriate practice guidelines, which shall include applicable evidence-based standards and may include any other practice guidelines developed by the federal government, national or professional medical societies, boards, or associations;

(f) Any applicable clinical review criteria developed and used by the health carrier or its designee utilization review organization; and

(g) The opinion of the independent review organization's clinical reviewer or reviewers after considering subdivisions (8)(a) through (f) of this section to the extent that the information or documents are available and the clinical reviewer or reviewers consider it appropriate.

(9)(a) Within forty-five days after the date of receipt of the request for an external review, the assigned independent review organization shall provide written notice of its decision to uphold or reverse the adverse determination or

the final adverse determination to the covered person, if applicable, the covered person's authorized representative, the health carrier, and the director.

(b) The independent review organization shall include in the notice sent pursuant to subdivision (9)(a) of this section:

- (i) A general description of the reason for the request for external review;
- (ii) The date that the independent review organization received the assignment from the director to conduct the external review;
- (iii) The date that the external review was conducted;
- (iv) The date of its decision;
- (v) The principal reason or reasons for its decision, including what applicable, if any, evidence-based standards were a basis for its decision;
- (vi) The rationale for its decision; and
- (vii) References to the evidence or documentation, including the evidence-based standards, considered in reaching its decision.

(c) Upon receipt of a notice of a decision pursuant to subdivision (9)(a) of this section reversing the adverse determination or final adverse determination, the health carrier shall immediately approve the coverage that was the subject of the adverse determination or final adverse determination.

(10) The assignment by the director of an approved independent review organization to conduct an external review in accordance with this section shall be done on a random basis among those approved independent review organizations qualified to conduct the particular external review based on the nature of the health care service that is the subject of the adverse determination or final adverse determination and other circumstances, including conflict of interest concerns pursuant to subsection (4) of section 44-1313.

Source: Laws 2013, LB147, § 8.

Cross References

Health Carrier Grievance Procedure Act, see section 44-7301.
Utilization Review Act, see section 44-5416.

44-1309 Request for expedited external review; director; duties; health carrier; duties; notice of initial determination; contents; expedited external review; independent review organization; powers; duties; decision; notice; contents.

(1) Except as provided in subsection (6) of this section, a covered person or the covered person's authorized representative may make a request for an expedited external review with the director at the time that the covered person receives:

- (a) An adverse determination if:
 - (i) The adverse determination involves a medical condition of the covered person for which the timeframe for completion of an expedited internal review of a grievance involving an adverse determination set forth in section 44-7311 would seriously jeopardize the life or health of the covered person or would jeopardize the covered person's ability to regain maximum function; and
 - (ii) The covered person or the covered person's authorized representative has filed a request for an expedited review of a grievance involving an adverse determination as set forth in section 44-7311; or
- (b) A final adverse determination:

(i) If the covered person has a medical condition in which the timeframe for completion of a standard external review pursuant to section 44-1308 would seriously jeopardize the life or health of the covered person or would jeopardize the covered person's ability to regain maximum function; or

(ii) If the final adverse determination concerns an admission, availability of care, continued stay, or health care service for which the covered person received emergency services, but has not been discharged from a facility.

(2)(a) Upon receipt of a request for an expedited external review, the director shall immediately send a copy of the request to the health carrier.

(b) Immediately upon receipt of the request pursuant to subdivision (2)(a) of this section, the health carrier shall determine whether the request meets the reviewability requirements set forth in subsection (2) of section 44-1308. The health carrier shall immediately notify the director and the covered person and, if applicable, the covered person's authorized representative of its eligibility determination.

(c)(i) The director may specify the form for the health carrier's notice of initial determination under this subsection and any supporting information to be included in the notice.

(ii) The notice of initial determination shall include a statement informing the covered person and, if applicable, the covered person's authorized representative that a health carrier's initial determination that an external review request is ineligible for review may be appealed to the director.

(d)(i) The director may determine that a request is eligible for external review under subsection (2) of section 44-1308 notwithstanding a health carrier's initial determination that the request is ineligible and require that it be referred for external review.

(ii) In making a determination under subdivision (2)(d)(i) of this section, the director's decision shall be made in accordance with the terms of the covered person's health benefit plan and shall be subject to all applicable provisions of the Health Carrier External Review Act.

(e) Upon receipt of the notice that the request meets the reviewability requirements, the director shall immediately assign an independent review organization to conduct the expedited external review from the list of approved independent review organizations compiled and maintained by the director pursuant to section 44-1312. The director shall immediately notify the health carrier of the name of the assigned independent review organization.

(f) In reaching a decision in accordance with subsection (5) of this section, the assigned independent review organization is not bound by any decisions or conclusions reached during the health carrier's utilization review process as set forth in the Health Carrier Grievance Procedure Act or the Utilization Review Act.

(3) Upon receipt of the notice from the director of the name of the independent review organization assigned to conduct the expedited external review pursuant to subdivision (2)(e) of this section, the health carrier or its designee utilization review organization shall provide or transmit all necessary documents and information considered in making the adverse determination or final adverse determination to the assigned independent review organization electronically or by telephone or facsimile or any other available expeditious method.

(4) In addition to the documents and information provided or transmitted pursuant to subsection (3) of this section, the assigned independent review organization, to the extent that the information or documents are available and the independent review organization considers them appropriate, shall consider the following in reaching a decision:

(a) The covered person's pertinent medical records;

(b) The attending health care professional's recommendation;

(c) Consulting reports from appropriate health care professionals and other documents submitted by the health carrier, covered person, the covered person's authorized representative, or the covered person's treating provider;

(d) The terms of coverage under the covered person's health benefit plan with the health carrier to ensure that the independent review organization's decision is not contrary to the terms of coverage under the covered person's health benefit plan with the health carrier;

(e) The most appropriate practice guidelines, which shall include evidence-based standards, and may include any other practice guidelines developed by the federal government, national or professional medical societies, boards, or associations;

(f) Any applicable clinical review criteria developed and used by the health carrier or its designee utilization review organization in making adverse determinations; and

(g) The opinion of the independent review organization's clinical reviewer or reviewers after considering subdivisions (4)(a) through (f) of this section to the extent that the information and documents are available and the clinical reviewer or reviewers consider it appropriate.

(5)(a) As expeditiously as the covered person's medical condition or circumstances requires, but in no event more than seventy-two hours after the date of receipt of the request for an expedited external review that meets the reviewability requirements set forth in subsection (2) of section 44-1308, the assigned independent review organization shall:

(i) Make a decision to uphold or reverse the adverse determination or final adverse determination; and

(ii) Notify the covered person and, if applicable, the covered person's authorized representative, the health carrier, and the director of the decision.

(b) If the notice provided pursuant to subdivision (5)(a) of this section was not in writing, within forty-eight hours after the date of providing that notice, the assigned independent review organization shall:

(i) Provide written confirmation of the decision to the covered person and, if applicable, the covered person's authorized representative, the health carrier, and the director; and

(ii) Include the information set forth in subdivision (9)(b) of section 44-1308.

(c) Upon receipt of the notice of a decision pursuant to subdivision (5)(a) of this section reversing the adverse determination or final adverse determination, the health carrier shall immediately approve the coverage that was the subject of the adverse determination or final adverse determination.

(6) An expedited external review may not be provided for retrospective adverse or final adverse determinations.

(7) The assignment by the director of an approved independent review organization to conduct an external review in accordance with this section shall be done on a random basis among those approved independent review organizations qualified to conduct the particular external review based on the nature of the health care service that is the subject of the adverse determination or final adverse determination and other circumstances, including conflict of interest concerns pursuant to subsection (4) of section 44-1313.

Source: Laws 2013, LB147, § 9.

Cross References

Health Carrier Grievance Procedure Act, see section 44-7301.

Utilization Review Act, see section 44-5416.

44-1310 Review of denial of coverage for service or coverage determined experimental or investigational; external review; expedited external review; director; duties; health carrier; duties; notice of initial determination; contents; appeal; clinical reviewer; duties; independent review organization; powers; duties; decision; notice; contents.

(1)(a) Within four months after the date of receipt of a notice of an adverse determination or final adverse determination pursuant to section 44-1305 that involves a denial of coverage based on a determination that the health care service or treatment recommended or requested is experimental or investigational, a covered person or the covered person's authorized representative may file a request for external review with the director.

(b)(i) A covered person or the covered person's authorized representative may make an oral request for an expedited external review of the adverse determination or final adverse determination pursuant to subdivision (1)(a) of this section if the covered person's treating physician certifies, in writing, that the recommended or requested health care service or treatment that is the subject of the request would be significantly less effective if not promptly initiated.

(ii) Upon receipt of a request for an expedited external review, the director shall immediately notify the health carrier.

(iii)(A) Upon notice of the request for expedited external review, the health carrier shall immediately determine whether the request meets the reviewability requirements of subdivision (2)(b) of this section. The health carrier shall immediately notify the director and the covered person and, if applicable, the covered person's authorized representative of its eligibility determination.

(B) The director may specify the form for the health carrier's notice of initial determination under subdivision (1)(b)(iii)(A) of this section and any supporting information to be included in the notice.

(C) The notice of initial determination under subdivision (1)(b)(iii)(A) of this section shall include a statement informing the covered person and, if applicable, the covered person's authorized representative that a health carrier's initial determination that the external review request is ineligible for review may be appealed to the director.

(iv)(A) The director may determine that a request is eligible for external review under subdivision (2)(b) of this section notwithstanding a health carrier's initial determination that the request is ineligible and require that it be referred for external review.

(B) In making a determination under subdivision (1)(b)(iii)(A) of this section, the director's decision shall be made in accordance with the terms of the covered person's health benefit plan and shall be subject to all applicable provisions of the Health Carrier External Review Act.

(v) Upon receipt of the notice that the expedited external review request meets the reviewability requirements of subdivision (2)(b) of this section, the director shall immediately assign an independent review organization to review the expedited request from the list of approved independent review organizations compiled and maintained by the director pursuant to section 44-1312 and notify the health carrier of the name of the assigned independent review organization.

(vi) At the time the health carrier receives the notice of the assigned independent review organization pursuant to subdivision (1)(b)(v) of this section, the health carrier or its designee utilization review organization shall provide or transmit all necessary documents and information considered in making the adverse determination or final adverse determination to the assigned independent review organization electronically or by telephone or facsimile or any other available expeditious method.

(2)(a) Except for a request for an expedited external review made pursuant to subdivision (1)(b) of this section, within one business day after the date of receipt of the request the director receives a request for an external review, the director shall notify the health carrier.

(b) Within five business days following the date of receipt of the notice sent pursuant to subdivision (2)(a) of this section, the health carrier shall conduct and complete a preliminary review of the request to determine whether:

(i) The individual is or was a covered person in the health benefit plan at the time that the health care service or treatment was recommended or requested or, in the case of a retrospective review, was a covered person in the health benefit plan at the time that the health care service or treatment was provided;

(ii) The recommended or requested health care service or treatment that is the subject of the adverse determination or final adverse determination:

(A) Is a covered benefit under the covered person's health benefit plan except for the health carrier's determination that the service or treatment is experimental or investigational for a particular medical condition; and

(B) Is not explicitly listed as an excluded benefit under the covered person's health benefit plan with the health carrier;

(iii) The covered person's treating physician has certified that one of the following situations is applicable:

(A) Standard health care services or treatments have not been effective in improving the condition of the covered person;

(B) Standard health care services or treatments are not medically appropriate for the covered person; or

(C) There is no available standard health care service or treatment covered by the health carrier that is more beneficial than the recommended or requested health care service or treatment described in subdivision (2)(b)(iv) of this section;

(iv) The covered person's treating physician:

(A) Has recommended a health care service or treatment that the physician certifies, in writing, is likely to be more beneficial to the covered person, in the physician's opinion, than any available standard health care service or treatment; or

(B) Who is a licensed, board-certified or board-eligible physician qualified to practice in the area of medicine appropriate to treat the covered person's condition, has certified in writing that scientifically valid studies using accepted protocols demonstrate that the health care service or treatment requested by the covered person that is the subject of the adverse determination or final adverse determination is likely to be more beneficial to the covered person than any available standard health care service or treatment;

(v) The covered person has exhausted the health carrier's internal grievance process as set forth in the Health Carrier Grievance Procedure Act unless the covered person is not required to exhaust the health carrier's internal grievance process pursuant to section 44-1307; and

(vi) The covered person has provided all the information and forms required by the director that are necessary to process an external review, including the release form provided under subsection (2) of section 44-1305.

(3)(a) Within one business day after completion of the preliminary review, the health carrier shall notify the director and the covered person and, if applicable, the covered person's authorized representative in writing whether the request is complete and the request is eligible for external review.

(b) If the request:

(i) Is not complete, the health carrier shall inform, in writing, the director and the covered person and, if applicable, the covered person's authorized representative and include in the notice what information or materials are needed to make the request complete; or

(ii) Is not eligible for external review, the health carrier shall inform the covered person, the covered person's authorized representative, if applicable, and the director in writing and include in the notice the reasons for its ineligibility.

(c)(i) The director may specify the form for the health carrier's notice of initial determination under subdivision (3)(b) of this section and any supporting information to be included in the notice.

(ii) The notice of initial determination provided under subdivision (3)(b) of this section shall include a statement informing the covered person and, if applicable, the covered person's authorized representative that a health carrier's initial determination that the external review request is ineligible for review may be appealed to the director.

(d)(i) The director may determine that a request is eligible for external review under subdivision (2)(b) of this section notwithstanding a health carrier's initial determination that the request is ineligible and require that it be referred for external review.

(ii) In making a determination under subdivision (3)(d)(i) of this section, the director's decision shall be made in accordance with the terms of the covered person's health benefit plan and shall be subject to all applicable provisions of the Health Carrier External Review Act.

(e) Whenever a request for external review is determined eligible for external review, the health carrier shall notify the director and the covered person and, if applicable, the covered person's authorized representative.

(4)(a) Within one business day after the receipt of the notice from the health carrier that the external review request is eligible for external review pursuant to subdivision (1)(b)(iv) of this section or subdivision (3)(e) of this section, the director shall:

(i) Assign an independent review organization to conduct the external review from the list of approved independent review organizations compiled and maintained by the director pursuant to section 44-1312 and notify the health carrier of the name of the assigned independent review organization; and

(ii) Notify in writing the covered person and, if applicable, the covered person's authorized representative of the request's eligibility and acceptance for external review.

(b) The director shall include in the notice provided to the covered person and, if applicable, the covered person's authorized representative a statement that the covered person or the covered person's authorized representative may submit in writing to the assigned independent review organization within five business days following the date of receipt of the notice provided pursuant to subdivision (4)(a) of this section additional information that the independent review organization shall consider when conducting the external review. The independent review organization may accept and consider additional information submitted after five business days.

(c) Within one business day after the receipt of the notice of assignment to conduct the external review pursuant to subdivision (4)(a) of this section, the assigned independent review organization shall:

(i) Select one or more clinical reviewers, as it determines is appropriate, pursuant to subdivision (4)(d) of this section to conduct the external review; and

(ii) Based upon the opinion of the clinical reviewer, or opinions if more than one clinical reviewer has been selected to conduct the external review, make a decision to uphold or reverse the adverse determination or final adverse determination.

(d)(i) In selecting clinical reviewers pursuant to subdivision (4)(c)(i) of this section, the assigned independent review organization shall select physicians or other health care professionals who meet the minimum qualifications described in section 44-1313 and, through clinical experience in the past three years, are experts in the treatment of the covered person's condition and knowledgeable about the recommended or requested health care service or treatment.

(ii) Neither the covered person, the covered person's authorized representative, if applicable, nor the health carrier shall choose or control the choice of the physicians or other health care professionals to be selected to conduct the external review.

(e) In accordance with subsection (8) of this section, each clinical reviewer shall provide a written opinion to the assigned independent review organization on whether the recommended or requested health care service or treatment should be covered.

(f) In reaching an opinion, a clinical reviewer is not bound by any decisions or conclusions reached during the health carrier's utilization review process as

set forth in the Utilization Review Act or the health carrier's internal grievance process as set forth in the Health Carrier Grievance Procedure Act.

(5)(a) Within five business days after the date of receipt of the notice provided pursuant to subdivision (4)(a) of this section, the health carrier or its designee utilization review organization shall provide to the assigned independent review organization the documents and any information considered in making the adverse determination or the final adverse determination.

(b) Except as provided in subdivision (5)(c) of this section, failure by the health carrier or its designee utilization review organization to provide the documents and information within the time specified in subdivision (5)(a) of this section shall not delay the conduct of the external review.

(c)(i) If the health carrier or its designee utilization review organization has failed to provide the documents and information within the time specified in subdivision (5)(a) of this section, the assigned independent review organization may terminate the external review and make a decision to reverse the adverse determination or final adverse determination.

(ii) Immediately upon making the decision under subdivision (5)(c)(i) of this section, the independent review organization shall notify the covered person, the covered person's authorized representative, if applicable, the health carrier, and the director.

(6)(a) Each clinical reviewer selected pursuant to subsection (4) of this section shall review all of the information and documents received pursuant to subsection (5) of this section and any other information submitted in writing by the covered person or the covered person's authorized representative pursuant to subdivision (4)(b) of this section.

(b) Upon receipt of any information submitted by the covered person or the covered person's authorized representative pursuant to subdivision (4)(b) of this section, within one business day after the receipt of the information, the assigned independent review organization shall forward the information to the health carrier.

(7)(a) Upon receipt of the information required to be forwarded pursuant to subdivision (6)(b) of this section, the health carrier may reconsider its adverse determination or final adverse determination that is the subject of the external review.

(b) Reconsideration by the health carrier of its adverse determination or final adverse determination pursuant to subdivision (7)(a) of this section shall not delay or terminate the external review.

(c) The external review may be terminated only if the health carrier decides, upon completion of its reconsideration, to reverse its adverse determination or final adverse determination and provide coverage or payment for the recommended or requested health care service or treatment that is the subject of the adverse determination or final adverse determination.

(d)(i) Immediately upon making the decision to reverse its adverse determination or final adverse determination as provided in subdivision (7)(c) of this section, the health carrier shall notify the covered person, the covered person's authorized representative, if applicable, the assigned independent review organization, and the director in writing of its decision.

(ii) The assigned independent review organization shall terminate the external review upon receipt of the notice from the health carrier sent pursuant to subdivision (7)(d)(i) of this section.

(8)(a) Except as provided in subdivision (8)(c) of this section, within twenty days after being selected in accordance with subsection (4) of this section to conduct the external review, each clinical reviewer shall provide an opinion to the assigned independent review organization pursuant to subsection (9) of this section on whether the recommended or requested health care service or treatment should be covered.

(b) Except for an opinion provided pursuant to subdivision (8)(c) of this section, each clinical reviewer's opinion shall be in writing and include the following information:

(i) A description of the covered person's medical condition;

(ii) A description of the indicators relevant to determining whether there is sufficient evidence to demonstrate that the recommended or requested health care service or treatment is more likely than not to be beneficial to the covered person than any available standard health care service or treatment and the adverse risk of the recommended or requested health care service or treatment would not be substantially increased over that of available standard health care service or treatment;

(iii) A description and analysis of any medical or scientific evidence considered in reaching the opinion;

(iv) A description and analysis of any evidence-based standard; and

(v) Information on whether the reviewer's rationale for the opinion is based on subdivision (9)(e)(i) or (ii) of this section.

(c) For an expedited external review, each clinical reviewer shall provide an opinion orally or in writing to the assigned independent review organization as expeditiously as the covered person's medical condition or circumstances requires, but in no event more than five calendar days after being selected in accordance with subsection (4) of this section.

(d) If the opinion provided pursuant to subdivision (8)(a) of this section was not in writing, within forty-eight hours following the date that the opinion was provided, the clinical reviewer shall provide written confirmation of the opinion to the assigned independent review organization and include the information required under subdivision (8)(b) of this section.

(9) In addition to the documents and information provided pursuant to subdivision (1)(b) of this section or subsection (5) of this section, each clinical reviewer selected pursuant to subsection (4) of this section, to the extent the information or documents are available and the reviewer considers appropriate, shall consider the following in reaching an opinion pursuant to subsection (8) of this section:

(a) The covered person's pertinent medical records;

(b) The attending physician or health care professional's recommendation;

(c) Consulting reports from appropriate health care professionals and other documents submitted by the health carrier, covered person, the covered person's authorized representative, if applicable, or the covered person's treating physician or health care professional;

(d) The terms of coverage under the covered person's health benefit plan with the health carrier to ensure that, but for the health carrier's determination that the recommended or requested health care service or treatment that is the subject of the opinion is experimental or investigational, the reviewer's opinion is not contrary to the terms of coverage under the covered person's health benefit plan with the health carrier; and

(e) Whether:

(i) The recommended or requested health care service or treatment has been approved by the federal Food and Drug Administration, if applicable, for the condition; or

(ii) Medical or scientific evidence or evidence-based standards demonstrate that the expected benefits of the recommended or requested health care service or treatment is more likely than not to be beneficial to the covered person than any available standard health care service or treatment and the adverse risks of the recommended or requested health care service or treatment would not be substantially increased over those of available standard health care service or treatment.

(10)(a)(i) Except as provided in subdivision (10)(a)(ii) of this section, within twenty days after the date it receives the opinion of each clinical reviewer pursuant to subsection (9) of this section, the assigned independent review organization, in accordance with subdivision (10)(b) of this section, shall make a decision and provide written notice of the decision to the covered person, if applicable, the covered person's authorized representative, the health carrier, and the director.

(ii)(A) For an expedited external review, within forty-eight hours after the date it receives the opinion of each clinical reviewer pursuant to subsection (9) of this section, the assigned independent review organization, in accordance with subdivision (10)(b) of this section, shall make a decision and provide notice of the decision orally or in writing to the persons listed in subdivision (10)(a)(i) of this section.

(B) If the notice provided under subdivision (10)(a)(ii)(A) of this section was not in writing, within forty-eight hours after the date of providing that notice, the assigned independent review organization shall provide written confirmation of the decision to the persons listed in subdivision (10)(a)(i) of this section and include the information set forth in subdivision (10)(c) of this section.

(b)(i) If a majority of the clinical reviewers recommend that the recommended or requested health care service or treatment should be covered, the independent review organization shall make a decision to reverse the health carrier's adverse determination or final adverse determination.

(ii) If a majority of the clinical reviewers recommend that the recommended or requested health care service or treatment should not be covered, the independent review organization shall make a decision to uphold the health carrier's adverse determination or final adverse determination.

(iii)(A) If the clinical reviewers are evenly split as to whether the recommended or requested health care service or treatment should be covered, the independent review organization shall obtain the opinion of an additional clinical reviewer in order for the independent review organization to make a decision based on the opinions of a majority of the clinical reviewers pursuant to subdivision (10)(b)(i) or (ii) of this section.

(B) The additional clinical reviewer selected under subdivision (10)(b)(iii)(A) of this section shall use the same information to reach an opinion as the clinical reviewers who have already submitted their opinions pursuant to subsection (9) of this section.

(C) The selection of the additional clinical reviewer shall not extend the time within which the assigned independent review organization is required to make a decision based on the opinions of the clinical reviewers selected under subsection (4) of this section pursuant to subdivision (4)(a) of this section.

(c) The independent review organization shall include in the notice provided pursuant to subdivision (10)(a) of this section:

(i) A general description of the reason for the request for external review;

(ii) The written opinion of each clinical reviewer, including the recommendation of each clinical reviewer as to whether the recommended or requested health care service or treatment should be covered and the rationale for the reviewer's recommendation;

(iii) The date the independent review organization was assigned by the director to conduct the external review;

(iv) The date the external review was conducted;

(v) The date of its decision;

(vi) The principal reason or reasons for its decision; and

(vii) The rationale for its decision.

(d) Upon receipt of a notice of a decision pursuant to subdivision (10)(a) of this section reversing the adverse determination or final adverse determination, the health carrier shall immediately approve coverage of the recommended or requested health care service or treatment that was the subject of the adverse determination or final adverse determination.

(11) The assignment by the director of an approved independent review organization to conduct an external review in accordance with this section shall be done on a random basis among those approved independent review organizations qualified to conduct the particular external review based on the nature of the health care service that is the subject of the adverse determination or final adverse determination and other circumstances, including conflict of interest concerns pursuant to subsection (4) of section 44-1313.

Source: Laws 2013, LB147, § 10.

Cross References

Health Carrier Grievance Procedure Act, see section 44-7301.

Utilization Review Act, see section 44-5416.

44-1311 External review decision; how treated; limitation on subsequent request.

(1) An external review decision is binding on the health carrier except to the extent the health carrier has other remedies available under applicable state law.

(2) An external review decision is binding on the covered person except to the extent the covered person has other remedies available under applicable federal or state law.

(3) A covered person or the covered person's authorized representative, if applicable, shall not file a subsequent request for external review involving the

same adverse determination or final adverse determination for which the covered person has already received an external review decision pursuant to the Health Carrier External Review Act.

Source: Laws 2013, LB147, § 11.

44-1312 Independent review organizations; approval; qualifications; application; contents; fee; termination of approval; director; powers and duties.

(1) The director shall approve independent review organizations eligible to be assigned to conduct external reviews under the Health Carrier External Review Act.

(2) In order to be eligible for approval by the director under this section to conduct external reviews under the act, an independent review organization:

(a) Except as otherwise provided in this section, shall be accredited by a nationally recognized private accrediting entity that the director has determined has independent review organization accreditation standards that are equivalent to or exceed the minimum qualifications for independent review organizations established under section 44-1313; and

(b) Shall submit an application for approval in accordance with subsection (4) of this section.

(3) The director shall develop an application form for initially approving and for reapproving independent review organizations to conduct external reviews.

(4)(a) Any independent review organization wishing to be approved to conduct external reviews under the act shall submit the application form and include with the form all documentation and information necessary for the director to determine if the independent review organization satisfies the minimum qualifications established under section 44-1313.

(b)(i) Subject to subdivision (4)(b)(ii) of this section, an independent review organization is eligible for approval under this section only if it is accredited by a nationally recognized private accrediting entity that the director has determined has independent review organization accreditation standards that are equivalent to or exceed the minimum qualifications for independent review organizations under section 44-1313.

(ii) The director may approve independent review organizations that are not accredited by a nationally recognized private accrediting entity if there are no acceptable nationally recognized private accrediting entities providing independent review organization accreditation.

(c) The director may charge an application fee that independent review organizations shall submit to the director with an application for approval and reapproval.

(5)(a) An approval is effective for two years, unless the director determines before its expiration that the independent review organization is not satisfying the minimum qualifications established under section 44-1313.

(b) Whenever the director determines that an independent review organization has lost its accreditation or no longer satisfies the minimum requirements established under section 44-1313, the director shall terminate the approval of the independent review organization and remove the independent review organization from the list of independent review organizations approved to

conduct external reviews under the act that is maintained by the director pursuant to subsection (6) of this section.

(6) The director shall maintain and periodically update a list of approved independent review organizations.

(7) The director may adopt and promulgate rules and regulations to carry out the provisions of this section.

Source: Laws 2013, LB147, § 12.

44-1313 Independent review organization; minimum qualifications; clinical reviewers; qualifications; limitation on ownership or control; conflict of interests; presumption of compliance; director; powers; duties.

(1) To be approved under section 44-1312 to conduct external reviews, an independent review organization shall have and maintain written policies and procedures that govern all aspects of both the standard external review process and the expedited external review process set forth in the Health Carrier External Review Act that include, at a minimum:

(a) A quality assurance mechanism in place that:

(i) Ensures that external reviews are conducted within the specified time-frames and that required notices are provided in a timely manner;

(ii) Ensures the selection of qualified and impartial clinical reviewers to conduct external reviews on behalf of the independent review organization and suitable matching of reviewers to specific cases and that the independent review organization employs or contracts with an adequate number of clinical reviewers to meet this objective;

(iii) Ensures the confidentiality of medical and treatment records and clinical review criteria; and

(iv) Ensures that any person employed by or under contract with the independent review organization adheres to the requirements of the act;

(b) A toll-free telephone service to receive information on a twenty-four-hours-per-day, seven-days-per-week basis related to external reviews that is capable of accepting, recording, or providing appropriate instruction to incoming telephone callers during other than normal business hours; and

(c) An agreement to maintain and provide to the director the information set out in section 44-1315.

(2) All clinical reviewers assigned by an independent review organization to conduct external reviews shall be physicians or other appropriate health care providers who meet the following minimum qualifications:

(a) Be an expert in the treatment of the covered person's medical condition that is the subject of the external review;

(b) Be knowledgeable about the recommended health care service or treatment through recent or current actual clinical experience treating patients with the same or similar medical condition of the covered person;

(c) Hold a nonrestricted license in a state of the United States and, for physicians, a current certification by a recognized medical specialty board in the United States in the area or areas appropriate to the subject of the external review; and

(d) Have no history of disciplinary actions or sanctions, including loss of staff privileges or participation restrictions, that have been taken or are pending by any hospital, governmental agency or unit, or regulatory body that raise a substantial question as to the clinical reviewer's physical, mental, or professional competence or moral character.

(3) In addition to the requirements set forth in subsection (1) of this section, an independent review organization may not own or control, be a subsidiary of, in any way be owned or controlled by, or exercise control with a health benefit plan, a national, state, or local trade association of health benefit plans, or a national, state, or local trade association of health care providers.

(4)(a) In addition to the requirements set forth in subsections (1), (2), and (3) of this section, to be approved pursuant to section 44-1312 to conduct an external review of a specified case, neither the independent review organization selected to conduct the external review nor any clinical reviewer assigned by the independent review organization to conduct the external review may have a material professional, familial, or financial conflict of interest with any of the following:

- (i) The health carrier that is the subject of the external review;
- (ii) The covered person whose treatment is the subject of the external review or the covered person's authorized representative, if applicable;
- (iii) Any officer, director, or management employee of the health carrier that is the subject of the external review;
- (iv) The health care provider or the health care provider's medical group or independent practice association recommending the health care service or treatment that is the subject of the external review;
- (v) The facility at which the recommended health care service or treatment would be provided; or
- (vi) The developer or manufacturer of the principal drug, device, procedure, or other therapy being recommended for the covered person whose treatment is the subject of the external review.

(b) In determining whether an independent review organization or a clinical reviewer of the independent review organization has a material professional, familial, or financial conflict of interest for purposes of subdivision (4)(a) of this section, the director shall take into consideration situations in which the independent review organization to be assigned to conduct an external review of a specified case or a clinical reviewer to be assigned by the independent review organization to conduct an external review of a specified case may have an apparent professional, familial, or financial relationship or connection with a person described in subdivision (4)(a) of this section, but that the characteristics of that relationship or connection are such that they are not a material professional, familial, or financial conflict of interest that results in the disapproval of the independent review organization or the clinical reviewer from conducting the external review.

(5)(a) An independent review organization that is accredited by a nationally recognized private accrediting entity that has independent review accreditation standards that the director has determined are equivalent to or exceed the minimum qualifications of this section shall be presumed in compliance with this section to be eligible for approval under section 44-1312.

(b) The director shall initially review and periodically review the independent review organization accreditation standards of a nationally recognized private accrediting entity to determine whether the entity's standards are, and continue to be, equivalent to or exceed the minimum qualifications established under this section. The director may accept a review conducted by the National Association of Insurance Commissioners for the purpose of the determination under this subdivision.

(c) Upon request, a nationally recognized private accrediting entity shall make its current independent review organization accreditation standards available to the director or the National Association of Insurance Commissioners in order for the director to determine if the entity's standards are equivalent to or exceed the minimum qualifications established under this section. The director may exclude any private accrediting entity that is not reviewed by the National Association of Insurance Commissioners.

(6) An independent review organization shall be unbiased. An independent review organization shall establish and maintain written procedures to ensure that it is unbiased in addition to any other procedures required under this section.

Source: Laws 2013, LB147, § 13.

44-1314 Liability for damages.

No independent review organization, clinical reviewer working on behalf of an independent review organization, or employee, agent, or contractor of an independent review organization shall be liable in damages to any person for any opinions rendered or acts or omissions performed within the scope of the organization's or person's duties under the law during or upon completion of an external review conducted pursuant to the Health Carrier External Review Act, unless the opinion was rendered or act or omission performed in bad faith or involved gross negligence.

Source: Laws 2013, LB147, § 14.

44-1315 Records; report; contents.

(1)(a) An independent review organization assigned pursuant to section 44-1308, 44-1309, or 44-1310 to conduct an external review shall maintain written records in the aggregate by state and by health carrier on all requests for external review for which it conducted an external review during a calendar year and, upon request, submit a report to the director as required under subdivision (1)(b) of this section.

(b) Each independent review organization required to maintain written records on all requests for external review pursuant to subdivision (1)(a) of this section for which it was assigned to conduct an external review shall submit to the director, upon request, a report in the format specified by the director.

(c) The report shall include in the aggregate by state, and for each health carrier:

(i) The total number of requests for external review;

(ii) The number of requests for external review resolved and, of those resolved, the number resolved upholding the adverse determination or final adverse determination and the number resolved reversing the adverse determination or final adverse determination;

(iii) The average length of time for resolution;

(iv) A summary of the types of coverages or cases for which an external review was sought, as provided in the format required by the director;

(v) The number of external reviews pursuant to section 44-1308 that were terminated as the result of a reconsideration by the health carrier of its adverse determination or final adverse determination after the receipt of additional information from the covered person or the covered person's authorized representative; and

(vi) Any other information the director may request or require.

(d) The independent review organization shall retain the written records required pursuant to this subsection for at least three years.

(2)(a) Each health carrier shall maintain written records in the aggregate, by state and for each type of health benefit plan offered by the health carrier, on all requests for external review that the health carrier receives notice of from the director pursuant to the Health Carrier External Review Act.

(b) Each health carrier required to maintain written records on all requests for external review pursuant to subdivision (2)(a) of this section shall submit to the director, upon request, a report in the format specified by the director.

(c) The report shall include in the aggregate, by state, and by type of health benefit plan:

(i) The total number of requests for external review;

(ii) From the total number of requests for external review reported under subdivision (2)(c)(i) of this section, the number of requests determined eligible for a full external review; and

(iii) Any other information the director may request or require.

(d) The health carrier shall retain the written records required pursuant to this section for at least three years.

Source: Laws 2013, LB147, § 15.

44-1316 Health carrier; cost.

The health carrier against which a request for a standard external review or an expedited external review is filed shall pay the cost of the independent review organization for conducting the external review.

Source: Laws 2013, LB147, § 16.

44-1317 Health carrier; disclosure; format; contents.

(1)(a) Each health carrier shall include a description of the external review procedures in or attached to the policy, certificate, membership booklet, outline of coverage, or other evidence of coverage it provides to covered persons.

(b) The disclosure required by subdivision (1)(a) of this section shall be in a format prescribed by the director.

(2) The description required under subsection (1) of this section shall include a statement that informs the covered person of the right of the covered person to file a request for an external review of an adverse determination or final adverse determination with the director. The statement may explain that external review is available when the adverse determination or final adverse determination involves an issue of medical necessity, appropriateness, health

care setting, level of care, or effectiveness. The statement shall include the telephone number and address of the director.

(3) In addition to the contents required by subsection (2) of this section, the statement shall inform the covered person that, when filing a request for an external review, the covered person will be required to authorize the release of any medical records of the covered person that may be required to be reviewed for the purpose of reaching a decision on the external review.

Source: Laws 2013, LB147, § 17.

44-1318 Applicability of act.

The Health Carrier External Review Act applies to any claim submitted on and after January 1, 2014.

Source: Laws 2013, LB147, § 18.

ARTICLE 15

UNFAIR PRACTICES

(b) UNFAIR INSURANCE CLAIMS SETTLEMENT PRACTICES ACT

Section

44-1540. Unfair claims settlement practice; acts and practices prohibited.

(b) UNFAIR INSURANCE CLAIMS SETTLEMENT PRACTICES ACT

44-1540 Unfair claims settlement practice; acts and practices prohibited.

Any of the following acts or practices by an insurer, if committed in violation of section 44-1539, shall be an unfair claims settlement practice:

(1) Knowingly misrepresenting to claimants and insureds relevant facts or policy provisions relating to coverages at issue;

(2) Failing to acknowledge with reasonable promptness pertinent communications with respect to claims arising under its policies;

(3) Failing to adopt and implement reasonable standards for the prompt investigation and settlement of claims arising under its policies;

(4) Not attempting in good faith to effectuate prompt, fair, and equitable settlement of claims submitted in which liability has become reasonably clear;

(5) Not attempting in good faith to effectuate prompt, fair, and equitable settlement of property and casualty claims (a) in which coverage and the amount of the loss are reasonably clear and (b) for loss of tangible personal property within real property which is insured by a policy subject to section 44-501.02 and which is wholly destroyed by fire, tornado, windstorm, lightning, or explosion;

(6) Compelling insureds or beneficiaries to institute litigation to recover amounts due under its policies by offering substantially less than the amounts ultimately recovered in litigation brought by them;

(7) Refusing to pay claims without conducting a reasonable investigation;

(8) Failing to affirm or deny coverage of a claim within a reasonable time after having completed its investigation related to such claim;

(9) Attempting to settle a claim for less than the amount to which a reasonable person would believe the insured or beneficiary was entitled by

reference to written or printed advertising material accompanying or made part of an application;

(10) Attempting to settle claims on the basis of an application which was materially altered without notice to or knowledge or consent of the insured;

(11) Making a claims payment to an insured or beneficiary without indicating the coverage under which each payment is being made;

(12) Unreasonably delaying the investigation or payment of claims by requiring both a formal proof-of-loss form and subsequent verification that would result in duplication of information and verification appearing in the formal proof-of-loss form;

(13) Failing, in the case of the denial of a claim or the offer of a compromise settlement, to promptly provide a reasonable and accurate explanation of the basis for such action;

(14) Failing to provide forms necessary to present claims with reasonable explanations regarding their use within fifteen working days of a request;

(15) Failing to adopt and implement reasonable standards to assure that the repairs of a repairer owned by or affiliated with the insurer are performed in a skillful manner. For purposes of this subdivision, a repairer is affiliated with the insurer if there is a preexisting arrangement, understanding, agreement, or contract between the insurer and repairer for services in connection with claims on policies issued by the insurer;

(16) Requiring the insured or claimant to use a particular company or location for motor vehicle repair. Nothing in this subdivision shall prohibit an insurer from entering into discount agreements with companies and locations for motor vehicle repair or otherwise entering into any business arrangements or affiliations which reduce the cost of motor vehicle repair if the insured or claimant has the right to use a particular company or reasonably available location for motor vehicle repair. If the insured or claimant chooses to use a particular company or location other than the one providing the lowest estimate for like kind and quality motor vehicle repair, the insurer shall not be liable for any cost exceeding the lowest estimate. For purposes of this subdivision, motor vehicle repair shall include motor vehicle glass replacement and motor vehicle glass repair;

(17) Failing to provide coverage information or coordinate benefits pursuant to section 68-928; and

(18) Failing to pay interest on any proceeds due on a life insurance policy as required by section 44-3,143.

Source: Laws 1991, LB 234, § 22; Laws 1992, LB 1006, § 16; Laws 1994, LB 978, § 24; Laws 1997, LB 543, § 1; Laws 2002, LB 58, § 1; Laws 2005, LB 589, § 9; Laws 2006, LB 1248, § 59; Laws 2011, LB72, § 5.

ARTICLE 19

TITLE INSURANCE

(b) TITLE INSURERS ACT

Section
44-1981. Terms, defined.

(b) TITLE INSURERS ACT

44-1981 Terms, defined.

For purposes of the Title Insurers Act:

(1) Abstract of title means a compilation in orderly arrangement of the materials and facts of record affecting the title to a specific piece of land, issued under a certificate certifying to the matters contained in such compilation;

(2) Affiliate means a specific person that directly, or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the person specified;

(3) Bona fide employee of the title insurer means an individual who devotes substantially all of his or her time to performing services on behalf of a title insurer and whose compensation for the services is in the form of salary or its equivalent paid by the title insurer;

(4) Control, including the terms controlling, controlled by, and under common control with, means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position or corporate office held by the person. Control is presumed to exist if a person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing ten percent or more of the voting securities of another person. This presumption may be rebutted by a showing that control does not exist in fact. The director may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support the determination, that control exists in fact, notwithstanding the absence of a presumption to that effect;

(5) Direct operations means that portion of a title insurer's operations which are attributable to title insurance business written by a bona fide employee of the title insurer;

(6) Director means the Director of Insurance;

(7) Escrow means written instruments, money, or other items deposited by one party with a depository, escrow agent, or escrow for delivery to another party upon the performance of a specified condition or the happening of a certain event;

(8) Escrow, settlement, or closing fee means the consideration for supervising or handling the actual execution, delivery, or recording of transfer and lien documents and for disbursing funds;

(9) Foreign title insurer means any title insurer incorporated or organized under the laws of any other state of the United States, the District of Columbia, or any other jurisdiction of the United States;

(10) Net retained liability means the total liability retained by a title insurer for a single risk, after taking into account any ceded liability and collateral, acceptable to the director, maintained by the title insurer;

(11) Non-United-States title insurer means any title insurer incorporated or organized under the laws of any foreign nation or any foreign province or territory;

(12) Person means any natural person, partnership, association, cooperative, corporation, trust, or other legal entity;

(13) Producer of title insurance business has the same meaning as in section 44-19,108;

(14) Qualified financial institution means an institution that is:

(a) Organized or, in the case of a United States branch or agency office of a foreign banking organization, licensed under the laws of the United States or any state and has been granted authority to operate with fiduciary powers;

(b) Regulated, supervised, and examined by federal or state authorities having regulatory authority over banks and trust companies;

(c) Insured by the appropriate federal entity; and

(d) Qualified under any additional rules and regulations adopted and promulgated by the director;

(15) Referral has the same meaning as in section 44-19,108;

(16) Security or security deposit means funds or other property received by a title insurer as collateral to secure an indemnitor's obligation under an indemnity agreement pursuant to which the title insurer is granted a perfected security interest in the collateral in exchange for agreeing to provide coverage in a title insurance policy for a specific title exception to coverage;

(17) Title insurance agent has the same meaning as in section 44-19,108;

(18) Title insurance business or business of title insurance means:

(a) Issuing as a title insurer or offering to issue as a title insurer a title insurance policy;

(b) Transacting or proposing to transact by a title insurer any of the following activities when conducted or performed in contemplation of or in conjunction with the issuance of a title insurance policy:

(i) Soliciting or negotiating the issuance of a title insurance policy;

(ii) Guaranteeing, warranting, or otherwise insuring the correctness of title searches for all instruments affecting titles to real property, any interest in real property, cooperative units, and proprietary leases and for all liens or charges affecting the same;

(iii) Handling of escrows, settlements, or closings;

(iv) Executing title insurance policies;

(v) Effecting contracts of reinsurance;

(vi) Searching or examining titles; or

(vii) Guaranteeing, warranting, or otherwise insuring the correctness of the search or filing results obtained from public registries established for determining liens or security interests in personal property or fixtures;

(c) Guaranteeing, warranting, or insuring searches or examinations of title to real property or any interest in real property;

(d) Guaranteeing or warranting the status of title as to ownership of or liens on real property by any person other than the principals to the transaction;

(e) Transacting or proposing to transact any business substantially equivalent to any of the activities listed in this subdivision in a manner designed to evade the provisions of the Title Insurers Act;

(f) Guaranteeing, warranting, or insuring the search or filing results obtained from public registries established for determining liens or security interests in personal property or fixtures; or

(g) Guaranteeing or warranting adverse claims to title, liens, encumbrances upon, or security interests in personal property or fixtures by any person other than the principals to the transaction;

(19) Title insurance commitment means a preliminary commitment, report, or binder issued prior to the issuance of a title insurance policy containing the terms, conditions, exceptions, and any other matters incorporated by reference under which the title insurer is willing to issue its title insurance policy;

(20) Title insurance policy means:

(a) A contract insuring or indemnifying owners of, or other persons lawfully interested in, real property or any interest in real property, against loss or damage arising from any or all of the following conditions existing on or before the policy date and not excepted or excluded:

(i) Defects in or liens or encumbrances on the insured title;

(ii) Unmarketability of the insured title;

(iii) Invalidity, lack of priority, or unenforceability of liens or encumbrances on the stated property;

(iv) Lack of legal right of access to the land; or

(v) Unenforceability of rights in title to the land; or

(b) A contract insuring or indemnifying owners of personal property or secured parties or others interested therein against loss or damage pertaining to adverse claims to title, liens, encumbrances upon, or security interests in personal property or fixtures, including the existence or nonexistence of the attachment, perfection, or priority of security interests in personal property or fixtures under the Uniform Commercial Code or other laws, rules, or regulations establishing procedures for the attachment, perfection, or priority of security interests in personal property or fixtures, or the accuracy or completeness of the search or filing results obtained from public registries established for determining liens or security interests in personal property or fixtures, and arising from any or all of the following conditions not excepted or excluded:

(i) Other liens or encumbrances on the stated personal property or fixtures;

(ii) Invalidity, lack of priority, or unenforceability of liens or other security interests in the stated personal property or fixtures; or

(iii) Any other matters relating directly or indirectly to the lien status of the stated personal property or fixtures;

(21) Title insurer means any insurer organized under the laws of this state for the purpose of transacting the business of title insurance and any foreign or non-United-States title insurer authorized to transact the business of title insurance in this state; and

(22) Title plant means a set of records consisting of documents, maps, surveys, or entries affecting title to real property or any interest in or encumbrance on the property which have been filed or recorded in the jurisdiction for which the title plant is established or maintained.

Source: Laws 1997, LB 53, § 4; Laws 2001, LB 360, § 9; Laws 2015, LB180, § 2.

ARTICLE 21

HOLDING COMPANIES

Section

- 44-2120. Act, how cited.
 44-2121. Terms, defined.
 44-2126. Acquisition of control of or merger with domestic insurer; notice of proposed divestiture; filing requirements; director; powers.
 44-2127. Merger; acquisition; approval by director; hearings; experts.
 44-2128. Merger; acquisition; exempt transactions.
 44-2129. Acquisition; divestiture; merger; prohibited acts.
 44-2132. Registration of insurers; filings required.
 44-2133. Transactions within an insurance holding company system; standards.
 44-2135. Management of domestic insurer.
 44-2137. Examination by director; director; powers; penalty.
 44-2137.01. Director; participate in supervisory college; powers; insurer; payment of expenses.
 44-2138. Information; confidential treatment; sharing of information; restrictions.
 44-2139. Director; rules and regulations.
 44-2147.01. Violations; effect.
 44-2154. International insurance group; criteria; determination by director.
 44-2155. International insurance group; director; identify group-wide supervisor; factors; director; powers; duties; supervision activities; expenses.

44-2120 Act, how cited.

Sections 44-2120 to 44-2155 shall be known and may be cited as the Insurance Holding Company System Act.

Source: Laws 1991, LB 236, § 1; Laws 2012, LB887, § 3; Laws 2016, LB772, § 10.

Operative date March 31, 2016.

44-2121 Terms, defined.

For purposes of the Insurance Holding Company System Act:

(1) An affiliate of, or person affiliated with, a specific person means a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with the person specified;

(2) Control, including controlling, controlled by, and under common control with, means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control is presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing ten percent or more of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner provided by subsection (11) of section 44-2132 that control does not exist in fact. The director may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support such determination, that control exists in fact, notwithstanding the absence of a presumption to that effect;

(3) Director means the Director of Insurance;

(4) Enterprise risk means any activity, circumstance, event, or series of events involving one or more affiliates of an insurer that, if not remedied promptly, is

likely to have a material adverse effect upon the financial condition or liquidity of the insurer or its insurance holding company system as a whole, including, but not limited to, anything that would cause the insurer's risk-based capital to fall into company action level as set forth in section 44-6011 or would cause the insurer to be in hazardous financial condition as defined by rule and regulation adopted and promulgated by the director to define standards for companies deemed to be in hazardous financial condition;

(5) Group-wide supervisor means the chief insurance regulatory official, including the director, who (a) is authorized to conduct and coordinate group-wide supervision activities of an international insurance group and (b) is from the jurisdiction determined or acknowledged by the director under section 44-2155 to have sufficient contacts with the international insurance group;

(6) An insurance holding company system shall consist of two or more affiliated persons, one or more of which is an insurer;

(7) Insurer has the same meaning as in section 44-103, except that insurer does not include agencies, authorities, or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state;

(8) International insurance group means an insurance holding company system that has been determined by the director to be an international insurance group under section 44-2154;

(9) Person means an individual, a corporation, a partnership, a limited partnership, an association, a joint-stock company, a trust, an unincorporated organization, any similar entity, or any combination of such entities acting in concert but does not include any joint-venture partnership exclusively engaged in owning, managing, leasing, or developing real or tangible personal property;

(10) Security holder of a specified person means one who owns any security of such person, including common stock, preferred stock, debt obligations, and any other security convertible into or evidencing the right to acquire any such stock or obligations;

(11) Subsidiary of a specified person means an affiliate controlled by such person directly or indirectly through one or more intermediaries; and

(12) Voting security includes any security convertible into or evidencing a right to acquire a voting security.

Source: Laws 1991, LB 236, § 2; Laws 2001, LB 360, § 13; Laws 2012, LB887, § 4; Laws 2016, LB772, § 11.
Operative date March 31, 2016.

44-2126 Acquisition of control of or merger with domestic insurer; notice of proposed divestiture; filing requirements; director; powers.

(1) No person other than the issuer shall make a tender offer for or a request or invitation for tenders of, or enter into any agreement to exchange securities for, or seek to acquire, or acquire, in the open market or otherwise, any voting security of a domestic insurer if, after the consummation thereof, such person would, directly or indirectly, or by conversion or by exercise of any right to acquire, be in control of such insurer, and no person shall enter into an agreement to merge with or otherwise to acquire control of a domestic insurer or any person controlling a domestic insurer unless, at the time any such offer, request, or invitation is made or any such agreement is entered into, or prior to

the acquisition of such securities if no offer or agreement is involved, such person has filed with the director and has sent to such insurer, a statement containing the information required by this section and such offer, request, invitation, agreement, or acquisition has been approved by the director in the manner prescribed in section 44-2127.

(2) For purposes of this section, any controlling person of a domestic insurer seeking to divest his, her, or its controlling interest in the domestic insurer, in any manner, shall file with the director, with a copy to the insurer, confidential notice of its proposed divestiture at least thirty days prior to the cessation of control. The director shall determine those instances in which the party or parties seeking to divest or to acquire a controlling interest in an insurer will be required to file for and obtain approval of the transaction. The information shall remain confidential until the conclusion of the transaction unless the director, in his or her discretion, determines that confidential treatment will interfere with enforcement of this section. If the statement referred to in subsection (1) of this section is otherwise filed, this subsection shall not apply.

(3) For purposes of this section, a domestic insurer includes any person controlling a domestic insurer unless such person as determined by the director is either directly or through its affiliates primarily engaged in business other than the business of insurance. For purposes of this section, person does not include any securities broker holding, in the usual and customary brokers function, less than twenty percent of the voting securities of an insurance company or of any person which controls an insurance company.

(4) The statement required to be filed with the director under subsection (1) of this section shall be made under oath and shall contain the following:

(a) The name and address of each person by whom or on whose behalf the merger or other acquisition of control referred to in subsection (1) of this section is to be effected and either:

(i) If such person is an individual, his or her principal occupation, all offices and positions held during the past five years, and any conviction of crimes other than minor traffic violations during the past ten years; or

(ii) If such person is not an individual, a report of the nature of its business operations during the past five years or for such lesser period as such person and any predecessors thereof have been in existence, an informative description of the business intended to be done by such person and such person's subsidiaries, and a list of all individuals who are or who have been selected to become directors of executive officers of such person or who perform or will perform functions appropriate to such positions. Such list shall include for each such individual the information required by subdivision (i) of this subdivision;

(b) The source, nature, and amount of the consideration used or to be used in effecting the merger or other acquisition of control, a description of any transaction in which funds were or are to be obtained for any such purpose, including any pledge of the insurer's stock or the stock of any of its subsidiaries or controlling affiliates, and the identity of persons furnishing such consideration, except that when a source of such consideration is a loan made in the lender's ordinary course of business, the identity of the lender shall remain confidential if the person filing such statement so requests;

(c) Fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding five fiscal years of each such acquiring party or for such lesser period as such acquiring party and any

predecessors thereof have been in existence and similar unaudited information as of a date not earlier than ninety days prior to the filing of the statement;

(d) Any plans or proposals which each acquiring party may have to liquidate such insurer, to sell its assets or merge or consolidate it with any person, or to make any other material change in its business or corporate structure or management;

(e) The number of shares of any security referred to in subsection (1) of this section which each acquiring party proposes to acquire, the terms of the offer, request, invitation, agreement, or acquisition referred to in subsection (1) of this section, and a statement as to the method by which the fairness of the proposal was arrived at;

(f) The amount of each class of any security referred to in subsection (1) of this section which is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party;

(g) A full description of any contracts, arrangements, or understandings with respect to any security referred to in subsection (1) of this section in which any acquiring party is involved, including transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss, guarantees of profits, division of losses or profits, or the giving or withholding of proxies. Such description shall identify the persons with whom such contracts, arrangements, or understandings have been entered into;

(h) A description of the purchase of any security referred to in subsection (1) of this section during the twelve calendar months preceding the filing of the statement by any acquiring party, including the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid therefor;

(i) A description of any recommendations to purchase any security referred to in subsection (1) of this section made during the twelve calendar months preceding the filing of the statement by any acquiring party or by anyone based upon interviews or at the suggestion of such acquiring party;

(j) Copies of all tender offers for, requests, or invitations for tenders of, exchange offers for, and agreements to acquire or exchange any securities referred to in subsection (1) of this section and, if distributed, of additional soliciting material relating thereto;

(k) The term of any agreement, contract, or understanding made with or proposed to be made with any broker-dealer as to solicitation of securities referred to in subsection (1) of this section for tender and the amount of any fees, commissions, or other compensation to be paid to broker-dealers with regard thereto;

(l) An agreement by the person required to file the statement referred to in subsection (1) of this section that he, she, or it will provide the annual report specified in subsection (12) of section 44-2132 for as long as control exists;

(m) An acknowledgment by the person required to file the statement referred to in subsection (1) of this section that the person and all subsidiaries within his, her, or its control in the insurance holding company system will provide information to the director upon request as necessary to evaluate enterprise risk to the insurer; and

(n) Such additional information as the director may by rule or regulation prescribe as necessary or appropriate for the protection of policyholders of the insurer or in the public interest.

(5) If the person required to file the statement is a partnership, limited partnership, syndicate, or other group, the director may require that the information called for by subsection (4) of this section shall be given with respect to each partner of such partnership or limited partnership, each member of such syndicate or group, and each person who controls such partner or member. If any such partner, member, or person is a corporation or the person required to file the statement is a corporation, the director may require that the information called for by subsection (4) of this section shall be given with respect to such corporation, each officer and director of such corporation, and each person who is directly or indirectly the beneficial owner of more than ten percent of the outstanding voting securities of such corporation.

(6) If any material change occurs in the facts set forth in the statement filed with the director and sent to such insurer pursuant to this section, an amendment setting forth such change, together with copies of all documents and other material relevant to such change, shall be filed with the director and sent to such insurer within two business days after the person learns of such change.

(7) If any offer, request, invitation, agreement, or acquisition referred to in subsection (1) of this section is proposed to be made by means of a registration statement under the Securities Act of 1933, in circumstances requiring the disclosure of similar information under the Securities Exchange Act of 1934, or under a state law requiring similar registration or disclosure, the person required to file the statement may utilize such documents in furnishing the information called for by the statement.

Source: Laws 1991, LB 236, § 7; Laws 2012, LB887, § 5.

44-2127 Merger; acquisition; approval by director; hearings; experts.

(1) The director shall approve any merger or other acquisition of control referred to in subsection (1) of section 44-2126 unless, after a public hearing thereon, he or she finds that:

(a) After the change of control, the domestic insurer would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed;

(b) The effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in this state or tend to create a monopoly therein;

(c) The financial condition of any acquiring party is such as might jeopardize the financial stability of the insurer or prejudice the interest of policyholders of the insurer;

(d) The plans or proposals which the acquiring party has to liquidate the insurer, to sell its assets or consolidate or merge it with any person, or to make any other material change in its business or corporate structure of management are unfair and unreasonable to policyholders of the insurer and not in the public interest;

(e) The competence, experience, and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest

of policyholders of the insurer and of the public to permit the merger or other acquisition of control;

(f) To the extent required under section 44-6115, an acquisition has not been approved by the director; or

(g) The acquisition is likely to be hazardous or prejudicial to the public.

(2) Except as provided in subsection (3) of this section, the public hearing referred to in subsection (1) of this section shall be held within thirty days after the statement required by subsection (1) of section 44-2126 is filed, and at least twenty days' notice thereof shall be given by the director to the person filing the statement. Not less than seven days' notice of such public hearing shall be given by the person filing the statement to the insurer and to such other persons as may be designated by the director. The director shall make a determination within the sixty-day period preceding the effective date of the proposed transaction. At such hearing, the person filing the statement, the insurer, any person to whom notice of hearing was sent, and any other person whose interest may be affected thereby shall have the right to present evidence, examine and cross-examine witnesses, and offer oral and written arguments and in connection therewith shall be entitled to conduct discovery proceedings in the same manner as is presently allowed in the district court. All discovery proceedings shall be concluded not later than three days prior to the commencement of the public hearing.

(3) If the proposed acquisition of control will require the approval of more than one director or commissioner of insurance, the public hearing required by this section may be held on a consolidated basis upon request of the person filing the statement referred to in subsection (1) of section 44-2126. Such person shall file the statement with the National Association of Insurance Commissioners within five days after making the request for a public hearing. A director or commissioner may opt out of a consolidated hearing and shall provide notice to the applicant of the opt out within ten days after the receipt of the statement. A hearing conducted on a consolidated basis shall be public and shall be held within the United States before the directors or commissioners of the states in which the insurers are domiciled. Such directors or commissioners shall hear and receive evidence. A director or commissioner may attend such hearing in person or by telecommunication.

(4) In connection with a change of control of a domestic insurer, any determination by the director that the person acquiring control of the insurer shall be required to maintain or restore the capital of the insurer to the level required by the laws, rules, and regulations of this state shall be made not later than sixty days after the date of the director's determination. The director may retain at the acquiring person's expense any attorneys, actuaries, accountants, and other experts who are not employees of the Department of Insurance as may be reasonably necessary to assist the director in reviewing the proposed acquisition of control.

Source: Laws 1991, LB 236, § 8; Laws 1997, LB 52, § 3; Laws 2002, LB 1139, § 22; Laws 2012, LB887, § 6.

44-2128 Merger; acquisition; exempt transactions.

Section 44-2126 shall not apply to:

(1) Any transaction which is subject to the provisions of the Nebraska Model Business Corporation Act and sections 44-224.01 to 44-224.10, except as otherwise provided in Chapter 44, dealing with the merger or consolidation of two or more insurers; or

(2) Any offer, request, invitation, agreement, or acquisition which the director by order shall exempt therefrom as (a) not having been made or entered into for the purpose and not having the effect of changing or influencing the control of a domestic insurer or (b) otherwise not comprehended within the purposes of section 44-2126.

Source: Laws 1991, LB 236, § 9; Laws 1995, LB 109, § 221; Laws 2014, LB749, § 287.

Operative date January 1, 2017.

Cross References

Nebraska Model Business Corporation Act, see section 21-201.

44-2129 Acquisition; divestiture; merger; prohibited acts.

(1) It shall be a violation of section 44-2126 to fail to file any statement, amendment, or other material required to be filed under such section.

(2) It shall be a violation of section 44-2127 to effectuate or attempt to effectuate an acquisition of control of, divestiture of, or merger with a domestic insurer unless the director has given his or her approval thereto.

Source: Laws 1991, LB 236, § 10; Laws 2012, LB887, § 7.

44-2132 Registration of insurers; filings required.

(1) Every insurer which is authorized to do business in this state and which is a member of an insurance holding company system shall register with the director, except that registration shall not be required for a foreign insurer subject to registration requirements and standards adopted by statute or regulation in the jurisdiction of its domicile which are substantially similar to those contained in this section, subsection (1) of section 44-2133, sections 44-2134 and 44-2136, and either subsection (2) of section 44-2133 or a provision such as the following: Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions within fifteen days after the end of the month in which it learns of each such change or addition. Any insurer which is subject to registration under this section shall register within fifteen days after it becomes subject to registration and annually thereafter by May 1 of each year for the previous calendar year unless the director for good cause shown extends the time for such initial or annual registration and then within such extended time. The director may require any insurer which is authorized to do business in the state, which is a member of an insurance holding company system, and which is not subject to registration under this section to furnish a copy of the registration statement, the summary specified in subsection (3) of this section, or other information filed by such insurer with the insurance regulatory authority of its domiciliary jurisdiction.

(2) Every insurer subject to registration shall file the registration statement with the director on a form and in a format prescribed by the National Association of Insurance Commissioners which shall contain the following current information:

(a) The capital structure, general financial condition, ownership, and management of the insurer and any person controlling the insurer;

(b) The identity and relationship of every member of the insurance holding company system;

(c) The following agreements in force and transactions currently outstanding or which have occurred during the last calendar year between such insurer and its affiliates:

(i) Loans, other investments, or purchases, sales, or exchanges of securities of the affiliates by the insurer or of the insurer by its affiliates;

(ii) Purchases, sales, or exchanges of assets;

(iii) Transactions not in the ordinary course of business;

(iv) Guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business;

(v) All management agreements, service contracts, and cost-sharing arrangements;

(vi) Reinsurance agreements;

(vii) Dividends and other distributions to shareholders; and

(viii) Consolidated tax allocation agreements;

(d) Any pledge of the insurer's stock, including stock of any subsidiary or controlling affiliate, for a loan made to any member of the insurance holding company system;

(e) If requested by the director, the insurer shall include financial statements of or within an insurance holding company system, including all affiliates. Financial statements may include, but are not limited to, annual audited financial statements filed with the Securities and Exchange Commission pursuant to the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended. An insurer required to file financial statements pursuant to this subdivision may satisfy the request by providing the director with the most recently filed parent corporation financial statements that have been filed with the Securities and Exchange Commission;

(f) Statements that show that the insurer's board of directors oversees corporate governance and internal controls and that the insurer's officers or senior management have approved, implemented, and continue to maintain and monitor corporate governance and internal control procedures;

(g) Other matters concerning transactions between registered insurers and any affiliates as may be included from time to time in any registration forms adopted or approved by the director; and

(h) Any other information required by rules and regulations which the director may adopt and promulgate.

(3) All registration statements shall contain a summary outlining all items in the current registration statement representing changes from the prior registration statement.

(4) It shall not be necessary to disclose on the registration statement information which is not material for the purposes of this section. Unless the director by rule, regulation, or order provides otherwise, sales, purchases, exchanges,

loans, or extensions of credit, investments, or guarantees involving one-half of one percent or less of an insurer's admitted assets as of December 31 next preceding shall not be deemed material for purposes of this section.

(5) Subject to the requirements of section 44-2134, each registered insurer shall give notice to the director of all dividends and other distributions to shareholders within five business days following the declaration thereof and shall not pay any such dividends or other distributions to shareholders within ten business days following receipt of such notice by the director unless for good cause shown the director has approved such payment within such ten-business-day period.

(6) Any person within an insurance holding company system subject to registration shall be required to provide complete and accurate information to an insurer when such information is reasonably necessary to enable the insurer to comply with the Insurance Holding Company System Act.

(7) The director shall terminate the registration of any insurer which demonstrates that it no longer is a member of an insurance holding company system.

(8) The director may require or allow two or more affiliated insurers subject to registration under this section to file a consolidated registration statement.

(9) The director may allow an insurer which is authorized to do business in this state and which is part of an insurance holding company system to register on behalf of any affiliated insurer which is required to register under subsection (1) of this section and to file all information and material required to be filed under this section.

(10) This section shall not apply to any insurer, information, or transaction if and to the extent that the director by rule, regulation, or order exempts the same from this section.

(11) Any person may file with the director a disclaimer of affiliation with any authorized insurer or such a disclaimer may be filed by such insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between such person and such insurer as well as the basis for disclaiming such affiliation. A disclaimer of affiliation shall be deemed to have been granted unless the director, within thirty days after receipt of a complete disclaimer, notifies the filing party that the disclaimer is disallowed. If the disclaimer is disallowed, the disclaiming party may request and shall be entitled to an administrative hearing. The disclaiming party shall be relieved of its duty to register under this section if approval of the disclaimer has been granted by the director or if the disclaimer is deemed to have been approved.

(12) The ultimate controlling person of every insurer subject to registration shall also file an annual enterprise risk report. The report shall, to the best of the ultimate controlling person's knowledge and belief, identify the material risks within the insurance holding company system that could pose enterprise risk to the insurer. The report shall be filed with the lead state director or commissioner of the insurance holding company system as determined by the procedures within the Financial Analysis Handbook adopted by the National Association of Insurance Commissioners.

(13) The failure to file a registration statement or any summary of the registration statement thereto or enterprise risk report required by this section within the time specified for such filing shall be a violation of this section.

Source: Laws 1991, LB 236, § 12; Laws 1996, LB 689, § 2; Laws 2005, LB 119, § 11; Laws 2012, LB887, § 8.

44-2133 Transactions within an insurance holding company system; standards.

(1) Transactions within an insurance holding company system to which an insurer subject to registration is a party shall be subject to the following standards:

(a) The terms shall be fair and reasonable;

(b) Agreements for cost-sharing services and management shall include such provisions as are required by rules and regulations which the director may adopt and promulgate;

(c) Charges or fees for services performed shall be reasonable;

(d) Expenses incurred and payment received shall be allocated to the insurer in conformity with customary insurance accounting practices consistently applied;

(e) The books, accounts, and records of each party to all such transactions shall be so maintained as to clearly and accurately disclose the nature and details of the transactions, including such accounting information as is necessary to support the reasonableness of the charges or fees to the respective parties; and

(f) The insurer's policyholders surplus following any dividends or distributions to shareholder affiliates shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(2) The following transactions involving a domestic insurer and any person in its insurance holding company system, including amendments or modifications of affiliate agreements previously filed pursuant to this section which are subject to any materiality standards contained in subdivisions (2)(a) through (e) of this section, shall not be entered into unless the insurer has notified the director in writing of its intention to enter into such transaction at least thirty days prior thereto or such shorter period as the director may permit and the director has not disapproved it within such period. The notice for amendments or modifications shall include the reasons for the change and the financial impact on the domestic insurer. Informal notice shall be reported, within thirty days after a termination of a previously filed agreement, to the director for determination of the type of filing required, if any:

(a) Sales, purchases, exchanges, loans, or extensions of credit, guarantees, or investments if such transactions are equal to or exceed (i) with respect to an insurer other than a life insurer, the lesser of three percent of the insurer's admitted assets or twenty-five percent of policyholders surplus as of December 31 next preceding and (ii) with respect to life insurers, three percent of the insurer's admitted assets as of December 31 next preceding;

(b) Loans or extensions of credit to any person who is not an affiliate, when the insurer makes such loans or extensions of credit with the agreement or understanding that the proceeds of such transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets

of, or to make investments in any affiliate of the insurer making such loans or extensions of credit if such transactions are equal to or exceed (i) with respect to an insurer other than a life insurer, the lesser of three percent of the insurer's admitted assets or twenty-five percent of policyholders surplus as of December 31 next preceding and (ii) with respect to life insurers, three percent of the insurer's admitted assets as of December 31 next preceding;

(c) Reinsurance agreements or modifications thereto, including (i) all reinsurance pooling agreements and (ii) agreements in which the reinsurance premium or a change in the insurer's liabilities or the projected reinsurance premium or change in the insurer's liabilities in any of the next three years equals or exceeds five percent of the insurer's policyholders surplus as of December 31 next preceding, including those agreements which may require as consideration the transfer of assets from an insurer to a nonaffiliate, if an agreement or understanding exists between the insurer and nonaffiliate that any portion of such assets will be transferred to one or more affiliates of the insurer;

(d) All management agreements, service contracts, tax-allocation agreements, and cost-sharing arrangements; and

(e) Any material transactions, specified by rule and regulation, which the director determines may adversely affect the interests of the insurer's policyholders.

Nothing in this section shall be deemed to authorize or permit any transactions which, in the case of an insurer not a member of the same insurance holding company system, would be otherwise contrary to law.

(3) A domestic insurer may not enter into transactions which are part of a plan or series of like transactions with persons within the insurance holding company system if the purpose of those separate transactions is to avoid the statutory threshold amount and thus avoid the review that would occur otherwise. If the director determines that such separate transactions were entered into over any twelve-month period for such purpose, the director may exercise his or her authority under sections 44-2143 to 44-2147.

(4) The director, in reviewing transactions pursuant to subsection (2) of this section, shall consider whether the transactions comply with the standards set forth in subsection (1) of this section and whether they may adversely affect the interests of policyholders.

(5) The director shall be notified within thirty days of any investment of the domestic insurer in any one corporation if the total investment in such corporation by the insurance holding company system exceeds ten percent of such corporation's voting securities.

Source: Laws 1991, LB 236, § 13; Laws 2012, LB887, § 9.

44-2135 Management of domestic insurer.

(1) Notwithstanding the control of a domestic insurer by any person, the officers and directors of the insurer shall not thereby be relieved of any obligation or liability to which they would otherwise be subject by law, and the insurer shall be managed so as to assure its separate operating identity consistent with the Insurance Holding Company System Act.

(2) Nothing in this section shall preclude a domestic insurer from having or sharing a common management or cooperative or joint use of personnel,

property, or services with one or more other persons under arrangements meeting the standards of subsection (1) of section 44-2133.

(3) Not less than one-third of the directors of a domestic insurer which is a member of an insurance holding company system shall be persons who are not officers or employees of such insurer or of any entity controlling, controlled by, or under common control with such insurer and who are not beneficial owners of a controlling interest in the voting stock of such insurer or any such entity. At least one such person shall be included in any quorum for the transaction of business at any meeting of the board of directors.

(4) Subsection (3) of this section shall not apply to a domestic insurer if the person controlling such insurer, such as an insurer, a mutual insurance holding company, or a publicly held corporation, has a board of directors that meets the requirements of such subsection with respect to such controlling entity.

(5) An insurer may make application to the director for a waiver from the requirements of this section if the insurer's annual direct written and assumed premium, excluding premiums reinsured with the Federal Crop Insurance Corporation and the national flood insurance program as defined in section 31-1014, is less than three hundred million dollars. An insurer may also make application to the director for a waiver from the requirements of this section based upon unique circumstances. The director may consider various factors including, but not limited to, the type of business entity, volume of business written, availability of qualified board members, or ownership or organizational structure of the entity.

Source: Laws 1991, LB 236, § 15; Laws 2012, LB887, § 10.

44-2137 Examination by director; director; powers; penalty.

(1)(a) Subject to the limitation contained in this section and in addition to the powers which the director has under the Insurers Examination Act relating to the examination of insurers, the director may examine any insurer registered under section 44-2132 and its affiliates to ascertain the financial condition of the insurer, including the enterprise risk to the insurer by the ultimate controlling party, by any entity or combination of entities within the insurance holding company system, or by the insurance holding company system on a consolidated basis.

(b) The director may order any insurer registered under section 44-2132 to produce such records, books, or other information papers in the possession of the insurer or its affiliates as are reasonably necessary to determine compliance with Chapter 44.

(c) To determine compliance with Chapter 44, the director may order any insurer registered under section 44-2132 to produce information not in the possession of the insurer if the insurer can obtain access to such information pursuant to contractual relationships, statutory obligations, or another method. If the insurer cannot obtain the information requested by the director, the insurer shall provide the director a detailed explanation of the reason that the insurer cannot obtain the information and the identity of the holder of the information. If it appears to the director that the detailed explanation is without merit, the director may require, after notice and hearing, the insurer to pay a penalty of one hundred dollars for each day's delay, not to exceed an aggregate penalty of ten thousand dollars, or may suspend or revoke the insurer's certificate of authority.

(2) The director may retain at the registered insurer's expense such attorneys, actuaries, accountants, and other experts who are not employees of the Department of Insurance as shall be reasonably necessary to assist in the conduct of the examination under this section. Any persons so retained shall be under the direction and control of the director and shall act in a purely advisory capacity.

(3) Each registered insurer producing for examination records, books, and papers pursuant to this section shall be liable for and shall pay the expense of such examination in accordance with the Insurers Examination Act.

(4) If the insurer fails to comply with an order, the director may examine the affiliates to obtain the information. The director may also issue subpoenas, administer oaths, and examine under oath any person for purposes of determining compliance with this section. Upon the failure or refusal of any person to obey a subpoena, the director may petition a court of competent jurisdiction, and upon proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the court order shall be punishable by contempt of court. Every person shall be obliged to attend as a witness at the place specified in the subpoena, when subpoenaed, anywhere within the state. He or she shall be entitled to the same fees and mileage, if claimed, as a witness in the district court, which fees, mileage, and actual expenses, if any, necessarily incurred in securing the attendance of witnesses and their testimony, shall be itemized, charged against, and paid by the entity being examined.

Source: Laws 1991, LB 236, § 17; Laws 1993, LB 583, § 85; Laws 2012, LB887, § 11.

Cross References

Insurers Examination Act, see section 44-5901.

44-2137.01 Director; participate in supervisory college; powers; insurer; payment of expenses.

(1) With respect to any insurer registered under section 44-2132 and in accordance with subsection (3) of this section, the director may participate in a supervisory college for any domestic insurer that is part of an insurance holding company system with international operations in order to determine compliance with Chapter 44 by the insurer. The powers of the director with respect to supervisory colleges include, but are not limited to, the following:

- (a) Initiating the establishment of a supervisory college;
- (b) Clarifying the membership and participation of other supervisors in the supervisory college;
- (c) Clarifying the functions of the supervisory college and the role of other regulators, including the establishment of a group-wide supervisor;
- (d) Coordinating the ongoing activities of the supervisory college, including planning meetings, supervisory activities, and processes for information sharing; and
- (e) Establishing a crisis management plan.

(2) Each insurer subject to this section shall be liable for and shall pay the reasonable expenses of the director's participation in a supervisory college in accordance with subsection (3) of this section, including reasonable travel expenses.

(3) In order to assess the business strategy, financial position, legal and regulatory position, risk exposure, risk management, and governance processes, and as part of the examination of individual insurers in accordance with section 44-2137, the director may participate in a supervisory college with other regulators charged with supervision of the insurer or its affiliates, including other state, federal, and international regulatory agencies. The director may enter into agreements in accordance with section 44-2138 providing the basis for cooperation between the director and the other regulatory agencies and the activities of the supervisory college.

(4) For purposes of this section, a supervisory college may be convened as either a temporary or permanent forum for communication and cooperation between the regulators charged with the supervision of the insurer or its affiliates, and the director may establish a regular assessment to the insurer for the payment of such expenses.

(5) Nothing in this section shall delegate to the supervisory college the authority of the director to regulate or supervise the insurer or its affiliates within its jurisdiction.

Source: Laws 2012, LB887, § 12.

44-2138 Information; confidential treatment; sharing of information; restrictions.

(1) All information, documents, and copies thereof obtained by or disclosed to the director or any other person in the course of an examination or investigation made pursuant to section 44-2137 and all information reported or provided to the director pursuant to sections 44-2132 to 44-2136 and 44-2155 shall be given confidential treatment, shall not be subject to subpoena, and shall not be made public by the director, the National Association of Insurance Commissioners and its affiliates and subsidiaries, or any other person, except to other state, federal, foreign, and international regulatory and law enforcement agencies if the recipient agrees in writing to maintain the confidentiality of the information, without the prior written consent of the insurer to which it pertains unless the director, after giving the insurer and its affiliates who would be affected thereby notice and opportunity to be heard, determines that the interest of policyholders, shareholders, or the public will be served by the publication thereof, in which event he or she may publish all or any part thereof in such manner as he or she may deem appropriate.

(2) The director may receive information, documents, and copies of information and documents disclosed to other state, federal, foreign, or international regulatory and law enforcement agencies and from the National Association of Insurance Commissioners and its affiliates and subsidiaries pursuant to an examination of an insurance holding company system. The director shall maintain information, documents, and copies of information and documents received pursuant to this subsection as confidential or privileged if received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the information. Such information shall not be a public record subject to disclosure by the director pursuant to sections 84-712 to 84-712.09, subject to subpoena, subject to discovery, or admissible in evidence in any private civil action, except that the director may use such information in any regulatory or legal action brought by the director. The director, and any other person while acting under the authority of the

director who has received information pursuant to this subsection, may not, and shall not be required to, testify in any private civil action concerning any information subject to this section. Nothing in this section shall constitute a waiver of any applicable privilege or claim of confidentiality in the information received pursuant to this subsection as a result of information sharing authorized by this section.

(3) In order to assist in the performance of the director's duties, the director may share information with state, federal, and international regulatory agencies, the National Association of Insurance Commissioners and its affiliates and subsidiaries, state, federal, and international law enforcement authorities, including members of any supervisory college described in section 44-2137.01, the International Association of Insurance Supervisors, and the Bank for International Settlements under the conditions set forth in section 44-154 if the recipient agrees in writing to maintain the confidentiality and privileged status of the document, material, or other information and has verified in writing the legal authority to maintain confidentiality. The director may only share confidential and privileged documents, material, or information reported pursuant to subsection (12) of section 44-2132 with directors or commissioners of states having statutes or regulations substantially similar to subsection (1) of this section and who have agreed in writing not to disclose such information.

(4) The director shall enter into written agreements with the National Association of Insurance Commissioners governing sharing and use of information provided pursuant to this section that shall:

(a) Specify procedures and protocols regarding the confidentiality and security of information shared with the National Association of Insurance Commissioners and its affiliates and subsidiaries pursuant to this section, including procedures and protocols for sharing by the association with other state, federal, or international regulators;

(b) Specify that ownership of information shared with the National Association of Insurance Commissioners and its affiliates and subsidiaries pursuant to this section remains with the director and the association's use of the information is subject to the direction of the director;

(c) Require prompt notice to be given to an insurer whose confidential information in the possession of the National Association of Insurance Commissioners pursuant to this section is subject to a request or subpoena to the association for disclosure or production; and

(d) Require the National Association of Insurance Commissioners and its affiliates and subsidiaries to consent to intervention by an insurer in any judicial or administrative action in which the association and its affiliates and subsidiaries may be required to disclose confidential information about the insurer shared with the association and its affiliates and subsidiaries pursuant to this section.

(5) The sharing of information by the director pursuant to this section shall not constitute a delegation of regulatory authority or rulemaking, and the director is solely responsible for the administration, execution, and enforcement of this section.

(6) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the director under this section or as a result of sharing as authorized by this section.

(7) Documents, materials, or other information in the possession or control of the National Association of Insurance Commissioners pursuant to this section shall be confidential and privileged, shall not be subject to public disclosure under section 84-712, shall not be subject to subpoena, and shall not be subject to discovery or admissible as evidence in any private civil action.

Source: Laws 1991, LB 236, § 18; Laws 2001, LB 52, § 47; Laws 2012, LB887, § 13; Laws 2016, LB772, § 14.
Operative date March 31, 2016.

44-2139 Director; rules and regulations.

The director may adopt and promulgate such rules and regulations and issue such orders as necessary to carry out the Insurance Holding Company System Act.

Source: Laws 1991, LB 236, § 19; Laws 2012, LB887, § 14.

44-2147.01 Violations; effect.

If it appears to the director that any person has committed a violation of sections 44-2126 to 44-2130 which prevents the full understanding of the enterprise risk to the insurer by affiliates or by the insurance holding company system, the violation may serve as an independent basis for disapproving dividends or distributions and for placing the insurer under an order of supervision in accordance with the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act.

Source: Laws 2012, LB887, § 15.

Cross References

Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act, see section 44-4862.

44-2154 International insurance group; criteria; determination by director.

The director may determine whether or not an insurance holding company system is an international insurance group. An insurance holding company system shall be considered an international insurance group if the insurance holding company system includes an insurer registered under section 44-2132 and:

(1) Meets the following criteria:

(a) The insurance holding company system has premiums written in at least three countries;

(b) The percentage of gross premiums written outside the United States is at least ten percent of the insurance holding company system's gross written premiums; and

(c) Based on a three-year rolling average, the total assets of the insurance holding company system are at least fifty billion dollars or the total gross written premiums of the insurance holding company system are at least ten billion dollars; or

(2) Does not meet the criteria in subdivision (1) of this section but is determined by the director to have significant international insurance business

operations. Such a determination may be made anytime by the director or after a request by an insurance holding company system.

Source: Laws 2016, LB772, § 12.

Operative date March 31, 2016.

44-2155 International insurance group; director; identify group-wide supervisor; factors; director; powers; duties; supervision activities; expenses.

(1) In cooperation with other state, federal, and international regulatory agencies, the director may identify a group-wide supervisor for an international insurance group in accordance with this section. The director may determine that the director is the appropriate group-wide supervisor, or he or she may acknowledge that a chief insurance regulatory official from another jurisdiction is the appropriate group-wide supervisor.

(2) The director may determine that the director is the appropriate group-wide supervisor for:

(a) An international insurance group that conducts substantial insurance operations in this state;

(b) An international insurance group with substantial insurance operations conducted by subsidiary insurance companies domiciled in this state whose ultimate controlling person is domiciled outside of this state;

(c) An international insurance group with an insurance company domiciled in this state that conducts substantial insurance operations from offices in this state;

(d) An international insurance group whose ultimate controlling person is domiciled in this state or whose top-tiered insurance company subsidiary is domiciled in this state; or

(e) Any other international insurance group, under the factors set forth in subsection (4) of this section.

(3) The director may acknowledge that a chief insurance regulatory official from another jurisdiction is the appropriate group-wide supervisor if the international insurance group:

(a) Does not have substantial insurance operations in the United States;

(b) Has substantial insurance operations in the United States, but not in this state; or

(c) Has substantial insurance operations in the United States and this state, but the director has determined pursuant to the factors set forth in subsections (4) and (10) of this section that the chief insurance regulatory official from another jurisdiction is the appropriate group-wide supervisor.

(4) The director shall consider, but shall not be limited to, the following factors when making a determination or acknowledgment regarding a group-wide supervisor under this section:

(a) The place of domicile of the ultimate controlling person of the international insurance group, if the chief insurance regulatory official of that place has significant insurance regulatory authority over such ultimate controlling person;

(b) The place of domicile of the insurer within the international insurance group that holds the largest share of the group's written premiums, assets, or liabilities;

(c) The place of domicile of the top-tiered insurer or insurers in the insurance holding company system of the international insurance group;

(d) The location of the executive offices of the international insurance group;

(e) Whether another chief insurance regulatory official is acting or is seeking to act as the group-wide supervisor under a regulatory system that the director determines is accredited by the National Association of Insurance Commissioners or has substantially similar laws when compared to the insurance laws of this state, especially with regard to the provision of group-wide supervision, enterprise risk analysis, and cooperation with other chief insurance regulatory officials;

(f) Whether another chief insurance regulatory official acting or seeking to act as the group-wide supervisor provides the director with reasonably reciprocal recognition and cooperation;

(g) Whether substantial insurance operations are conducted by subsidiary insurance companies domiciled in this state;

(h) Whether another chief insurance regulatory official acting or seeking to act as the group-wide supervisor and key staff maintain the requisite skill, experience, and tenure necessary to act as group-wide supervisor; and

(i) Whether the international insurance group's current group-wide supervisor is carrying out such duty reasonably.

(5) An international insurance group for which the director has not determined or acknowledged a group-wide supervisor may request that the director make a determination or acknowledgment as to a group-wide supervisor pursuant to this section.

(6) A group-wide supervisor may determine that it is appropriate to acknowledge another chief insurance regulatory official to serve as the group-wide supervisor. The acknowledgment of the group-wide supervisor shall be made after consideration of the factors listed in subsection (4) of this section and shall be made in cooperation with and subject to the acknowledgment of other regulatory officials involved with supervision of members of the international insurance group and in consultation with the international insurance group.

(7) Notwithstanding any other provision of law, when another chief insurance regulatory official is acting as the group-wide supervisor of an international insurance group, the director may acknowledge that chief insurance regulatory official as the group-wide supervisor. Such acknowledgment shall not remove any obligation of an insurer to provide information to the director pursuant to the Insurance Holding Company System Act. However, if there is a material change in the international insurance group that results in (a) the international insurance group's insurers domiciled in this state holding the largest share of the group's premiums, assets, or liabilities or (b) this state being the place of domicile of the top-tiered insurer or insurers in the insurance holding company system of the international insurance group, the director shall make a determination or acknowledgment as to the appropriate group-wide supervisor for such an international insurance group pursuant to this section.

(8) Pursuant to section 44-2137, the director is authorized to collect from any insurer registered pursuant to section 44-2132 all information necessary to determine whether the director may act as the group-wide supervisor of an international insurance group or if the director may acknowledge another chief insurance regulatory official to act as the group-wide supervisor. Prior to

issuing a determination that an international insurance group is subject to group-wide supervision by the director, the director shall notify the insurer registered pursuant to section 44-2132 and the ultimate controlling person within the international insurance group. The international insurance group shall have not less than thirty days to provide the director with additional information pertinent to the pending determination. The director shall publish on the web site of the Department of Insurance the identity of international insurance groups that the director has determined are subject to group-wide supervision by the director.

(9) If the director is the group-wide supervisor for an international insurance group, the director may engage in any of the following group-wide supervision activities:

(a) Assess the enterprise risks within the international insurance group to ensure that:

(i) The material financial condition and liquidity risks to the members of the international insurance group that are engaged in the business of insurance are identified by management; and

(ii) Reasonable and effective mitigation measures are in place;

(b) Request, from any member of an international insurance group subject to the director's supervision, information necessary and appropriate to assess enterprise risk, including, but not limited to, information about the members of the international insurance group regarding:

(i) Governance, risk assessment, and management;

(ii) Capital adequacy; and

(iii) Material intercompany transactions;

(c) Coordinate and, through the authority of the regulatory officials of the jurisdictions where members of the international insurance group are domiciled, compel development and implementation of reasonable measures designed to ensure that the international insurance group is able to timely recognize and mitigate enterprise risks to members of such international insurance group that are engaged in the business of insurance;

(d) Communicate with other state, federal, and international regulatory agencies for members within the international insurance group and share relevant information, subject to the confidentiality provisions of section 44-2138, through supervisory colleges as set forth in section 44-2137.01 or otherwise;

(e) Enter into agreements with or obtain documentation from any insurer registered under section 44-2132, any member of the international insurance group, and any other state, federal, and international regulatory agencies for members of the international insurance group, providing the basis for or otherwise clarifying the director's role as group-wide supervisor, including provisions for resolving disputes with other regulatory officials. Such agreements or documentation shall not serve as evidence in any proceeding that any insurer or person within an insurance holding company system not domiciled or incorporated in this state is doing business in this state or is otherwise subject to jurisdiction in this state; and

(f) Other group-wide supervision activities, consistent with the authorities and purposes enumerated in this section, as considered necessary by the director.

(10) If the director acknowledges that another regulatory official from a jurisdiction that is not accredited by the National Association of Insurance Commissioners is the group-wide supervisor, the director may reasonably cooperate, through supervisory colleges or otherwise, with group-wide supervision undertaken by the group-wide supervisor if:

(a) The director's cooperation is in compliance with the laws of this state; and

(b) The regulatory official acknowledged as the group-wide supervisor also recognizes and cooperates with the director's activities as a group-wide supervisor for other international insurance groups where applicable. Where such recognition and cooperation is not reasonably reciprocal, the director may refuse recognition and cooperation.

(11) The director may enter into agreements with or obtain documentation from any insurer registered under section 44-2132, any affiliate of the insurer, and other state, federal, and international regulatory agencies for members of the international insurance group that provide the basis for or otherwise clarify a regulatory official's role as group-wide supervisor.

(12) A registered insurer subject to this section shall be liable for and shall pay the reasonable expenses of the director's participation in the administration of this section, including the engagement of attorneys, actuaries, and any other professionals and all reasonable travel expenses.

Source: Laws 2016, LB772, § 13.

Operative date March 31, 2016.

ARTICLE 27

NEBRASKA LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION ACT

Section

44-2702. Terms, defined.

44-2703. Coverages authorized.

44-2704. Act; how construed.

44-2719.02. Insurer under court order; provisions applicable; act; applicability.

44-2702 Terms, defined.

As used in the Nebraska Life and Health Insurance Guaranty Association Act, unless the context otherwise requires:

(1) Account means any of the three accounts created pursuant to section 44-2705;

(2) Association means the Nebraska Life and Health Insurance Guaranty Association created by section 44-2705;

(3) Authorized, when used in the context of assessments, or authorized assessment means a resolution by the board of directors has passed whereby an assessment will be called immediately or in the future from member insurers for a specified amount. An assessment is authorized when the resolution is passed;

(4) Called, when used in the context of assessments, or called assessment means that a notice has been issued by the association to member insurers requiring that an authorized assessment be paid within the timeframe set forth within the notice. An authorized assessment becomes a called assessment when notice is mailed by the association to member insurers;

(5) Director means the Director of Insurance;

(6) Contractual obligation means any obligation under a policy or contract or portion of such policy or contract for which coverage is provided under section 44-2703;

(7) Covered policy means any policy or contract or portion of such policy or contract for which coverage is provided under section 44-2703;

(8) Impaired insurer means a member insurer which, after August 24, 1975, (a) is deemed by the director to be potentially unable to fulfill its contractual obligations and is not an insolvent insurer or (b) is placed under an order of rehabilitation or conservation by a court of competent jurisdiction;

(9) Insolvent insurer means a member insurer which after August 24, 1975, is placed under an order of liquidation by a court of competent jurisdiction with a finding of insolvency;

(10) Member insurer means any person authorized to transact in this state any kind of insurance provided for under section 44-2703. Member insurer includes any person whose license or certificate of authority may have been suspended, revoked, not renewed, or voluntarily withdrawn. Member insurer does not include:

(a) A nonprofit hospital or medical service organization;

(b) A health maintenance organization unless such organization is controlled by an insurance company licensed by the Department of Insurance under Chapter 44;

(c) A fraternal benefit society;

(d) A mandatory state pooling plan;

(e) An unincorporated mutual association;

(f) An assessment association operating under Chapter 44 which issues only policies or contracts subject to assessment;

(g) A reciprocal or interinsurance exchange which issues only policies or contracts subject to assessment;

(h) A viatical settlement provider, a viatical settlement broker, or a financing entity under the Viatical Settlements Act; or

(i) An entity similar to any entity listed in subdivisions (10)(a) through (h) of this section;

(11) Moody's corporate bond yield average means the monthly average of corporate bond yields published by Moody's Investment Service, Incorporated, or any successor to Moody's Investment Service, Incorporated;

(12) Owner of a policy or contract, policy owner, and contract owner means the person who is identified as the legal owner under the terms of the policy or contract or who is otherwise vested with legal title to the policy or contract through a valid assignment completed in accordance with the terms of the policy or contract and properly recorded as the owner on the books of the insurer. Owner, policy owner, and contract owner does not include persons with a mere beneficial interest in a policy or contract;

(13) Person means any individual, corporation, partnership, limited liability company, association, or voluntary organization;

(14) Premiums means amounts or considerations received on covered policies or contracts less returned premiums, considerations, and deposits, less

dividends and experience credits. Premiums does not include amounts or considerations received for policies or contracts or for the portions of policies or contracts for which coverage is not provided under subsection (2) of section 44-2703, except that assessable premiums shall not be reduced on account of subdivision (2)(b)(iii) of section 44-2703 relating to interest limitations and subdivision (3)(b) of section 44-2703 relating to limitations with respect to one individual, one participant, and one contract owner. Premiums does not include:

(a) Premiums on an unallocated annuity contract; or

(b) With respect to multiple nongroup life insurance policies owned by one owner, whether the policy owner is an individual, firm, corporation, or other person and whether the persons insured are officers, managers, employees, or other persons, premiums exceeding five million dollars with respect to these policies or contracts, regardless of the number of policies or contracts held by the owner;

(15)(a) Principal place of business of a plan sponsor or a person other than a natural person means the single state in which the natural persons who establish policy for the direction, control, and coordination of the operations of the entity as a whole primarily exercise that function. The association shall determine the principal place of business considering the following factors:

(i) The state in which the primary executive and administrative headquarters of the entity is located;

(ii) The state in which the principal office of the chief executive officer of the entity is located;

(iii) The state in which the board of directors or similar governing person or persons of the entity conducts the majority of meetings;

(iv) The state in which the executive or management committee of the board of directors or similar governing person or persons of the entity conducts the majority of its meetings;

(v) The state from which the management of the overall operations of the entity is directed; and

(vi) In the case of a benefit plan sponsored by affiliated companies comprising a consolidated corporation, the state in which the holding company or controlling affiliate has its principal place of business as determined using the factors in subdivisions (15)(a)(i) through (v) of this section, except that in the case of a plan sponsor, if more than fifty percent of the participants in the benefit plan are employed in a single state, that state shall be deemed to be the principal place of business of the plan sponsor.

(b) The principal place of business of a plan sponsor of a benefit plan shall be deemed to be the principal place of business of the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the benefit plan that, in lieu of a specific or clear designation of a principal place of business, shall be deemed to be the principal place of business of the employer or employee organization that has the largest investment in the benefit plan in question;

(16) Receivership court means the court in the insolvent or impaired insurer's state having jurisdiction over the conservation, rehabilitation, or liquidation of the insurer;

(17) Resident means any person to whom a contractual obligation is owed who resides in this state at the date of entry of a court order that determines that a member insurer is an impaired or insolvent insurer, whichever occurs first. A person may be a resident of only one state. A person other than a natural person shall be a resident of its principal place of business. Citizens of the United States that are residents of foreign countries, or are residents of a United States possession that does not have an association similar to the association created by the Nebraska Life and Health Insurance Guaranty Association Act, shall be deemed residents of the state of domicile of the insurer that issued the policies or contracts;

(18) State means a state, the District of Columbia, Puerto Rico, and any United States possession, territory, or protectorate;

(19) Structured settlement annuity means an annuity purchased in order to fund periodic payments for a plaintiff or other claimant in payment for or with respect to personal injury suffered by the plaintiff or other claimant;

(20) Supplemental contract means any agreement entered into between a member insurer and an owner or beneficiary for the distribution of policy or contract proceeds under a covered policy or contract; and

(21) Unallocated annuity contract means an annuity contract or group annuity certificate that is not issued to and owned by an individual, except to the extent of any annuity benefits guaranteed to an individual by an insurer under the contract or certificate.

Source: Laws 1975, LB 217, § 2; Laws 1986, LB 593, § 4; Laws 1993, LB 121, § 244; Laws 2001, LB 360, § 14; Laws 2012, LB887, § 16.

Cross References

Viatical Settlements Act, see section 44-1101.

44-2703 Coverages authorized.

(1)(a) The Nebraska Life and Health Insurance Guaranty Association Act shall provide coverage for the policies and contracts specified in subsection (2) of this section:

(i) To persons who, regardless of where they reside, except for nonresident certificate holders under group policies or contracts, are the beneficiaries, assignees, or payees of the persons covered under subdivision (1)(a)(ii) of this section; and

(ii) To persons who are owners of or certificate holders under the policies or contracts, other than structured settlement annuities, and in each case who:

(A) Are residents; or

(B) Are not residents and all of the following conditions apply:

(I) The insurer that issued the policies or contracts is domiciled in this state;

(II) The states in which the persons reside have associations similar to the association created by the act; and

(III) The persons are not eligible for coverage by an association in any other state due to the fact that the insurer was not licensed in the state at the time specified in the state's guaranty association law.

(b) For structured settlement annuities specified in subsection (2) of this section, subdivisions (1)(a)(i) and (ii) of this section do not apply. The act shall, except as provided in subdivisions (1)(c) and (d) of this section, provide

coverage to a person who is a payee under a structured settlement annuity, or beneficiary of a payee if the payee is deceased, if the payee:

- (i) Is a resident, regardless of where the contract owner resides; or
- (ii) Is not a resident, but only under the following conditions:

(A)(I) The contract owner of the structured settlement annuity is a resident; or

(II) The contract owner of the structured settlement annuity is not a resident, but the insurer that issued the structured settlement annuity is domiciled in this state and the state in which the contract owner resides has an association similar to the association created by the act; and

(B) The payee or beneficiary and the contract owner are not eligible for coverage by the association of the state in which the payee or contract owner resides.

(c) The act shall not provide coverage to a person who is a payee or beneficiary of a contract owner resident of this state if the payee or beneficiary is afforded any coverage by the association of another state.

(d) The act is intended to provide coverage to a person who is a resident of this state and, in special circumstances, to a nonresident. To avoid duplicate coverage, if a person who would otherwise receive coverage under the act is provided coverage under the laws of any other state, the person shall not be provided coverage under the act. In determining the application of the provisions of this subdivision in situations in which a person could be covered by the association of more than one state, whether as an owner, payee, beneficiary, or assignee, the act shall be construed in conjunction with other state laws to result in coverage by only one association.

(2)(a) The act shall provide coverage to the persons specified in subsection (1) of this section for direct nongroup life, health, or annuity policies or contracts and supplemental contracts to any of these and for certificates under direct group policies and contracts, except as limited by the act. Annuity contracts and certificates under group annuity contracts include allocated funding agreements, structured settlement annuities, and any immediate or deferred annuity contracts.

(b) The act shall not apply to:

(i) Any portion of any policy or contract not guaranteed by the insurer or under which the risk is borne by the policy or contract holder;

(ii) A policy or contract of reinsurance, unless assumption certificates have been issued pursuant to the reinsurance policy or contract;

(iii) A portion of a policy or contract to the extent that the rate of interest on which it is based or the interest rate, crediting rate, or similar factor determined by use of an index or other external reference stated in the policy or contract employed in calculating returns or changes in value:

(A) Averaged over the period of four years prior to the date on which the member insurer becomes an impaired or insolvent insurer under the act, whichever is earlier, exceeds the rate of interest determined by subtracting two percentage points from Moody's corporate bond yield average averaged for that same four-year period or for such lesser period if the policy or contract was issued less than four years before the member insurer becomes an impaired or insolvent insurer under the act, whichever is earlier; and

(B) On and after the date on which the member insurer becomes an impaired or insolvent insurer under the act, whichever is earlier, exceeds the rate of interest determined by subtracting three percentage points from Moody's corporate bond yield average as most recently available;

(iv) A portion of a policy or contract issued to a plan or program of an employer, association, or other person to provide life, health, or annuity benefits to its employees, members, or others, to the extent that the plan or program is self-funded or uninsured, including benefits payable by an employer, association, or other person under:

(A) A multiple employer welfare arrangement as described in 29 U.S.C. 1002(40);

(B) A minimum premium group insurance plan;

(C) A stop-loss group insurance plan; or

(D) An administrative services only contract;

(v) A portion of a policy or contract to the extent that it provides for:

(A) Dividends or experience rating credits;

(B) Voting rights; or

(C) Payment of any fees or allowances to any person, including the policy or contract owner, in connection with the service to or administration of the policy or contract;

(vi) A policy or contract issued in this state by a member insurer at a time when it was not licensed or did not have a certificate of authority to issue the policy or contract in this state;

(vii) A portion of a policy or contract to the extent that the assessments required by section 44-2708 with respect to the policy or contract are preempted by federal or state law;

(viii) An obligation that does not arise under the express written terms of the policy or contract issued by the insurer to the contract owner or policy owner, including:

(A) Claims based on marketing materials;

(B) Claims based on side letters, riders, or other documents that were issued by the insurer without meeting applicable policy form, filing, or approval requirements;

(C) Misrepresentations of or regarding policy benefits;

(D) Extra-contractual claims; or

(E) A claim for penalties or consequential or incidental damages;

(ix) A contractual agreement that establishes the member insurer's obligations to provide a book value accounting guaranty for defined contribution benefit plan participants by reference to a portfolio of assets that is owned by the benefit plan or its trustee, which in each case is not an affiliate of the member insurer;

(x) A portion of a policy or contract to the extent it provides for interest or other changes in value to be determined by the use of an index or other external reference stated in the policy or contract, but which have not been credited to the policy or contract or as to which the policy or contract owner's rights are subject to forfeiture as of the date the member insurer becomes an impaired or insolvent insurer under the act, whichever is earlier. If a policy's or

contract's interest or changes in value are credited less frequently than annually, then for purposes of determining the values that have been credited and are not subject to forfeiture under this subdivision, the interest or change in value determined by using the procedures defined in the policy or contract will be credited as if the contractual date of crediting interest or changing values was the date of impairment or insolvency, whichever is earlier, and will not be subject to forfeiture;

(xi) An unallocated annuity contract, a funding agreement, a guaranteed interest contract, a guaranteed investment contract, a synthetic guaranteed investment contract, or a deposit administration contract;

(xii) Any such policy or contract issued by:

(A) A nonprofit hospital or medical service organization;

(B) A health maintenance organization unless such organization is controlled by an insurance company licensed by the Department of Insurance under Chapter 44;

(C) A fraternal benefit society;

(D) A mandatory state pooling plan;

(E) An unincorporated mutual association;

(F) An assessment association operating under Chapter 44 which issues only policies or contracts subject to assessment; or

(G) A reciprocal or interinsurance exchange which issues only policies or contracts subject to assessment;

(xiii) Any policy or contract issued by any person, corporation, or organization which is not licensed by the Department of Insurance under Chapter 44;

(xiv) A policy or contract providing any hospital, medical, prescription drug, or other health care benefits pursuant to Title 42, Chapter 7, Subchapter XVIII, Part C or D of the United States Code or any regulations issued pursuant thereto; or

(xv) A viatical settlement contract as defined in section 44-1102 or a viaticated policy as defined in section 44-1102.

(3) The benefits that the association may become obligated to cover shall in no event exceed the lesser of:

(a) The contractual obligations for which the insurer is liable or would have been liable if it were not an impaired or insolvent insurer; or

(b)(i) With respect to one life, regardless of the number of policies or contracts:

(A) Three hundred thousand dollars in life insurance death benefits, but not more than one hundred thousand dollars in net cash surrender and net cash withdrawal values for life insurance;

(B) In health insurance benefits: (I) Five hundred thousand dollars for basic hospital, medical, or surgical insurance or major medical insurance. For purposes of this subdivision: Basic hospital, medical, or surgical insurance means a policy which pays a certain portion of hospital room and board costs each day. This type of policy also pays for hospital services and supplies including X-rays, lab tests, medicine, and other items up to a stated amount; and major medical insurance means health insurance to finance the expense of major illness and injury characterized by large benefit maximums and reim-

burses the major part of all charges for hospitals, doctors, private nurses, medical appliances, prescribed out-of-hospital treatment, drugs, and medicines above an initial deductible; (II) three hundred thousand dollars for disability insurance or long-term care insurance as defined in section 44-4509. For purposes of this subdivision, disability insurance means the type of policy which pays a monthly or weekly amount if an individual is disabled and cannot work; and (III) one hundred thousand dollars for coverages not defined as disability insurance, long-term care insurance, basic hospital, medical, or surgical insurance, or major medical insurance, including any net cash surrender and net cash withdrawal values; or

(C) Two hundred fifty thousand dollars in the present value of annuity benefits, including net cash surrender and net cash withdrawal values;

(ii) With respect to each payee of a structured settlement annuity or beneficiary or beneficiaries of the payee if deceased, two hundred fifty thousand dollars in the present value of annuity benefits, in the aggregate, including net cash surrender and net cash withdrawal values, if any;

(iii) The association shall not be obligated to cover more than:

(A) An aggregate of three hundred thousand dollars in benefits with respect to any one life under subdivisions (3)(b)(i) and (ii) of this section, except that with respect to benefits for basic hospital, medical, or surgical insurance and major medical insurance under subdivision (3)(b)(i)(B)(I) of this section, in which case the aggregate liability of the association shall not exceed five hundred thousand dollars with respect to any one individual; or

(B) With respect to one owner of multiple nongroup policies of life insurance, whether the policy owner is an individual, firm, corporation, or other person and whether the persons insured are officers, managers, employees, or other persons, more than five million dollars in benefits regardless of the number of policies and contracts held by the owner;

(iv) The limitations set forth in this subsection are limitations on the benefits for which the association is obligated before taking into account either its subrogation and assignment rights or the extent to which those benefits could be provided out of the assets of the impaired or insolvent insurer attributable to covered policies. The costs of the association's obligations under the act may be met by the use of assets attributable to covered policies or reimbursed to the association pursuant to its subrogation and assignment rights.

(4) In performing its obligations to provide coverage under section 44-2707, the association shall not be required to guarantee, assume, reinsure, or perform, or cause to be guaranteed, assumed, reinsured, or performed, the contractual obligations of the insolvent or impaired insurer under a covered policy or contract that do not materially affect the economic values or economic benefits of the covered policy or contract.

Source: Laws 1975, LB 217, § 3; Laws 1986, LB 593, § 5; Laws 2001, LB 360, § 15; Laws 2004, LB 1047, § 8; Laws 2012, LB887, § 17.

44-2704 Act; how construed.

The Nebraska Life and Health Insurance Guaranty Association Act shall be construed to effect the purposes enumerated in section 44-2701.

Source: Laws 1975, LB 217, § 4; Laws 1986, LB 593, § 6; Laws 2012, LB887, § 18.

44-2719.02 Insurer under court order; provisions applicable; act; applicability.

(1) Any insurer under an order of liquidation, rehabilitation, or conservation on February 12, 1986, shall be subject to the provisions of the Nebraska Life and Health Insurance Guaranty Association Act in effect on the day prior to February 12, 1986.

(2) Notwithstanding any other provision of law, the provisions of the Nebraska Life and Health Insurance Guaranty Association Act in effect on the date the association first becomes obligated for the policies or contracts of an insolvent or impaired member govern the association's rights or obligations to the policyowners of the insolvent or impaired member insurer.

Source: Laws 1986, LB 593, § 15; Laws 2012, LB887, § 19.

ARTICLE 28**NEBRASKA HOSPITAL-MEDICAL LIABILITY ACT**

Section

44-2825. Action for injury or death; maximum amount recoverable; settlement; manner.

44-2825 Action for injury or death; maximum amount recoverable; settlement; manner.

(1) The total amount recoverable under the Nebraska Hospital-Medical Liability Act from any and all health care providers and the Excess Liability Fund for any occurrence resulting in any injury or death of a patient may not exceed (a) five hundred thousand dollars for any occurrence on or before December 31, 1984, (b) one million dollars for any occurrence after December 31, 1984, and on or before December 31, 1992, (c) one million two hundred fifty thousand dollars for any occurrence after December 31, 1992, and on or before December 31, 2003, (d) one million seven hundred fifty thousand dollars for any occurrence after December 31, 2003, and on or before December 31, 2014, and (e) two million two hundred fifty thousand dollars for any occurrence after December 31, 2014.

(2) A health care provider qualified under the act shall not be liable to any patient or his or her representative who is covered by the act for an amount in excess of five hundred thousand dollars for all claims or causes of action arising from any occurrence during the period that the act is effective with reference to such patient.

(3) Subject to the overall limits from all sources as provided in subsection (1) of this section, any amount due from a judgment or settlement which is in excess of the total liability of all liable health care providers shall be paid from the Excess Liability Fund pursuant to sections 44-2831 to 44-2833.

Source: Laws 1976, LB 434, § 25; Laws 1984, LB 692, § 8; Laws 1986, LB 1005, § 2; Laws 1992, LB 1006, § 18; Laws 2003, LB 146, § 1; Laws 2004, LB 998, § 2; Laws 2014, LB961, § 3.

ARTICLE 29

NEBRASKA HOSPITAL AND PHYSICIANS MUTUAL
INSURANCE ASSOCIATION ACT

Section

44-2916. Associations; provisions applicable.

44-2916 Associations; provisions applicable.

To the extent applicable and when not in conflict with the Nebraska Hospital and Physicians Mutual Insurance Association Act, the provisions of the Nebraska Model Business Corporation Act and Chapters 44 and 77 relating to corporations and insurance shall apply to associations incorporated pursuant to the Nebraska Hospital and Physicians Mutual Insurance Association Act.

Source: Laws 1976, LB 809, § 16; Laws 1989, LB 92, § 218; Laws 1995, LB 109, § 222; Laws 2014, LB749, § 288.
Operative date January 1, 2017.

Cross References

Nebraska Model Business Corporation Act, see section 21-201.

ARTICLE 31

NEBRASKA PROFESSIONAL ASSOCIATION
MUTUAL INSURANCE COMPANY ACT

Section

44-3112. Act; other provisions applicable.

44-3112 Act; other provisions applicable.

To the extent applicable and when not in conflict with the Nebraska Professional Association Mutual Insurance Company Act, the provisions of the Nebraska Model Business Corporation Act and Chapters 44 and 77 relating to corporations and insurance shall apply to companies incorporated pursuant to the Nebraska Professional Association Mutual Insurance Company Act.

Source: Laws 1978, LB 656, § 12; Laws 1989, LB 92, § 219; Laws 1995, LB 109, § 223; Laws 2014, LB749, § 289.
Operative date January 1, 2017.

Cross References

Nebraska Model Business Corporation Act, see section 21-201.

ARTICLE 32

HEALTH MAINTENANCE ORGANIZATIONS

Section

- 44-32,115. Establishment of health maintenance organization; certificate of authority required.
- 44-32,177. Health maintenance organization; acquisition, merger, and consolidation; procedure.

44-32,115 Establishment of health maintenance organization; certificate of authority required.

Any person may apply to the director for a certificate of authority to establish and operate a health maintenance organization in compliance with the Health

Maintenance Organization Act. No person shall establish or operate a health maintenance organization in this state without obtaining a certificate of authority under the act. Operating a health maintenance organization without a certificate of authority shall be a violation of the Unauthorized Insurers Act. A foreign corporation may qualify under the Health Maintenance Organization Act if it registers to do business in this state as a foreign corporation under the Nebraska Model Business Corporation Act and complies with the Health Maintenance Organization Act and other applicable state laws.

Source: Laws 1990, LB 1136, § 24; Laws 1993, LB 583, § 88; Laws 1995, LB 109, § 224; Laws 2014, LB749, § 290.

Operative date January 1, 2017.

Cross References

Nebraska Model Business Corporation Act, see section 21-201.

Unauthorized Insurers Act, see section 44-2008.

44-32,177 Health maintenance organization; acquisition, merger, and consolidation; procedure.

No person shall (1) make a tender for or a request or invitation for tenders of, (2) enter into an agreement to exchange securities for, or (3) acquire in the open market or otherwise any voting security of a health maintenance organization or enter into any other agreement if, after the consummation thereof, that person would, directly or indirectly, or by conversion or by exercise of any right to acquire, be in control of the health maintenance organization, and no person shall enter into an agreement to merge or consolidate with or otherwise to acquire control of a health maintenance organization unless, at the time any offer, request, or invitation is made or any agreement is entered into or prior to the acquisition of the securities if no offer or agreement is involved, the person has filed with the director and has sent to the health maintenance organization information required by subsection (4) of section 44-2126 and the offer, request, invitation, agreement, or acquisition has been approved by the director. Approval by the director shall be governed by the Insurance Holding Company System Act.

Source: Laws 1990, LB 1136, § 86; Laws 1991, LB 236, § 34; Laws 2012, LB887, § 20.

Cross References

Insurance Holding Company System Act, see section 44-2120.

ARTICLE 33

LEGAL SERVICE INSURANCE CORPORATIONS

Section

44-3312. Legal service insurance corporation; articles of incorporation; contents.

44-3312 Legal service insurance corporation; articles of incorporation; contents.

(1) Two or more persons may organize a legal service insurance corporation under this section.

(2) The articles of incorporation of a not-for-profit corporation shall conform to the requirements applicable to not-for-profit corporations under the Nebras-

ka Nonprofit Corporation Act and the articles of incorporation of a corporation for profit shall conform to the requirements applicable to corporations for profit under the Nebraska Model Business Corporation Act, except that:

(a) The name of the corporation shall indicate that legal services or indemnity for legal services is to be provided;

(b) The purposes of the corporation shall be limited to providing legal services or indemnity for legal expenses and business reasonably related thereto;

(c) The articles shall state whether members or other providers of services may be required to share operating deficits, either through assessments or through reductions in the compensation for services rendered. They shall also state the general conditions and procedures for deficit sharing and any limits on the amount of the deficit to be assumed by each individual member or provider;

(d) For corporations having members, the articles shall state the conditions and procedures for acquiring membership and that only members have the right to vote; and

(e) For corporations not having members, the articles shall state how the directors are to be selected.

Source: Laws 1979, LB 52, § 12; Laws 1995, LB 109, § 225; Laws 1996, LB 681, § 195; Laws 2014, LB749, § 291.
Operative date January 1, 2017.

Cross References

Nebraska Model Business Corporation Act, see section 21-201.

Nebraska Nonprofit Corporation Act, see section 21-1901.

ARTICLE 35
SERVICE CONTRACTS

(b) MOTOR VEHICLES

Section

44-3521. Terms, defined.

44-3524. Cease and desist order; notice; hearing; injunction.

44-3526. Act; exemptions.

(b) MOTOR VEHICLES

44-3521 Terms, defined.

For purposes of the Motor Vehicle Service Contract Reimbursement Insurance Act:

(1) Director means the Director of Insurance;

(2) Incidental costs means expenses specified in a motor vehicle service contract that are incurred by the service contract holder due to the failure of a vehicle protection product to perform as provided in the contract. Incidental costs include, but are not limited to, insurance policy deductibles, rental vehicle charges, the difference between the actual value of the stolen vehicle at the time of theft and the cost of a replacement vehicle, sales taxes, registration fees, transaction fees, and mechanical inspection fees. Incidental costs may be reimbursed in either a fixed amount specified in the motor vehicle service

contract or sales agreement or by use of a formula itemizing specific incidental costs incurred by the service contract holder;

(3) Mechanical breakdown insurance means a policy, contract, or agreement that undertakes to perform or provide repair or replacement service, or indemnification for such service, for the operational or structural failure of a motor vehicle due to defect in materials or workmanship or normal wear and tear and that is issued by an insurance company authorized to do business in this state;

(4) Motor vehicle means any motor vehicle as defined in section 60-339;

(5)(a) Motor vehicle service contract means a contract or agreement given for consideration over and above the lease or purchase price of a motor vehicle that undertakes to perform or provide repair or replacement service, or indemnification for such service, for the operational or structural failure of a motor vehicle due to defect in materials or workmanship or normal wear and tear but does not include mechanical breakdown insurance.

(b) Motor vehicle service contract also includes a contract or agreement that is effective for a specified duration and paid for by means other than the purchase of a motor vehicle to perform any one or more of the following:

(i) The repair or replacement of tires or wheels on a motor vehicle damaged as a result of coming into contact with road hazards;

(ii) The removal of dents, dings, or creases on a motor vehicle that can be repaired using the process of paintless dent removal without affecting the existing paint finish and without replacing vehicle body panels, sanding, bonding, or painting;

(iii) The repair of chips or cracks in or replacement of motor vehicle windshields as a result of damage caused by road hazards;

(iv) The replacement of a motor vehicle key or keyfob in the event the key or keyfob becomes inoperable or is lost;

(v) The payment of specified incidental costs as the result of a failure of a vehicle protection product to perform as specified; and

(vi) Other products and services approved by the director;

(6) Motor vehicle service contract provider means a person who issues, makes, provides, sells, or offers to sell a motor vehicle service contract, except that motor vehicle service contract provider does not include an insurer as defined in section 44-103;

(7) Motor vehicle service contract reimbursement insurance policy means a policy of insurance meeting the requirements in section 44-3523 that provides coverage for all obligations and liabilities incurred by a motor vehicle service contract provider under the terms of motor vehicle service contracts issued by the provider;

(8) Road hazards means hazards that are encountered during normal driving conditions, including, but not limited to, potholes, rocks, wood debris, metal parts, glass, plastic, curbs, or composite scraps;

(9) Service contract holder means a person who purchases a motor vehicle service contract; and

(10)(a) Vehicle protection product means a vehicle protection device, system, or service that:

(i) Is installed on or applied to a vehicle;

(ii) Is designed to prevent loss or damage to a vehicle from a specific cause; and

(iii) Includes a written warranty.

(b) Vehicle protection product includes, but is not limited to, chemical additives, alarm systems, body part marking products, steering locks, window etch products, pedal and ignition locks, fuel and ignition kill switches, and electronic, radio, and satellite tracking devices.

Source: Laws 1990, LB 1136, § 93; Laws 2005, LB 274, § 230; Laws 2006, LB 875, § 4; Laws 2012, LB1054, § 1.

44-3524 Cease and desist order; notice; hearing; injunction.

(1) The director may issue an order instructing a motor vehicle service contract provider to cease and desist from selling or offering for sale motor vehicle service contracts if the director determines that the provider has failed to comply with the Motor Vehicle Service Contract Reimbursement Insurance Act. At the same time the order is issued, the director shall serve notice to the motor vehicle service provider of the reasons for such order and that the motor vehicle service provider may request a hearing in writing within ten business days after receipt of the order. If a hearing is requested, the director shall schedule a hearing within ten business days after receipt of the request. The hearing shall be conducted in accordance with the Administrative Procedure Act. If a hearing is not requested and none is ordered by the director, the order shall remain in effect until modified or vacated by the director.

(2) Upon the failure of a motor vehicle service contract provider to obey a cease and desist order issued by the director, the director may give notice in writing of the failure to the Attorney General who may commence an action against the provider to enjoin the provider from selling or offering for sale motor vehicle service contracts until the provider complies with the act. The district court may issue the injunction.

Source: Laws 1990, LB 1136, § 96; Laws 2014, LB700, § 15.

Cross References

Administrative Procedure Act, see section 84-920.

44-3526 Act; exemptions.

The Motor Vehicle Service Contract Reimbursement Insurance Act shall not apply to:

(1) Motor vehicle service contracts (a)(i) issued by a motor vehicle manufacturer or importer for the motor vehicles manufactured or imported by that manufacturer or importer and (ii) sold by a franchised motor vehicle dealer licensed pursuant to the Motor Vehicle Industry Regulation Act or (b) issued and sold directly by a motor vehicle manufacturer or importer licensed pursuant to the Motor Vehicle Industry Regulation Act for the motor vehicles manufactured or imported by that manufacturer or importer; or

(2) Product warranties governed by the Magnuson-Moss Warranty - Federal Trade Commission Improvement Act, 15 U.S.C. 2301 et seq., or to any other

warranties, indemnity agreement, or guarantees that are not provided incidental to the purchase of a vehicle protection product.

Source: Laws 1990, LB 1136, § 98; Laws 2010, LB816, § 3; Laws 2012, LB1054, § 2.

Cross References

Motor Vehicle Industry Regulation Act, see section 60-1401.

ARTICLE 37

MOTOR CLUB SERVICES ACT

Section

44-3719. Director; duties; rules and regulations.

44-3719 Director; duties; rules and regulations.

The director shall administer and enforce the provisions of sections 44-3701 to 44-3721 and may adopt and promulgate rules and regulations in accordance with sections 44-3701 to 44-3721.

Source: Laws 1981, LB 113, § 19; Laws 2014, LB700, § 16.

ARTICLE 38

DENTAL SERVICES

Section

44-3812. Corporation; articles of incorporation; requirements.

44-3812 Corporation; articles of incorporation; requirements.

(1) Two or more persons may organize a prepaid dental service corporation under this section.

(2) The articles of incorporation of the corporation shall conform to the requirements of the Nebraska Nonprofit Corporation Act or to the requirements of the Nebraska Model Business Corporation Act, except that:

(a) The name of the corporation shall indicate that dental services are to be provided;

(b) The purposes of the corporation shall be limited to providing dental services and business reasonably related thereto;

(c) The articles shall state whether members, shareholders, or providers of services may be required to share operating deficits, either through assessments or through reductions in compensation for services rendered, the general conditions and procedures for deficit sharing, and any limits on the amount of the deficit to be assumed by each individual member, shareholder, or provider;

(d) For corporations having members, the articles shall state the conditions and procedures for acquiring membership and that only members have the right to vote; and

(e) For corporations not having members, the articles shall state how the directors are to be selected.

Source: Laws 1982, LB 139, § 12; Laws 1995, LB 109, § 226; Laws 1996, LB 681, § 196; Laws 2014, LB749, § 292.
Operative date January 1, 2017.

Cross References

Nebraska Model Business Corporation Act, see section 21-201.
 Nebraska Nonprofit Corporation Act, see section 21-1901.

ARTICLE 39
EDUCATION

(a) CONTINUING EDUCATION FOR INSURANCE LICENSEES

Section

44-3903. Continuing education requirements; exceptions.

44-3904. Licensee; requirements; furnish evidence of continuing education.

(b) PRELICENSING EDUCATION FOR INSURANCE PRODUCERS

44-3909. Prelicensing education requirements.

44-3910. Prelicensing education requirements; exemptions.

(a) CONTINUING EDUCATION FOR INSURANCE LICENSEES

44-3903 Continuing education requirements; exceptions.

Sections 44-3901 to 44-3908 shall not apply to the following persons:

(1) Licensees for whom an examination is not required under the laws of this state;

(2) Licensees who sell or consult only in the areas of credit life insurance and credit accident and health insurance;

(3) Licensees who sell or consult only in the area of travel insurance; and

(4) Licensees holding such limited or restricted licenses as the director may exempt.

Source: Laws 1982, LB 274, § 3; Laws 1985, LB 48, § 1; Laws 1989, LB 92, § 243; Laws 1990, LB 984, § 1; Laws 2001, LB 51, § 34; Laws 2015, LB458, § 1.

44-3904 Licensee; requirements; furnish evidence of continuing education.

(1)(a)(i) Licensees qualified to solicit property and casualty insurance shall be required to complete twenty-one hours of approved continuing education activities in each two-year period commencing before January 1, 2010. Licensees qualified to solicit life, accident and health or sickness, property, casualty, or personal lines property and casualty insurance shall be required to complete six hours of approved continuing education activities for each line of insurance, including each miscellaneous line, in which he or she is licensed in each two-year period commencing before January 1, 2010. Licensees qualified to solicit life, accident and health or sickness, property, casualty, or personal lines property and casualty insurance shall be required to complete twenty-one hours of approved continuing education activities in each two-year period commencing on or after January 1, 2010.

(ii) Licensees qualified to solicit only crop insurance shall be required to complete three hours of approved continuing education activities in each two-year period.

(iii) Licensees qualified to solicit only limited line pre-need funeral insurance shall be required to complete (A) three hours of approved continuing education activities in each two-year period if such licensee holds a license as a funeral director and embalmer under the Funeral Directing and Embalming Practice

Act or (B) six hours of approved continuing education activities in each two-year period if such licensee does not hold a license as a funeral director and embalmer under the Funeral Directing and Embalming Practice Act.

(iv) Licensees qualified to solicit any lines of insurance other than those described in subdivisions (i), (ii), and (iii) of subdivision (a) of this subsection shall be required to complete six hours of approved continuing education activities in each two-year period for each line of insurance, including each miscellaneous line, in which he or she is licensed. Licensees qualified to solicit variable life and variable annuity products shall not be required to complete additional continuing education activities because the licensee is qualified to solicit variable life and variable annuity products.

(b) Licensees who are not insurance producers shall be required to complete twenty-one hours of approved continuing education activities in each two-year period commencing on or after January 1, 2000.

(c) In each two-year period, every licensee shall furnish evidence to the director that he or she has satisfactorily completed the hours of approved continuing education activities required under this subsection for each line of insurance in which he or she is licensed as a resident insurance producer, except that no licensee shall be required to complete more than twenty-four cumulative hours required under this subsection in any two-year period commencing on or after January 1, 2000.

(d) A licensee shall not repeat a continuing education activity for credit within a two-year period.

(2) In each two-year period, licensees required to complete approved continuing education activities under subsection (1) of this section shall, in addition to such activities, be required to complete three hours of approved continuing education activities on insurance industry ethics.

(3) When the requirements of this section have been met, the licensee shall furnish to the department evidence of completion for the current two-year period.

Source: Laws 1982, LB 274, § 4; Laws 1985, LB 48, § 2; Laws 1988, LB 1114, § 1; Laws 1989, LB 92, § 244; Laws 1989, LB 279, § 4; Laws 1993, LB 583, § 91; Laws 1994, LB 978, § 29; Laws 1999, LB 260, § 5; Laws 2008, LB855, § 23; Laws 2015, LB198, § 1.

Cross References

Funeral Directing and Embalming Practice Act, see section 38-1401.

(b) PRELICENSING EDUCATION FOR INSURANCE PRODUCERS

44-3909 Prelicensing education requirements.

Except as otherwise provided by the Insurance Producers Licensing Act, no individual shall be eligible to apply for a license as an insurance producer unless he or she has completed the following prelicensing education requirements:

(1) An individual seeking a qualification for a license in the life insurance line shall complete at least six hours of education on insurance industry ethics in addition to fourteen hours of education in the area of life insurance;

(2) An individual seeking a qualification for a license in the accident and health or sickness insurance line shall complete at least six hours of education

on insurance industry ethics in addition to fourteen hours of education in the area of accident and health or sickness insurance;

(3) An individual seeking a qualification for a license in the property insurance line shall complete at least six hours of education on insurance industry ethics in addition to fourteen hours of education in the area of property insurance;

(4) An individual seeking a qualification for a license in the casualty insurance line shall complete at least six hours of education on insurance industry ethics in addition to fourteen hours of education in the area of casualty insurance;

(5) An individual seeking a qualification for a license in the personal lines property and casualty insurance line shall complete at least six hours of education on insurance industry ethics in addition to fourteen hours of education in the area of personal lines property and casualty insurance;

(6) An individual seeking a qualification for a license in the title insurance line shall complete at least six hours of education on insurance industry ethics in addition to six hours of education in the area of title insurance;

(7) An individual seeking a qualification for a license in the crop insurance line shall complete at least three hours of education on insurance industry ethics in addition to three hours of education in the area of crop insurance; and

(8) An individual seeking a qualification for a license to sell limited line pre-need funeral insurance shall complete at least three hours of education on insurance industry ethics in addition to (a) three hours of education in the area of life insurance if such individual holds a license as a funeral director and embalmer under the Funeral Directing and Embalming Practice Act or (b) five hours of education in the area of life insurance if such individual does not hold a license as a funeral director and embalmer under the Funeral Directing and Embalming Practice Act.

Source: Laws 1993, LB 583, § 95; Laws 1999, LB 260, § 7; R.S.1943, (1998), § 44-4005.01; Laws 2001, LB 51, § 29; Laws 2008, LB855, § 24; Laws 2015, LB198, § 2.

Cross References

Funeral Directing and Embalming Practice Act, see section 38-1401.

Insurance Producers Licensing Act, see section 44-4047.

44-3910 Prelicensing education requirements; exemptions.

The prelicensing education requirements of section 44-3909 shall not apply to an individual who, at the time of application for an insurance producer license:

(1) Is applying for qualification for the life insurance line of authority and has the certified employee benefit specialist designation, the chartered financial consultant designation, the certified insurance counselor designation, the certified financial planner designation, the chartered life underwriter designation, the fellow life management institute designation, or the Life Underwriter Training Council fellow designation;

(2) Is applying for qualification for the accident and health or sickness insurance line of authority and has the registered health underwriter designation, the certified employee benefit specialist designation, the registered employee benefit consultant designation, or the health insurance associate designation;

(3) Is applying for qualification for the property insurance, casualty insurance, or personal lines property and casualty insurance line of authority and has the accredited advisor in insurance designation, the associate in risk management designation, the certified insurance counselor designation, or the chartered property and casualty underwriter designation;

(4) Is applying for a limited lines travel insurance producer license pursuant to section 44-4068;

(5) Has a college degree with a concentration in insurance from an accredited educational institution;

(6) Is an individual described in section 44-4056 or 44-4058; or

(7) Is a person who the director may exempt pursuant to a rule or regulation adopted and promulgated pursuant to the Administrative Procedure Act.

Source: Laws 1993, LB 583, § 96; R.S.1943, (1998), § 44-4005.02; Laws 2001, LB 51, § 30; Laws 2008, LB855, § 25; Laws 2015, LB458, § 2.

Cross References

Administrative Procedure Act, see section 84-920.

ARTICLE 40

INSURANCE PRODUCERS LICENSING ACT

Section

44-4047. Act, how cited.

44-4049. Terms, defined.

44-4052. Licensure examination; requirements.

44-4054. License; lines of authority; renewal; procedure; licensee; duties; director; powers.

44-4055. Nonresident license; requirements.

44-4068. Travel insurance; limited lines travel insurance producer; license; duties; travel retailer; duties; director; powers.

44-4047 Act, how cited.

Sections 44-4047 to 44-4068 shall be known and may be cited as the Insurance Producers Licensing Act.

Source: Laws 1984, LB 801, § 1; Laws 1991, LB 419, § 2; Laws 1993, LB 583, § 93; Laws 1999, LB 424, § 2; R.S.Supp.,2000, § 44-4001; Laws 2001, LB 51, § 1; Laws 2015, LB458, § 3.

44-4049 Terms, defined.

For purposes of the Insurance Producers Licensing Act:

(1) Business entity means a corporation, association, partnership, limited liability company, limited liability partnership, or other legal entity;

(2) Director means the Director of Insurance;

(3) Home state means the state in which an insurance producer maintains his or her principal place of residence or principal place of business and is licensed to act as an insurance producer;

(4) Insurance has the same meaning as in section 44-102;

(5) Insurance producer or producer has the same meaning as in section 44-103;

(6) Insurer has the same meaning as in section 44-103;

(7) License means a document issued by the director authorizing a person to act as an insurance producer for the lines of authority specified in the document. The license itself does not create any authority, actual, apparent, or inherent, in the holder to represent or commit an insurer;

(8) Limited line credit insurance includes credit life, credit disability, credit property, credit unemployment, involuntary unemployment, mortgage life, mortgage guaranty, mortgage disability, guaranteed automobile protection insurance, and any other form of insurance offered in connection with an extension of credit that is limited to partially or wholly extinguishing that credit obligation that the director determines should be designated a form of limited line credit insurance;

(9) Limited line credit insurance producer means a person who sells, solicits, or negotiates one or more forms of limited line credit insurance coverage to individuals through a master, corporate, group, or individual policy;

(10) Limited line pre-need funeral insurance means life insurance or a fixed annuity contract purchased by or on behalf of the insured solely to pay the costs of funeral services or funeral service merchandise to be purchased from a funeral home establishment or cemetery;

(11) Limited line pre-need funeral insurance producer means a person who sells, solicits, or negotiates limited line pre-need funeral insurance coverage to individuals;

(12) Limited lines insurance means any authority granted by the home state which restricts the authority of the license to less than the total authority prescribed in the associated major lines pursuant to subsection (1) of section 44-4054 or any line of insurance that the director may deem it necessary to recognize for the purposes of complying with subsection (5) of section 44-4055;

(13) Limited lines producer means a person authorized by the director to sell, solicit, or negotiate limited lines insurance;

(14) Negotiate means the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms, or conditions of the contract, if the person engaged in that act either sells insurance or obtains insurance from insurers for purchasers;

(15) Person means any individual or business entity;

(16) Sell means to exchange a contract of insurance by any means, for money or its equivalent, on behalf of an insurance company;

(17) Solicit means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular company;

(18) 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;

(19) Terminate means the cancellation of the relationship between an insurance producer and the insurer or the termination of a producer's authority to transact insurance;

(20) Uniform application means the uniform application as prescribed by the director which conforms substantially to the uniform application for resident

and nonresident producer licensing adopted by the National Association of Insurance Commissioners; and

(21) Uniform business entity application means the uniform business entity application as prescribed by the director which conforms substantially to the uniform business entity application for resident and nonresident business entities adopted by the National Association of Insurance Commissioners.

Source: Laws 2001, LB 51, § 3; Laws 2015, LB198, § 3.

44-4052 Licensure examination; requirements.

(1) A resident individual applying for an insurance producer license shall pass a written examination unless exempt pursuant to section 44-4056 or 44-4068. The examination shall test the knowledge of the individual concerning the lines of authority for which application is made, the duties and responsibilities of an insurance producer, and the insurance laws, rules, and regulations of this state. Examinations required by this section shall be developed and conducted under rules and regulations adopted and promulgated by the director.

(2) The director may make arrangements, including contracting with an outside testing service, for administering examinations and collecting the non-refundable fee set forth in section 44-4064.

(3) Each individual applying for an examination shall remit a nonrefundable fee as prescribed by the director as set forth in section 44-4064.

(4) An individual who fails to appear for the examination as scheduled or fails to pass the examination shall reapply for an examination and remit all required fees and forms before being rescheduled for another examination.

Source: Laws 2001, LB 51, § 6; Laws 2015, LB458, § 4.

44-4054 License; lines of authority; renewal; procedure; licensee; duties; director; powers.

(1) Unless denied licensure pursuant to section 44-4059, a person who has met the requirements of sections 44-4052 and 44-4053 shall be issued an insurance producer license. An insurance producer may receive qualification for a license in one or more of the following lines of authority:

(a) Life insurance coverage on human lives, including benefits of endowment and annuities, and may include benefits in the event of death or dismemberment by accident and benefits for disability income;

(b) Accident and health or sickness, insurance coverage for sickness, bodily injury, or accidental death and may include benefits for disability income;

(c) Property insurance coverage for the direct or consequential loss or damage to property of every kind;

(d) Casualty insurance coverage against legal liability, including that for death, injury, or disability or damage to real or personal property;

(e) Variable life and variable annuity products, insurance coverage provided under variable life insurance contracts, and variable annuities;

(f) Limited line credit insurance;

(g) Limited line pre-need funeral insurance;

(h) Personal lines property and casualty insurance coverage sold to individuals and families for primarily noncommercial purposes; and

(i) Any other line of insurance permitted under Nebraska laws, rules, or regulations.

(2) An insurance producer license shall remain in effect unless revoked or suspended if the fee set forth in section 44-4064 is paid and education requirements for resident individual producers are met by the due date.

(3) All business entity licenses issued under the Insurance Producers Licensing Act shall expire on April 30 of each year, and all producers licenses shall expire on the last day of the month of the producer's birthday in the first year after issuance in which his or her age is divisible by two. Such producer licenses may be renewed within the ninety-day period before their expiration dates. Business entity and producer licenses also may be renewed within the thirty-day period after their expiration dates upon payment of a late renewal fee as established by the director pursuant to section 44-4064 in addition to the applicable fee otherwise required for renewal of business entity and producer licenses as established by the director pursuant to such section. All business entity and producer licenses renewed within the thirty-day period after their expiration dates pursuant to this subsection shall be deemed to have been renewed before their expiration dates.

(4) The director may establish procedures for renewal of licenses by rule and regulation adopted and promulgated pursuant to the Administrative Procedure Act.

(5) An individual insurance producer who allows his or her license to lapse may, within twelve months from the due date of the renewal fee, reinstate the same license without the necessity of passing a written examination. Producer licenses reinstated pursuant to this subsection shall be issued only after payment of a reinstatement fee as established by the director pursuant to section 44-4064 in addition to the applicable fee otherwise required for renewal of producer licenses as established by the director pursuant to such section.

(6) The director may grant a licensed insurance producer who is unable to comply with license renewal procedures due to military service or some other extenuating circumstance, including, but not limited to, a long-term medical disability, a waiver of those procedures. The director may grant a producer a waiver of any examination requirement or any other fine, fee, or sanction imposed for failure to comply with renewal procedures.

(7) The license shall contain the licensee's name, address, and personal identification number, the date of issuance, the lines of authority, the expiration date, and any other information the director deems necessary.

(8) Licensees shall inform the director by any means acceptable to the director of a change of legal name or address within thirty days after the change. Any person failing to provide such notification shall be subject to a fine by the director of not more than five hundred dollars per violation, suspension of the person's license until the change of address is reported to the director, or both.

(9) The director may contract with nongovernmental entities, including the National Association of Insurance Commissioners or any affiliates or subsidiaries that the National Association of Insurance Commissioners oversees, to

perform any ministerial functions, including the collection of fees, related to producer licensing that the director may deem appropriate.

Source: Laws 2001, LB 51, § 8; Laws 2015, LB198, § 4.

Cross References

Administrative Procedure Act, see section 84-920.

44-4055 Nonresident license; requirements.

(1) Unless denied licensure pursuant to section 44-4059, a nonresident person shall receive a nonresident insurance producer license if:

(a) The person is currently licensed as a resident and in good standing in his or her home state;

(b) The person has submitted the proper request for licensure and has paid the fees required by section 44-4064;

(c) The person has submitted or transmitted to the director the application for licensure that the person submitted to his or her home state, or in lieu of the same, a completed uniform application; and

(d) The person's home state awards nonresident producer licenses to residents of this state on the same basis.

(2) The director may verify the insurance producer's licensing status through the producer data base maintained by the National Association of Insurance Commissioners or its affiliates or subsidiaries.

(3) A nonresident insurance producer who moves from one state to another state or a resident producer who moves from this state to another state shall file a change of address and provide certification from the new resident state within thirty days of the change of legal residence. No fee or license application is required for the filing of the change of address.

(4) Notwithstanding any other provision of the Insurance Producers Licensing Act, a person licensed as a surplus lines insurance producer in his or her home state shall receive a nonresident surplus lines producer license pursuant to subsection (1) of this section. Except as to subsection (1) of this section, nothing in this section otherwise amends or supersedes any provision of the Surplus Lines Insurance Act.

(5) Notwithstanding any other provisions of the Insurance Producers Licensing Act, a person licensed as a limited line credit insurance producer, a limited line pre-need funeral insurance producer, or other type of limited lines producer in his or her home state shall receive a nonresident limited lines insurance producer license, pursuant to subsection (1) of this section, granting the same scope of authority as granted under the license issued by the producer's home state.

Source: Laws 2001, LB 51, § 9; Laws 2015, LB198, § 5.

Cross References

Surplus Lines Insurance Act, see section 44-5501.

44-4068 Travel insurance; limited lines travel insurance producer; license; duties; travel retailer; duties; director; powers.

(1) For purposes of this section:

(a) Limited lines travel insurance producer means a licensed insurance producer, including a limited lines producer, who is designated by an insurer as the travel insurance supervising entity;

(b) Offer and disseminate means to provide general information about travel insurance, including a description of the coverage and price, as well as processing the application, collecting premiums, and performing other nonlicensable activities permitted by the state;

(c) Travel insurance means insurance coverage for personal risks incident to planned travel, including interruption or cancellation of a trip or event, loss of baggage or personal effects, damages to accommodations or rental vehicles, and sickness, accident, disability, or death occurring during travel. Travel insurance does not include major medical plans that provide comprehensive medical protection for travelers with trips lasting six months or longer, including those working overseas as an expatriate or as deployed military personnel; and

(d) Travel retailer means a business entity that makes, arranges, or offers travel services and that offers and disseminates travel insurance as a service to its customers on behalf of and under the direction of a limited lines travel insurance producer.

(2)(a) The director may issue a limited lines travel insurance producer license to an individual or business entity that authorizes the limited lines travel insurance producer to sell, solicit, or negotiate travel insurance through a licensed insurer in a form and manner prescribed by the director.

(b) A travel retailer, its employees, and its authorized representatives may offer and disseminate travel insurance as a service to the travel retailer's customers, on behalf of and under the direction of an individual or a business entity that holds a limited lines travel insurance producer license. In doing so, the travel retailer must provide to prospective purchasers of travel insurance:

(i) A description of the material terms or the actual material terms of the insurance coverage;

(ii) A description of the process for filing a claim;

(iii) A description of the review or cancellation process for the travel insurance policy; and

(iv) The identity and contact information of the insurer and limited lines travel insurance producer.

(c) At the time of licensure, the limited lines travel insurance producer shall establish and maintain a register of each travel retailer that offers travel insurance on the limited lines travel insurance producer's behalf on a form prescribed by the director. The limited lines travel insurance producer must maintain and update the register annually and include: The name, address, and contact information of each travel retailer; the name, address, and contact information of an officer or person who directs or controls the travel retailer's operations; and the travel retailer's federal tax identification number. The limited lines travel insurance producer must submit the register to the director upon request. The limited lines travel insurance producer must also certify that the travel retailer registered is not in violation of 18 U.S.C. 1033.

(d) The limited lines travel insurance producer must designate one of its employees who is a licensed individual producer as the person responsible for

the limited lines travel insurance producer's compliance with the travel insurance laws, rules, and regulations of the state.

(e) The limited lines travel insurance producer shall require each employee and authorized representative of the travel retailer whose duties include offering and disseminating travel insurance to receive a program of instruction or training, which may be subject to review by the director. The training material must include, at minimum, instructions on the types of insurance offered, ethical sales practices, and required disclosures to prospective customers.

(3) A limited lines travel insurance producer and those registered under its license are exempt from the examination requirements in section 44-4052, the prelicensing education requirements in sections 44-3909 to 44-3913, and the continuing education requirements in sections 44-3901 to 44-3908.

(4) Any travel retailer offering or disseminating travel insurance shall make brochures or other written materials available to prospective purchasers that:

(a) Provide the identity and contact information of the insurer and the limited lines travel insurance producer;

(b) Explain that the purchase of travel insurance is not required in order to purchase any other product or service from the travel retailer; and

(c) Explain that an unlicensed travel retailer is permitted to provide general information about the insurance offered by the travel retailer, including a description of the coverage and price, but is not qualified or authorized to answer technical questions about the terms and conditions of the insurance offered by the travel retailer or to evaluate the adequacy of the customer's existing insurance coverage.

(5) A travel retailer's employee or authorized representative who is not licensed as an insurance producer may not:

(a) Evaluate or interpret the technical terms, benefits, or conditions of the offered travel insurance coverage;

(b) Evaluate or provide advice concerning a prospective purchaser's existing insurance coverage; or

(c) Hold himself or herself out as a licensed insurer, licensed producer, or insurance expert.

(6) A travel retailer whose insurance-related activities, and those of its employees and authorized representatives, are limited to offering and disseminating travel insurance on behalf of and under the direction of a limited lines travel insurance producer meeting the conditions stated in this section is authorized to receive related compensation for the services upon registration by the limited lines travel insurance producer.

(7) Travel insurance may be provided under an individual policy or under a group or master policy.

(8) The limited lines travel insurance producer is responsible for the acts of the travel retailer and shall use reasonable means to ensure that the travel retailer complies with this section.

(9) The director may take disciplinary action against a limited lines travel insurance producer pursuant to section 44-4059.

Source: Laws 2015, LB458, § 5.

ARTICLE 42

COMPREHENSIVE HEALTH INSURANCE POOL ACT

Section

- 44-4217. Board; pool administrator; selection.
 44-4219. Plan of operation; contents.
 44-4220.02. Review of health care provider reimbursement rates; report; health care provider; reimbursement; other payments.
 44-4223. Selection of pool administrator; procedure.
 44-4224. Pool administrator; duties.
 44-4225. Board; report; Comprehensive Health Insurance Pool Distributive Fund; created; use; investment; director; funding powers.

44-4217 Board; pool administrator; selection.

The director shall select the board. The board shall select a pool administrator pursuant to section 44-4223.

Source: Laws 1985, LB 391, § 17; Laws 1989, LB 279, § 6; Laws 1992, LB 1006, § 31; Laws 2000, LB 1253, § 21; Laws 2011, LB73, § 1.

44-4219 Plan of operation; contents.

In its plan of operation, the board shall:

- (1) Establish procedures for the handling and accounting of assets and funds of the pool;
- (2) Select a pool administrator in accordance with section 44-4223;
- (3) Establish procedures for the selection, replacement, term of office, and qualifications of the directors of the board and rules of procedures for the operation of the board; and
- (4) Develop and implement a program to publicize the existence of the pool, the eligibility requirements, and the procedures for enrollment and to maintain public awareness of the pool.

Source: Laws 1985, LB 391, § 19; Laws 1992, LB 1006, § 33; Laws 2000, LB 1253, § 22; Laws 2011, LB73, § 2.

44-4220.02 Review of health care provider reimbursement rates; report; health care provider; reimbursement; other payments.

(1)(a) In addition to the requirements of section 44-4220.01, following the close of each calendar year, the board shall conduct a review of health care provider reimbursement rates for benefits payable under pool coverage for covered services. The board shall report to the director the results of the review within thirty days after the completion of the review.

(b) The review required by this section shall include a determination of whether (i) health care provider reimbursement rates for benefits payable under pool coverage for covered services are in excess of reasonable amounts and (ii) cost savings in the operation of the pool could be achieved by establishing the level of health care provider reimbursement rates for benefits payable under pool coverage for covered services as a multiplier of an objective standard.

(c) In the determination pursuant to subdivision (1)(b)(i) of this section, the board shall consider:

(i) The success of any efforts by the pool administrator to negotiate reduced health care provider reimbursement rates for benefits payable under pool coverage for covered services on a voluntary basis;

(ii) The effect of health care provider reimbursement rates for benefits payable under pool coverage for covered services on the number and geographic distribution of health care providers providing covered services to covered individuals;

(iii) The administrative cost of implementing a level of health care provider reimbursement rates for benefits payable under pool coverage for covered services; and

(iv) A filing by the pool administrator which shows the difference, if any, between the aggregate amounts set for health care provider reimbursement rates for benefits payable under pool coverage for covered services by existing contracts between the pool administrator and health care providers and the amounts generally charged to reimburse health care providers prevailing in the commercial market. No such filing shall require the pool administrator to disclose proprietary information regarding health care provider reimbursement rates for specific covered services under pool coverage.

(d) If the board determines that cost savings in the operation of the pool could be achieved, the board shall set forth specific findings supporting the determination and may establish the level of health care provider reimbursement rates for benefits payable under pool coverage for covered services as a multiplier of an objective standard.

(2) A health care provider who provides covered services to a covered individual under pool coverage and requests payment is deemed to have agreed to reimbursement according to the health care provider reimbursement rates for benefits payable under pool coverage for covered services established pursuant to this section. Any reimbursement paid to a health care provider for providing covered services to a covered person under pool coverage is limited to the lesser of billed charges or the health care provider reimbursement rates for benefits payable under pool coverage for covered services established pursuant to this section. A health care provider shall not collect or attempt to collect from a covered individual any money owed to the health care provider by the pool. A health care provider shall not have any recourse against a covered individual for any covered services under pool coverage in excess of the copayment, coinsurance, or deductible amounts specified in the pool coverage.

(3) Nothing in this section shall prohibit a health care provider from billing a covered individual under pool coverage for services which are not covered services under pool coverage.

Source: Laws 2009, LB358, § 3; Laws 2011, LB73, § 3.

44-4223 Selection of pool administrator; procedure.

(1) The board shall select a pool administrator through a competitive bidding process to administer the pool. The pool administrator may be an insurer or a third-party administrator authorized to transact business in this state. The board shall evaluate bids submitted on the basis of criteria established by the board which shall include:

(a) The applicant's proven ability to handle individual sickness and accident insurance;

(b) The efficiency of the applicant's claim-paying procedures;

(c) The applicant's estimate of total charges for administering the pool;

(d) The applicant's ability to administer the pool in a cost-effective manner; and

(e) The applicant's ability to negotiate reduced health care provider reimbursement rates for benefits payable under pool coverage for covered services.

(2) The pool administrator shall serve for a period of three years subject to removal for cause. At least one year prior to the expiration of each three-year period of service by a pool administrator, the board shall invite all insurers and third-party administrators authorized to transact business in this state, including the current pool administrator, to submit bids to serve as the pool administrator for the succeeding three-year period. Selection of the pool administrator for the succeeding period shall be made at least six months prior to the end of the current three-year period.

Source: Laws 1985, LB 391, § 23; Laws 1992, LB 1006, § 37; Laws 2011, LB73, § 4.

44-4224 Pool administrator; duties.

The pool administrator shall:

(1) Perform all eligibility verification functions relating to the pool;

(2) Establish a premium billing procedure for collection of premiums from covered individuals on a periodic basis as determined by the board;

(3) Perform all necessary functions to assure timely payment of benefits to covered individuals, including:

(a) Making available information relating to the proper manner of submitting a claim for benefits to the pool and distributing forms upon which submission shall be made; and

(b) Evaluating the eligibility of each claim for payment by the pool;

(4) Submit regular reports to the board regarding the operation of the pool. The frequency, content, and form of the reports shall be determined by the board;

(5) Following the close of each calendar year, report such income and expense items as directed by the board to the board and the department on a form prescribed by the director; and

(6) Be paid as provided in the plan of operation for its expenses incurred in the performance of its services to the pool.

Source: Laws 1985, LB 391, § 24; Laws 2000, LB 1253, § 26; Laws 2011, LB73, § 5.

44-4225 Board; report; Comprehensive Health Insurance Pool Distributive Fund; created; use; investment; director; funding powers.

(1) Following the close of each calendar year, the board shall report the board's determination of the paid and incurred losses for the year, taking into account investment income and other appropriate gains and losses. The board shall distribute copies of the report to the director, the Governor, and each

member of the Legislature. The report submitted to each member of the Legislature shall be submitted electronically.

(2) The Comprehensive Health Insurance Pool Distributive Fund is created. Commencing with the premium and related retaliatory taxes for the taxable year ending December 31, 2001, and for each taxable year thereafter, any premium and related retaliatory taxes imposed by section 44-150 or 77-908 paid by insurers writing health insurance in this state, except as otherwise set forth in subdivisions (1) and (2) of section 77-912, shall be remitted to the State Treasurer for credit to the fund. The fund shall be used for the operation of and payment of claims made against the pool. 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) The board shall make periodic estimates of the amount needed from the fund for payment of losses resulting from claims, including a reasonable reserve, and administrative, organizational, and interim operating expenses and shall notify the director of the amount needed and the justification of the board for the request.

(4) The director shall approve all withdrawals from the fund and may determine when and in what amount any additional withdrawals may be necessary from the fund to assure the continuing financial stability of the pool.

(5) No later than May 1, 2002, and each May 1 thereafter, after funding of the net loss from operation of the pool for the prior premium and related retaliatory tax year, taking into account the policyholder premiums, account investment income, claims, costs of operation, and other appropriate gains and losses, the director shall transmit any money remaining in the fund as directed by section 77-912, disregarding the provisions of subdivisions (1) through (3) of such section. Interest earned on money in the fund shall be credited proportionately in the same manner as premium and related retaliatory taxes set forth in section 77-912.

Source: Laws 1985, LB 391, § 25; Laws 1991, LB 419, § 3; Laws 1992, LB 1006, § 38; Laws 2000, LB 1253, § 27; Laws 2011, LB73, § 6; Laws 2012, LB782, § 54.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

ARTICLE 44

RISK RETENTION ACT

Section

44-4404. Risk retention group; charter and license requirements; governance standards; material service provider contract; term; audit committee; written charter; waiver of requirement; code of business conduct and ethics.

44-4404 Risk retention group; charter and license requirements; governance standards; material service provider contract; term; audit committee; written charter; waiver of requirement; code of business conduct and ethics.

(1) A risk retention group seeking to be chartered and licensed in this state shall be chartered and licensed as a liability insurance company under Chapter

44 and, except as provided elsewhere in the Risk Retention Act, shall comply with all of the laws, rules, and regulations applicable to such insurers chartered and licensed in this state and with sections 44-4405 to 44-4413 to the extent such requirements are not a limitation on laws, rules, or regulations of this state.

(2) Before a risk retention group may offer insurance in any state, it shall submit for approval to the director a plan of operation and revisions of such plan if the group intends to offer any additional lines of liability insurance.

(3) At the time of filing its application for a charter and license, the risk retention group shall provide to the director in summary form the following information: The identity of the initial members of the group; the identity of those individuals who organized the group or who will provide administrative services or otherwise influence or control the activities of the group; the amount and nature of initial capitalization; the coverages to be afforded; and the states in which the group intends to operate. Upon receipt of this information, the director shall forward such information to the National Association of Insurance Commissioners. Providing notification to the National Association of Insurance Commissioners shall be in addition to and shall not be sufficient to satisfy the requirements of section 44-4405 or any other sections of the act.

(4) Subsections (5) through (11) of this section provide governance standards for risk retention groups licensed and chartered in this state. Any risk retention group in existence on January 1, 2017, shall be in compliance with such standards by January 1, 2018. Any risk retention group that is initially licensed on or after January 1, 2017, shall be in compliance with such standards at the time of licensure.

(5)(a) For purposes of this subsection:

(i) Board of directors or board means the governing body of the risk retention group elected by the shareholders or members to establish policy, elect or appoint officers and committees, and make other governing decisions; and

(ii) Director means a natural person designated in the articles of the risk retention group or designated, elected, or appointed by any other manner, name, or title to act as a director.

(b) The board of directors of the risk retention group shall have a majority of independent directors. If the risk retention group is a reciprocal, then the attorney in fact would be required to adhere to the same standards regarding independence of operation and governance as imposed on the risk retention group's board of directors or subscribers advisory committee under this subsection. To the extent permissible under state law, service providers of a reciprocal risk retention group should contract with the risk retention group and not the attorney in fact.

(c) No director qualifies as independent unless the board of directors affirmatively determines that the director has no material relationship with the risk retention group. Each risk retention group shall disclose these determinations to its domestic regulator at least annually. For this purpose, any person that is a direct or indirect owner of or subscriber in the risk retention group, or is an officer, director, or employee of such an owner and insured unless some other position of such officer, director, or employee constitutes a material relationship, as contemplated by section 3901(a)(4)(E)(ii) of the federal Liability Risk Retention Act of 1986, is considered to be independent.

(d) Material relationship of a person with the risk retention group includes, but is not limited to:

(i) The receipt in any one twelve-month period of compensation or payment of any other item of value by such person, a member of such person's immediate family, or any business with which such person is affiliated from the risk retention group or a consultant or service provider to the risk retention group is greater than or equal to five percent of the risk retention group's gross written premium for such twelve-month period or two percent of its surplus, whichever is greater, as measured at the end of any fiscal quarter falling in such a twelve-month period. Such person or immediate family member of such person is not independent until one year after his or her compensation from the risk retention group falls below the threshold;

(ii) A relationship with an auditor as follows: A director or an immediate family member of a director who is affiliated with or employed in a professional capacity by a present or former internal or external auditor of the risk retention group is not independent until one year after the end of the affiliation, employment, or auditing relationship; and

(iii) A relationship with a related entity as follows: A director or immediate family member of a director who is employed as an executive officer of another company where any of the risk retention group's present executives serve on that other company's board of directors is not independent until one year after the end of such service or the employment relationship.

(6)(a) The term of any material service provider contract with the risk retention group shall not exceed five years. Any such contract, or its renewal, shall require the approval of the majority of the risk retention group's independent directors. The risk retention group's board of directors shall have the right to terminate any service provider, audit, or actuarial contracts at any time for cause after providing adequate notice as defined in the contract. The service provider contract is deemed material if the amount to be paid for such contract is greater than or equal to five percent of the risk retention group's annual gross written premium or two percent of its surplus, whichever is greater.

(b) For purposes of this subsection, service providers shall include captive managers, auditors, accountants, actuaries, investment advisors, lawyers, managing general underwriters, or other parties responsible for underwriting, determination of rates, collection of premiums, adjusting and settling claims, or the preparation of financial statements. Any reference to lawyers in this subdivision does not include defense counsel retained by the risk retention group to defend claims, unless the amount of fees paid to such lawyers are material as referenced in subdivision (5)(d) of this section.

(c) No service provider contract meeting the definition of material relationship contained in subdivision (5)(d) of this section shall be entered into unless the risk retention group has notified the director in writing of its intention to enter into such transaction at least thirty days prior thereto and the director has not disapproved it within such period.

(7) The risk retention group's board of directors shall adopt a written policy in the plan of operation as approved by the board that requires the board to:

(a) Assure that all owners or insureds of the risk retention group receive evidence of ownership interest;

(b) Develop a set of governance standards applicable to the risk retention group;

(c) Oversee the evaluation of the risk retention group's management, including, but not limited to, the performance of the captive manager, managing general underwriter, or other party or parties responsible for underwriting, determination of rates, collection of premiums, adjusting or settling claims, or the preparation of financial statements;

(d) Review and approve the amount to be paid for all material service providers; and

(e) Review and approve, at least annually:

(i) The risk retention group's goals and objectives relevant to the compensation of officers and service providers;

(ii) The officers' and service providers' performance in light of those goals and objectives; and

(iii) The continued engagement of the officers and material service providers.

(8)(a) The risk retention group shall have an audit committee composed of at least three independent board members as described in subsection (5) of this section. A nonindependent board member may participate in the activities of the audit committee, if invited by the members, but cannot be a member of such committee.

(b) The audit committee shall have a written charter that defines the committee's purpose, which, at a minimum, must be to:

(i) Assist board oversight of (A) the integrity of the financial statements, (B) the compliance with legal and regulatory requirements, and (C) the qualifications, independence, and performance of the independent auditor and actuary;

(ii) Discuss the annual audited financial statements and quarterly financial statements with management;

(iii) Discuss the annual audited financial statements with its independent auditor and, if advisable, discuss its quarterly financial statements with its independent auditor;

(iv) Discuss policies with respect to risk assessment and risk management;

(v) Meet separately and periodically, either directly or through a designated representative of the committee, with management and independent auditors;

(vi) Review with the independent auditor any audit problems or difficulties and management's response;

(vii) Set clear hiring policies of the risk retention group as to the hiring of employees or former employees of the independent auditor;

(viii) Require the external auditor to rotate the lead or coordinating audit partner having primary responsibility for the risk retention group's audit as well as the audit partner responsible for reviewing that audit so that neither individual performs audit services for more than five consecutive fiscal years; and

(ix) Report regularly to the board of directors.

(c) The domestic regulator may waive the requirement to establish an audit committee composed of independent board members if the risk retention group is able to demonstrate to the domestic regulator that it is impracticable to do so and the risk retention group's board of directors itself is otherwise able to

accomplish the purposes of an audit committee as described in subdivision (8)(b) of this section.

(9) The board of directors shall adopt and disclose governance standards, where disclose means making such information available through electronic or other means, including the posting of such information on the risk retention group's web site, and providing such information to members or insureds upon request, which shall include:

- (a) A process by which the directors are elected by the owners or insureds;
- (b) Director qualification standards;
- (c) Director responsibilities;
- (d) Director access to management and, as necessary and appropriate, independent advisors;
- (e) Director compensation;
- (f) Director orientation and continuing education;
- (g) The policies and procedures that are followed for management succession; and
- (h) The policies and procedures that are followed for annual performance evaluation of the board.

(10) The board of directors shall adopt and disclose a code of business conduct and ethics for directors, officers, and employees and promptly disclose to the board of directors any waivers of the code for directors or executive officers, which should include the following topics:

- (a) Conflicts of interest;
- (b) Matters covered under the corporate opportunities doctrine under the state of domicile;
- (c) Confidentiality;
- (d) Fair dealing;
- (e) Protection and proper use of risk retention group assets;
- (f) Compliance with all applicable laws, rules, and regulations; and
- (g) Requiring the reporting of any illegal or unethical behavior which affects the operation of the risk retention group.

(11) The captive manager, president, or chief executive officer of the risk retention group shall promptly notify the domestic regulator in writing if he or she becomes aware of any material noncompliance with any of the governance standards provided in subsections (5) through (11) of this section.

Source: Laws 1987, LB 514, § 4; Laws 1991, LB 236, § 47; Laws 2016, LB772, § 15.

Operative date January 1, 2017.

ARTICLE 48

INSURERS SUPERVISION, REHABILITATION, AND LIQUIDATION

Section

- 44-4803. Terms, defined.
- 44-4805. Injunctions and orders.
- 44-4815. Actions; effect of rehabilitation.
- 44-4821. Powers of liquidator.
- 44-4826. Fraudulent transfers and obligations incurred prior to petition.

Section

- 44-4827. Fraudulent transfer after petition.
44-4828. Preferences and liens.
44-4830.01. Netting agreement; qualified financial contract; net or settlement amount; treatment; receiver; powers; duties; notice; claim of counterparty; rights of counterparty.
44-4862. Act, how cited.

44-4803 Terms, defined.

For purposes of the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act:

- (1) Ancillary state means any state other than a domiciliary state;
- (2) Creditor means a person having any claim, whether matured or unmatured, liquidated or unliquidated, secured or unsecured, or absolute, fixed, or contingent;
- (3) Delinquency proceeding means any proceeding instituted against an insurer for the purpose of liquidating, rehabilitating, reorganizing, or conserving such insurer and any summary proceeding under section 44-4809 or 44-4810;
- (4) Department means the Department of Insurance;
- (5) Director means the Director of Insurance;
- (6) Doing business includes any of the following acts, whether effected by mail or otherwise:
 - (a) The issuance or delivery of contracts of insurance to persons who are residents of this state;
 - (b) The solicitation of applications for such contracts or other negotiations preliminary to the execution of such contracts;
 - (c) The collection of premiums, membership fees, assessments, or other consideration for such contracts;
 - (d) The transaction of matters subsequent to execution of such contracts and arising out of them; or
 - (e) Operating as an insurer under a license or certificate of authority issued by the department;
- (7) Domiciliary state means the state in which an insurer is incorporated or organized or, in the case of an alien insurer, its state of entry;
- (8) Fair consideration is given for property or an obligation:
 - (a) When in exchange for such property or obligation, as a fair equivalent therefor, and in good faith, (i) property is conveyed, (ii) services are rendered, (iii) an obligation is incurred, or (iv) an antecedent debt is satisfied; or
 - (b) When such property or obligation is received in good faith to secure a present advance or antecedent debt in an amount not disproportionately small as compared to the value of the property or obligation obtained;
- (9) Foreign country means any other jurisdiction not in any state;
- (10) Foreign guaranty association means a guaranty association now in existence in or hereafter created by the legislature of another state;
- (11) Formal delinquency proceeding means any liquidation or rehabilitation proceeding;

(12) General assets means all property, real, personal, or otherwise not specifically mortgaged, pledged, deposited, or otherwise encumbered for the security or benefit of specified persons or classes of persons. As to specifically encumbered property, general assets includes all such property or its proceeds in excess of the amount necessary to discharge the sum or sums secured thereby. Assets held in trust and on deposit for the security or benefit of all insureds or all insureds and creditors, in more than a single state, are treated as general assets;

(13) Guaranty association means the Nebraska Property and Liability Insurance Guaranty Association, the Nebraska Life and Health Insurance Guaranty Association, and any other similar entity now or hereafter created by the Legislature for the payment of claims of insolvent insurers;

(14) Insolvency or insolvent means:

(a) For an insurer formed under Chapter 44, article 8:

(i) The inability to pay any obligation within thirty days after it becomes payable; or

(ii) If an assessment is made within thirty days after such date, the inability to pay such obligation thirty days following the date specified in the first assessment notice issued after the date of loss;

(b) For any other insurer, that it is unable to pay its obligations when they are due or when its admitted assets do not exceed its liabilities plus the greater of:

(i) Any capital and surplus required by law to be maintained; or

(ii) The total par or stated value of its authorized and issued capital stock; and

(c) For purposes of this subdivision, liabilities includes, but is not limited to, reserves required by statute or by rules and regulations adopted and promulgated or specific requirements imposed by the director upon a subject company at the time of admission or subsequent thereto;

(15) Insurer means any person who has done, purports to do, is doing, or is licensed to do an insurance business and is or has been subject to the authority of or to liquidation, rehabilitation, reorganization, supervision, or conservation by the director or the director, commissioner, or equivalent official of another state. Any other persons included under section 44-4802 are deemed to be insurers;

(16) Netting agreement means an agreement and any terms and conditions incorporated by reference therein, including a master agreement that, together with all schedules, confirmations, definitions, and addenda thereto and transactions under any thereof, shall be treated as one netting agreement:

(a) That documents one or more transactions between parties to the agreement for or involving one or more qualified financial contracts; and

(b) That provides for the netting or liquidation of qualified financial contracts or present or future payment obligations or payment entitlements thereunder, including liquidation or closeout values relating to such obligations or entitlements among the parties to the netting agreement;

(17) Person includes any individual, corporation, partnership, limited liability company, association, trust, or other entity;

(18) Qualified financial contract means a commodity contract, forward contract, repurchase agreement, securities contract, swap agreement, and any

similar agreement that the director determines by rule and regulation, resolution, or order to be a qualified financial contract for the purposes of the act;

(19) Receiver means receiver, liquidator, rehabilitator, or conservator as the context requires;

(20) Reciprocal state means any state other than this state in which in substance and effect sections 44-4818, 44-4852, 44-4853, and 44-4855 to 44-4857 are in force, in which provisions are in force requiring that the director, commissioner, or equivalent official of such state be the receiver of a delinquent insurer, and in which some provision exists for the avoidance of fraudulent conveyances and preferential transfers;

(21) Secured claim means any claim secured by mortgage, trust deed, pledge, or deposit as security, escrow, or otherwise but does not include a special deposit claim or a claim against general assets. The term includes claims which have become liens upon specific assets by reason of judicial process;

(22) Special deposit claim means any claim secured by a deposit made pursuant to statute for the security or benefit of a limited class or classes of persons but does not include any claim secured by general assets;

(23) State means any state, district, or territory of the United States and the Panama Canal Zone; and

(24) Transfer includes the sale of property or an interest therein and every other and different mode, direct or indirect, of disposing of or of parting with property, an interest therein, or the possession thereof or of fixing a lien upon property or an interest therein, absolutely or conditionally, voluntarily, or by or without judicial proceedings. The retention of a security title to property delivered to a debtor is deemed a transfer suffered by the debtor.

Source: Laws 1989, LB 319, § 3; Laws 1990, LB 984, § 4; Laws 1991, LB 236, § 60; Laws 1993, LB 121, § 258; Laws 2011, LB72, § 6.

Cross References

Nebraska Life and Health Insurance Guaranty Association, see section 44-2705.

Nebraska Property and Liability Insurance Guaranty Association, see section 44-2404.

44-4805 Injunctions and orders.

(1) Except as provided in subsection (3) of this section, any receiver appointed in a proceeding under the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act may at any time apply for, and the court may grant, such restraining orders, preliminary and permanent injunctions, and other orders as may be deemed necessary and proper to prevent:

(a) The transaction of further business;

(b) The transfer of property;

(c) Interference with the receiver or with a proceeding under the act;

(d) Waste of the insurer's assets;

(e) Dissipation and transfer of bank accounts;

(f) The institution or further prosecution of any actions or proceedings;

(g) The obtaining of preferences, judgments, attachments, garnishments, or liens against the insurer, its assets, or its insureds;

(h) The levying of execution against the insurer, its assets, or its insureds;

(i) The making of any sale or deed for nonpayment of taxes or assessments that would lessen the value of the assets of the insurer;

(j) The withholding from the receiver of books, accounts, documents, or other records relating to the business of the insurer; or

(k) Any other threatened or contemplated action that might lessen the value of the insurer's assets or prejudice the rights of insureds, creditors, or shareholders or the administration of any proceeding under the act.

(2) Except as provided in subsection (3) of this section, the receiver may apply to any court outside of the state for the relief described in subsection (1) of this section.

(3) A Federal Home Loan Bank shall not be stayed, enjoined, or prohibited from exercising or enforcing any right or cause of action regarding collateral pledged under any security agreement, or any pledge, security, collateral or guarantee agreement or any other similar arrangement or credit enhancement relating to such Federal Home Loan Bank security agreement.

Source: Laws 1989, LB 319, § 5; Laws 1991, LB 236, § 62; Laws 2013, LB337, § 1.

44-4815 Actions; effect of rehabilitation.

(1) Except as provided in subsection (4) of this section, any court in this state before which any action or proceeding in which the insurer is a party or is obligated to defend a party is pending when a rehabilitation order against the insurer is entered shall stay the action or proceeding for ninety days and such additional time as is necessary for the rehabilitator to obtain proper representation and prepare for further proceedings. The rehabilitator shall take such action respecting the pending litigation as he or she deems necessary in the interests of justice and for the protection of insureds, creditors, and the public. The rehabilitator shall immediately consider all litigation pending outside this state and shall petition the courts having jurisdiction over that litigation for stays whenever necessary to protect the estate of the insurer.

(2) No statute of limitations or defense of laches shall run with respect to any action by or against an insurer between the filing of a petition for appointment of a rehabilitator for that insurer and the order granting or denying that petition. Any action by or against the insurer that might have been commenced when the petition was filed may be commenced for at least sixty days after the order of rehabilitation is entered or the petition is denied. The rehabilitator may, upon an order for rehabilitation, within one year or such other longer time as applicable law may permit, institute an action or proceeding on behalf of the insurer upon any cause of action against which the period of limitation fixed by applicable law has not expired at the time of the filing of the petition upon which such order is entered.

(3) Any guaranty association or foreign guaranty association covering life or health insurance or annuities shall have standing to appear in any court proceeding concerning the rehabilitation of a life or health insurer if such association is or may become liable to act as a result of the rehabilitation.

(4) A Federal Home Loan Bank shall not be stayed, enjoined, or prohibited from exercising or enforcing any right or cause of action regarding collateral pledged under any security agreement, or any pledge, security, collateral or

guarantee agreement or any other similar arrangement or credit enhancement relating to such Federal Home Loan Bank security agreement.

Source: Laws 1989, LB 319, § 15; Laws 1991, LB 236, § 70; Laws 2013, LB337, § 2.

44-4821 Powers of liquidator.

(1) The liquidator shall have the power:

(a) To appoint a special deputy to act for him or her under the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act and to determine his or her reasonable compensation. The special deputy shall have all powers of the liquidator granted by this section. The special deputy shall serve at the pleasure of the liquidator;

(b) To employ employees, agents, legal counsel, actuaries, accountants, appraisers, consultants, and such other personnel as he or she may deem necessary to assist in the liquidation;

(c) To appoint, with the approval of the court, an advisory committee of policyholders, claimants, or other creditors, including guaranty associations, should such a committee be deemed necessary. Such committee shall serve without compensation other than reimbursement for reasonable travel and per diem living expenses. No other committee of any nature shall be appointed by the director or the court in liquidation proceedings conducted under the act;

(d) To fix the reasonable compensation of employees, agents, legal counsel, actuaries, accountants, appraisers, and consultants with the approval of the court;

(e) To pay reasonable compensation to persons appointed and to defray from the funds or assets of the insurer all expenses of taking possession of, conserving, conducting, liquidating, disposing of, or otherwise dealing with the business and property of the insurer;

(f) To hold hearings, to subpoena witnesses, to compel their attendance, to administer oaths and affirmations, to examine any person under oath or affirmation, and to compel any person to subscribe to his or her testimony after it has been correctly reduced to writing and, in connection therewith, to require the production of any books, papers, records, or other documents which he or she deems relevant to the inquiry;

(g) To audit the books and records of all agents of the insurer insofar as those records relate to the business activities of the insurer;

(h) To collect all debts and money due and claims belonging to the insurer, wherever located, and for this purpose:

(i) To institute timely action in other jurisdictions, in order to forestall garnishment and attachment proceedings against such debts;

(ii) To do such other acts as are necessary or expedient to collect, conserve, or protect its assets or property, including the power to sell, compound, compromise, or assign debts for purposes of collection upon such terms and conditions as he or she deems best; and

(iii) To pursue any creditor's remedies available to enforce his or her claims;

(i) To conduct public and private sales of the property of the insurer;

(j) To use assets of the estate of an insurer under a liquidation order to transfer policy obligations to a solvent assuming insurer if the transfer can be arranged without prejudice to applicable priorities under section 44-4842;

(k) To acquire, hypothecate, encumber, lease, improve, sell, transfer, abandon, or otherwise dispose of or deal with any property of the insurer at its market value or upon such terms and conditions as are fair and reasonable. He or she shall also have power to execute, acknowledge, and deliver any and all deeds, assignments, releases, and other instruments necessary or proper to effectuate any sale of property or other transaction in connection with the liquidation;

(l) To borrow money on the security of the insurer's assets or without security and to execute and deliver all documents necessary to that transaction for the purpose of facilitating the liquidation. Any such funds borrowed may be repaid as an administrative expense and shall have priority over any other claims under subdivision (1) of section 44-4842;

(m) To enter into such contracts as are necessary to carry out the order to liquidate and to affirm or disavow any contracts to which the insurer is a party, except that a liquidator shall not have power to disavow, reject, or repudiate any Federal Home Loan Bank security agreement, or any pledge, security, collateral or guarantee agreement or any other similar arrangement or credit enhancement relating to such Federal Home Loan Bank security agreement;

(n) To continue to prosecute and to institute in the name of the insurer or in his or her own name any and all suits and other legal proceedings in this state or elsewhere and to abandon the prosecution of claims he or she deems unprofitable to pursue further. If the insurer is dissolved under section 44-4820, the liquidator shall have the power to apply to any court in this state or elsewhere for leave to substitute himself or herself for the insurer as plaintiff;

(o) To prosecute any action which may exist on behalf of the insureds, creditors, members, or shareholders of the insurer against any officer of the insurer or any other person;

(p) To remove any or all records and property of the insurer to the offices of the director or to such other place as may be convenient for the purposes of efficient and orderly execution of the liquidation. Guaranty associations and foreign guaranty associations shall have such reasonable access to the records of the insurer as is necessary for them to carry out their statutory obligations;

(q) To deposit in one or more banks in this state such sums as are required for meeting current administration expenses and dividend distributions;

(r) To invest all sums not currently needed unless the court orders otherwise;

(s) To file any necessary documents for record in the office of any register of deeds or record office in this state or elsewhere where property of the insurer is located;

(t) To assert all defenses available to the insurer as against third persons, including statutes of limitations, statutes of frauds, and the defense of usury. A waiver of any defense by the insurer after a petition in liquidation has been filed shall not bind the liquidator. Whenever a guaranty association or foreign guaranty association has an obligation to defend any suit, the liquidator shall give precedence to such obligation and may defend only in the absence of a defense by such guaranty associations;

(u) To exercise and enforce all the rights, remedies, and powers of any insured, creditor, shareholder, or member, including any power to avoid any transfer or lien that may be given by the general law and that is not included with sections 44-4826 to 44-4828, except that a liquidator shall not have power to disavow, reject, or repudiate any Federal Home Loan Bank security agreement, or any pledge, security, collateral or guarantee agreement or any other similar arrangement or credit enhancement relating to such Federal Home Loan Bank security agreement;

(v) To intervene in any proceeding wherever instituted that might lead to the appointment of a receiver or trustee and to act as the receiver or trustee whenever the appointment is offered;

(w) To enter into agreements with any receiver or the director, commissioner, or equivalent official of any other state relating to the rehabilitation, liquidation, conservation, or dissolution of an insurer doing business in both states; and

(x) To exercise all powers now held or hereafter conferred upon receivers by the laws of this state not inconsistent with the provisions of the act.

(2)(a) If a company placed in liquidation has issued liability policies on a claims-made basis, which policies provided an option to purchase an extended period to report claims, then the liquidator may make available to holders of such policies, for a charge, an extended period to report claims as stated in this subsection. The extended reporting period shall be made available only to those insureds who have not secured substitute coverage. The extended period made available by the liquidator shall begin upon termination of any extended period to report claims in the basic policy and shall end at the earlier of the final date for filing of claims in the liquidation proceeding or eighteen months from the order of liquidation.

(b) The extended period to report claims made available by the liquidator shall be subject to the terms of the policy to which it relates. The liquidator shall make available such extended period within sixty days after the order of liquidation at a charge to be determined by the liquidator subject to approval of the court. Such offer shall be deemed rejected unless the offer is accepted in writing and the charge is paid within ninety days after the order of liquidation. No commissions, premium taxes, assessments, or other fees shall be due on the charge pertaining to the extended period to report claims.

(3) The enumeration in this section of the powers and authority of the liquidator shall not be construed as a limitation upon him or her nor shall it exclude in any manner his or her right to do such other acts not in this section specifically enumerated or otherwise provided for as may be necessary or appropriate for the accomplishment of or in aid of the purpose of liquidation.

(4) Notwithstanding the powers of the liquidator as stated in subsections (1) and (2) of this section, the liquidator shall have no obligation to defend claims or to continue to defend claims subsequent to the entry of a liquidation order.

Source: Laws 1989, LB 319, § 21; Laws 1991, LB 236, § 75; Laws 2013, LB337, § 3.

44-4826 Fraudulent transfers and obligations incurred prior to petition.

(1) Every transfer made or suffered and every obligation incurred by an insurer within one year prior to the filing of a successful petition for rehabilita-

tion or liquidation under the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act shall be fraudulent as to then existing and future creditors if made or incurred without fair consideration or with actual intent to hinder, delay, or defraud either existing or future creditors. Except as provided in subsection (5) of this section, a transfer made or an obligation incurred by an insurer ordered to be rehabilitated or liquidated under the act which is fraudulent under this section may be avoided by the receiver, except as to a person who in good faith is a purchaser, lienor, or obligee for a present fair equivalent value, and except that any purchaser, lienor, or obligee who in good faith has given a consideration less than fair for such transfer, lien, or obligation may retain the property, lien, or obligation as security for repayment. The court may, on due notice, order any such transfer or obligation to be preserved for the benefit of the estate, and in that event, the receiver shall succeed to and may enforce the rights of the purchaser, lienor, or obligee.

(2)(a) A transfer of property other than real property shall be deemed to be made or suffered when it becomes so far perfected that no subsequent lien obtainable by legal or equitable proceedings on a simple contract could become superior to the rights of the transferee under subsection (3) of section 44-4828.

(b) A transfer of real property shall be deemed to be made or suffered when it becomes so far perfected that no subsequent bona fide purchaser from the insurer could obtain rights superior to the rights of the transferee.

(c) A transfer which creates an equitable lien shall not be deemed to be perfected if there are available means by which a legal lien could be created.

(d) Any transfer not perfected prior to the filing of a petition for liquidation shall be deemed to be made immediately before the filing of the successful petition.

(e) The provisions of this subsection shall apply whether or not there are or were creditors who might have obtained any liens or persons who might have become bona fide purchasers.

(3) Except as provided in subsection (5) of this section, any transaction of the insurer with a reinsurer shall be deemed fraudulent and may be avoided by the receiver under subsection (1) of this section if:

(a) The transaction consists of the termination, adjustment, or settlement of a reinsurance contract in which the reinsurer is released from any part of its duty to pay the originally specified share of losses that had occurred prior to the time of the transactions unless the reinsurer gives a present fair equivalent value for the release; and

(b) Any part of the transaction took place within one year prior to the date of filing of the petition through which the receivership was commenced.

(4) Every person receiving any property from the insurer or any benefit thereof which is a fraudulent transfer under subsection (1) of this section shall be personally liable therefor and shall be bound to account to the liquidator.

(5) A receiver may not avoid any transfer of, or any obligation to transfer, money or any other property arising under or in connection with any Federal Home Loan Bank security agreement, or any pledge, security, collateral or guarantee agreement or any other similar arrangement or credit enhancement relating to such Federal Home Loan Bank security agreement. However, a

transfer may be avoided under this subsection if it was made with actual intent to hinder, delay, or defraud either existing or future creditors.

Source: Laws 1989, LB 319, § 26; Laws 1991, LB 236, § 78; Laws 2013, LB337, § 4.

44-4827 Fraudulent transfer after petition.

(1) After a petition for rehabilitation or liquidation has been filed, a transfer of any of the real property of the insurer made to a person acting in good faith shall be valid against the receiver if made for a present fair equivalent value or, if not made for a present fair equivalent value, then to the extent of the present consideration actually paid therefor, for which amount the transferee shall have a lien on the property so transferred. The commencement of a proceeding in rehabilitation or liquidation shall be constructive notice upon the recording of a copy of the petition for or order of rehabilitation or liquidation with the register of deeds in the county where any real property in question is located. The exercise by a court of the United States or any state or jurisdiction to authorize or effect a judicial sale of real property of the insurer within any county in any state shall not be impaired by the pendency of such a proceeding unless the copy is recorded in the county prior to the consummation of the judicial sale.

(2) After a petition for rehabilitation or liquidation has been filed and before either the receiver takes possession of the property of the insurer or an order of rehabilitation or liquidation is granted:

(a) A transfer of any of the property of the insurer, other than real property, made to a person acting in good faith shall be valid against the receiver if made for a present fair equivalent value or, if not made for a present fair equivalent value, then to the extent of the present consideration actually paid therefor, for which amount the transferee shall have a lien on the property so transferred;

(b) A person indebted to the insurer or holding property of the insurer may, if acting in good faith, pay the indebtedness or deliver the property or any part thereof to the insurer or upon his or her order with the same effect as if the petition were not pending;

(c) A person having actual knowledge of the pending rehabilitation or liquidation shall be deemed not to act in good faith; and

(d) A person asserting the validity of a transfer under this section shall have the burden of proof. Except as elsewhere provided in this section, no transfer by or on behalf of the insurer after the date of the petition for liquidation by any person other than the liquidator shall be valid against the liquidator.

(3) Every person receiving any property from the insurer or any benefit thereof which is a fraudulent transfer under subsection (1) of this section shall be liable therefor and shall be bound to account to the liquidator.

(4) Nothing in the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act shall impair the negotiability of currency or negotiable instruments.

(5) A receiver may not avoid any transfer of, or any obligation to transfer, money or any other property arising under or in connection with any Federal Home Loan Bank security agreement, or any pledge, security, collateral or guarantee agreement or any other similar arrangement or credit enhancement relating to such Federal Home Loan Bank security agreement. However, a

transfer may be avoided under this subsection if it was made with actual intent to hinder, delay, or defraud either existing or future creditors.

Source: Laws 1989, LB 319, § 27; Laws 1991, LB 236, § 79; Laws 2013, LB337, § 5.

44-4828 Preferences and liens.

(1)(a) A preference shall mean a transfer of any of the property of an insurer to or for the benefit of a creditor, for or on account of an antecedent debt, made or suffered by the insurer within one year before the filing of a successful petition for liquidation under the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act the effect of which transfer may be to enable the creditor to obtain a greater percentage of such debt than another creditor of the same class would receive. If a liquidation order is entered while the insurer is already subject to a rehabilitation order, such transfers shall be deemed preferences if made or suffered within one year before the filing of the successful petition for rehabilitation or within two years before the filing of the successful petition for liquidation, whichever time is shorter.

(b) Except as provided in subdivision (1)(d) of this section, any preference may be avoided by the liquidator if:

- (i) The insurer was insolvent at the time of the transfer;
- (ii) The transfer was made within four months before the filing of the petition;
- (iii) The creditor receiving it or to be benefited thereby or his or her agent acting with reference thereto had, at the time when the transfer was made, reasonable cause to believe that the insurer was insolvent or was about to become insolvent; or
- (iv) The creditor receiving it was: An officer; any employee, attorney, or other person who was in fact in a position of comparable influence in the insurer to an officer whether or not he or she held such position; any shareholder holding directly or indirectly more than five percent of any class of any equity security issued by the insurer; or any other person, firm, corporation, association, or aggregation of persons with whom the insurer did not deal at arm's length.

(c) When the preference is voidable, the liquidator may recover the property or, if it has been converted, its value from any person who has received or converted the property, except when a bona fide purchaser or lienor has given less than fair equivalent value, he or she shall have a lien upon the property to the extent of the consideration actually given by him or her. When a preference by way of lien or security title is voidable, the court may on due notice order the lien or title to be preserved for the benefit of the estate, in which event the lien or title shall pass to the liquidator.

(d) A liquidator or receiver shall not avoid any preference arising under or in connection with any Federal Home Loan Bank security agreement, or any pledge, security, collateral or guarantee agreement or any other similar arrangement or credit enhancement relating to such Federal Home Loan Bank security agreement.

(2)(a) A transfer of property other than real property shall be deemed to be made or suffered when it becomes so far perfected that no subsequent lien obtainable by legal or equitable proceedings on a simple contract could become superior to the rights of the transferee.

(b) A transfer of real property shall be deemed to be made or suffered when it becomes so far perfected that no subsequent bona fide purchaser from the insurer could obtain rights superior to the rights of the transferee.

(c) A transfer which creates an equitable lien shall not be deemed to be perfected if there are available means by which a legal lien could be created.

(d) A transfer not perfected prior to the filing of a petition for liquidation shall be deemed to be made immediately before the filing of the successful petition.

(e) The provisions of this subsection shall apply whether or not there are or were creditors who might have obtained liens or persons who might have become bona fide purchasers.

(3)(a) A lien obtainable by legal or equitable proceedings upon a simple contract shall be one arising in the ordinary course of such proceedings upon the entry or docketing of a judgment or decree or upon attachment, garnishment, execution, or like process, whether before, upon, or after judgment or decree and whether before or upon levy. It shall not include liens which under applicable law are given a special priority over other liens which are prior in time.

(b) A lien obtainable by legal or equitable proceedings could become superior to the rights of a transferee or a purchaser could obtain rights superior to the rights of a transferee within the meaning of subsection (2) of this section if such consequences would follow only from the lien or purchase itself or from the lien or purchase followed by any step wholly within the control of the respective lienholder or purchaser with or without the aid of ministerial action by public officials. Such a lien could not, however, become superior and such a purchase could not create superior rights for the purpose of subsection (2) of this section through any acts subsequent to the obtaining of such a lien or subsequent to such a purchase which require the agreement or concurrence of any third party or which require any further judicial action or ruling.

(4) A transfer of property for or on account of a new and contemporaneous consideration which is deemed under subsection (2) of this section to be made or suffered after the transfer because of delay in perfecting shall not thereby become a transfer for or on account of an antecedent debt if any acts required by the applicable law to be performed in order to perfect the transfer as against liens or bona fide purchasers' rights are performed within twenty-one days or any period expressly allowed by the law, whichever is less. A transfer to secure a future loan, if such a loan is actually made, or a transfer which becomes security for a future loan shall have the same effect as a transfer for or on account of a new and contemporaneous consideration.

(5) If any lien deemed voidable under subdivision (1)(b) of this section has been dissolved by the furnishing of a bond or other obligation, the surety on which has been indemnified directly or indirectly by the transfer of or the creation of a lien upon any property of an insurer before the filing of a petition under the act which results in a liquidation order, the indemnifying transfer or lien shall also be deemed voidable.

(6) The property affected by any lien deemed voidable under subsections (1) and (5) of this section shall be discharged from such lien, and that property and any of the indemnifying property transferred to or for the benefit of a surety shall pass to the liquidator, except that the court may on due notice order any such lien to be preserved for the benefit of the estate and the court may direct

that such conveyance be executed as may be proper or adequate to evidence the title of the liquidator.

(7) The district court of Lancaster County shall have summary jurisdiction of any proceeding by the liquidator to hear and determine the rights of any parties under this section. Reasonable notice of any hearing in the proceeding shall be given to all parties in interest, including the obligee of a releasing bond or other like obligation. When an order is entered for the recovery of indemnifying property in kind or for the avoidance of an indemnifying lien, the court, upon application of any party in interest, shall in the same proceeding ascertain the value of the property or lien, and if the value is less than the amount for which the property is indemnity or than the amount of the lien, the transferee or lienholder may elect to retain the property or lien upon payment of its value, as ascertained by the court, to the liquidator within such reasonable times as the court shall fix.

(8) The liability of the surety under a releasing bond or other like obligation shall be discharged to the extent of the value of the indemnifying property recovered or the indemnifying lien nullified and avoided by the liquidator or, when the property is retained under subsection (7) of this section, to the extent of the amount paid to the liquidator.

(9) If a creditor has been preferred and afterward in good faith gives the insurer further credit without security of any kind for property which becomes a part of the insurer's estate, the amount of the new credit remaining unpaid at the time of the petition may be set off against the preference which would otherwise be recoverable from him or her.

(10) If an insurer, directly or indirectly, within four months before the filing of a successful petition for liquidation under the act or at any time in contemplation of a proceeding to liquidate, pays money or transfers property to an attorney for services rendered or to be rendered, the transactions may be examined by the court on its own motion or shall be examined by the court on petition of the liquidator and shall be held valid only to the extent of a reasonable amount to be determined by the court, and the excess may be recovered by the liquidator for the benefit of the estate, except that if the attorney is in a position of influence in the insurer or an affiliate thereof, payment of any money or the transfer of any property to the attorney for services rendered or to be rendered shall be governed by subdivision (1)(b)(iv) of this section.

(11)(a) Every officer, manager, employee, shareholder, member, subscriber, attorney, or any other person acting on behalf of the insurer who knowingly participates in giving any preference when he or she has reasonable cause to believe the insurer is or is about to become insolvent at the time of the preference shall be personally liable to the liquidator for the amount of the preference. It shall be permissible to infer that there is a reasonable cause to so believe if the transfer was made within four months before the date of filing of the successful petition for liquidation.

(b) Every person receiving any property from the insurer or the benefit thereof as a preference voidable under subsection (1) of this section shall be personally liable therefor and shall be bound to account to the liquidator.

(c) Nothing in this subsection shall prejudice any other claim by the liquidator against any person.

Source: Laws 1989, LB 319, § 28; Laws 1995, LB 616, § 2; Laws 2013, LB337, § 6.

44-4830.01 Netting agreement; qualified financial contract; net or settlement amount; treatment; receiver; powers; duties; notice; claim of counterparty; rights of counterparty.

(1) Notwithstanding any other provision of the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act to the contrary, including any other provision of the act that permits the modification of contracts, or another law of this state, a person shall not be stayed or prohibited from exercising any of the following:

(a) A contractual right to terminate, liquidate, or close out any netting agreement or qualified financial contract with an insurer because of one of the following:

(i) The insolvency, financial condition, or default of the insurer at any time, if the right is enforceable under applicable law other than the act; or

(ii) The commencement of a formal delinquency proceeding under the act;

(b) Any right under a pledge, security, collateral, or guarantee agreement or any other similar security arrangement or credit support document relating to a netting agreement or qualified financial contract; or

(c) Subject to any provision of subsection (2) of section 44-4830, any right to setoff or net out any termination value, payment amount, or other transfer obligation arising under or in connection with a netting agreement or qualified financial contract if the counterparty or its guarantor is organized under the laws of the United States or a state or foreign jurisdiction approved by the Securities Valuation Office of the National Association of Insurance Commissioners as eligible for netting.

(2) Upon termination of a netting agreement or qualified financial contract, the net or settlement amount, if any, owed by a nondefaulting party to an insurer against which an application or petition has been filed under the act shall be transferred to or on the order of the receiver for the insurer, even if the insurer is the defaulting party, notwithstanding any provision in the netting agreement or qualified financial contract that may provide that the defaulting party is not required to pay any net or settlement amount due to the defaulting party upon termination. Any limited two-way payment provision in a netting agreement or qualified financial contract with an insurer that has defaulted shall be deemed to be a full two-way payment provision as against the defaulting insurer. Any such amount, except to the extent it is subject to one or more secondary liens or encumbrances, shall be a general asset of the insurer.

(3) In making any transfer of a netting agreement or qualified financial contract of an insurer subject to a proceeding under the act, the receiver shall do one of the following:

(a) Transfer to one party, other than an insurer subject to a proceeding under the act, all netting agreements and qualified financial contracts between a counterparty or any affiliate of the counterparty and the insurer that is the subject of the proceeding, including all of the following:

(i) All rights and obligations of each party under each netting agreement and qualified financial contract; and

(ii) All property, including any guarantees or credit support documents, securing any claims of each party under each such netting agreement and qualified financial contract; or

(b) Transfer none of the netting agreements, qualified financial contracts, rights, obligations, or property referred to in subdivision (a) of this subsection with respect to the counterparty and any affiliate of the counterparty.

(4) If a receiver for an insurer makes a transfer of one or more netting agreements or qualified financial contracts, the receiver shall use his or her best efforts to notify any person who is party to the netting agreement or qualified financial contract of the transfer by noon of the receiver's local time on the business day following the transfer. For purposes of this subsection, business day means a day other than a Saturday, Sunday, or any day on which either the New York Stock Exchange or the Federal Reserve Bank of New York is closed.

(5) Notwithstanding any other provision of the act to the contrary, a receiver shall not avoid a transfer of money or other property arising under or in connection with a netting agreement or qualified financial contract or any pledge, security, collateral, or guarantee agreement or any other similar security arrangement or credit support document relating to a netting agreement or qualified financial contract that is made before the commencement of a formal delinquency proceeding under the act. However, a transfer may be avoided under section 44-4828 if the transfer was made with actual intent to hinder, delay, or defraud the insurer, a receiver appointed for the insurer, or an existing or future creditor.

(6)(a) In exercising any of its powers under the act to disaffirm or repudiate a netting agreement or qualified financial contract, the receiver shall take action with respect to each netting agreement or qualified financial contract and all transactions entered into in connection therewith in its entirety.

(b) Notwithstanding any other provision of the act to the contrary, any claim of a counterparty against the estate arising from the receiver's disaffirmance or repudiation of a netting agreement or qualified financial contract that has not been previously affirmed in the liquidation or in the immediately preceding rehabilitation case shall be determined and allowed or disallowed as if the claim had arisen before the date of the filing of the petition for liquidation or, if a rehabilitation proceeding is converted to a liquidation proceeding, as if the claim had arisen before the date of the filing of the petition for rehabilitation. The amount of the claim shall be the actual direct compensatory damages determined as of the date of the disaffirmance or repudiation of the netting agreement or qualified financial contract. For purposes of this subdivision, actual direct compensatory damages does not include punitive or exemplary damages, damages for lost profit or lost opportunity, or damages for pain and suffering, but does include normal and reasonable costs of cover or other reasonable measures of damages utilized in the derivatives market for the contract and agreement claims.

(7) For purposes of this section, contractual right includes any right, whether or not evidenced in writing, arising under (a) statutory or common law, (b) a rule or bylaw of a national securities exchange, a national securities clearing organization, or a securities clearing agency, (c) a rule or bylaw or a resolution

of the governing body of a contract market or its clearing organization, or (d) law merchant.

(8) This section does not apply to persons who are affiliates of the insurer that is the subject of the proceeding.

(9) All rights of a counterparty under the act shall apply to netting agreements and qualified financial contracts entered into on behalf of the general account or separate accounts, if the assets of each separate account are available only to counterparties to netting agreements and qualified financial contracts entered into on behalf of that separate account.

Source: Laws 2011, LB72, § 7.

44-4862 Act, how cited.

Sections 44-4801 to 44-4862 shall be known and may be cited as the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act.

Source: Laws 1991, LB 236, § 85; Laws 2004, LB 1047, § 17; Laws 2011, LB72, § 8.

ARTICLE 55

SURPLUS LINES INSURANCE

Section

- 44-5502. Terms, defined.
- 44-5503. Surplus lines license; issuance.
- 44-5504. Nonadmitted insurer; surplus lines license; application; fee; expiration; renewal.
- 44-5505. Nonadmitted insurer; surplus lines licensee; record of business; contents; how kept.
- 44-5506. Surplus lines licensee; quarterly statement; tax payment.
- 44-5508. Surplus lines licensee; requirements; duties of licensee; violations; penalty; nonadmitted insurer; requirements.
- 44-5510. Insurance; procurement from nonadmitted insurer; when; terms and conditions; surplus lines licensee; exempt from due diligence search; conditions.
- 44-5511. Surplus lines licensee; report; contents; when due.
- 44-5515. Exempt commercial purchaser; taxes; form.

44-5502 Terms, defined.

For purposes of the Surplus Lines Insurance Act:

(1) Affiliated group means a group of entities in which each entity, with respect to an insured, controls, is controlled by, or is under common control with the insured;

(2) Control means:

(a) To own, control, or have the power of an entity directly, indirectly, or acting through one or more other persons to vote twenty-five percent or more of any class of voting securities of another entity; or

(b) To direct, by an entity, in any manner, the election of a majority of the directors or trustees of another entity;

(3) Department means the Department of Insurance;

(4) Director means the Director of Insurance;

(5)(a) Exempt commercial purchaser means any person purchasing commercial insurance that, at the time of placement, meets the following requirements:

(i) The person employs or retains a qualified risk manager to negotiate insurance coverage;

(ii) The person has paid aggregate nationwide commercial property and casualty insurance premiums in excess of one hundred thousand dollars in the immediately preceding twelve months; and

(iii) The person meets at least one of the following criteria:

(A) The person possesses a net worth in excess of twenty million dollars, as such amount is adjusted pursuant to subdivision (5)(b) of this section;

(B) The person generates annual revenue in excess of fifty million dollars, as such amount is adjusted pursuant to subdivision (5)(b) of this section;

(C) The person employs more than five hundred full-time or full-time equivalent employees per individual insured or is a member of an affiliated group employing more than one thousand employees in the aggregate;

(D) The person is a not-for-profit organization or public entity generating annual budgeted expenditures of at least thirty million dollars, as such amount is adjusted pursuant to subdivision (5)(b) of this section; or

(E) The person is a municipality with a population in excess of fifty thousand inhabitants.

(b) Beginning on the fifth occurrence of January 1 after July 21, 2011, and each fifth occurrence of January 1 thereafter, the amounts in subdivisions (5)(a)(iii)(A), (B), and (D) of this section shall be adjusted to reflect the percentage change for such five-year period in the Consumer Price Index for All Urban Consumers published by the Federal Bureau of Labor Statistics;

(6) Foreign, alien, admitted, and nonadmitted, when referring to insurers, has the same meanings as in section 44-103 but does not include a risk retention group as defined in 15 U.S.C. 3901(a)(4);

(7)(a) Except as provided in subdivision (7)(b) of this section, home state means, with respect to an insured, (i) the state in which an insured maintains its principal place of business or, in the case of an individual, the individual's principal residence or (ii) if one hundred percent of the insured risk is located out of the state referred to in subdivision (7)(a)(i) of this section, the state to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.

(b) If more than one insured from an affiliated group are named insureds on a single nonadmitted insurance contract, home state means the home state, as determined pursuant to subdivision (7)(a) of this section, of the member of the affiliated group that has the largest percentage of premium attributed to it under such insurance contract.

(c) When determining the home state of the insured, the principal place of business is the state in which the insured maintains its headquarters and where the insured's high-level officers direct, control, and coordinate the business activities of the insured;

(8) Insurer has the same meaning as in section 44-103;

(9) Nonadmitted insurance means any property and casualty insurance permitted to be placed directly or through surplus lines licensees with a nonadmitted insurer eligible to accept such insurance; and

(10) Qualified risk manager means, with respect to a policyholder of commercial insurance, a person who meets the definition in section 527 of the

Nonadmitted and Reinsurance Reform Act of 2010, which is Subtitle B of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, as such section existed on January 1, 2011.

Source: Laws 1992, LB 1006, § 2; Laws 2007, LB117, § 22; Laws 2011, LB70, § 1.

44-5503 Surplus lines license; issuance.

The department, in consideration of the payment of the license fee, may issue a surplus lines license, revocable at any time, to any individual who currently holds an insurance producer license or to a foreign or domestic corporation. The corporate surplus lines license shall list all officers or employees of the corporation who currently hold an insurance producer license or meet the requirements for an individual surplus lines license and who have authority to transact surplus lines business on behalf of the corporation. Only individuals listed on the corporate surplus lines license shall transact surplus lines business on behalf of the corporate licensee. If the applicant is an individual, the application for the license shall include the applicant's social security number. The director may utilize the national insurance producer data base of the National Association of Insurance Commissioners, or any other equivalent uniform national data base, for the licensure of an individual or an entity as a surplus lines producer and for renewal of such license.

Source: Laws 1913, c. 154, § 25, p. 408; R.S.1913, § 3161; Laws 1919, c. 190, tit. V, art. III, § 18, p. 587; C.S.1922, § 7762; C.S.1929, § 44-218; R.S.1943, § 44-139; Laws 1955, c. 168, § 3, p. 479; Laws 1978, LB 836, § 1; Laws 1989, LB 92, § 29; R.S.Supp.,1990, § 44-139; Laws 1992, LB 1006, § 3; Laws 1997, LB 752, § 113; Laws 2001, LB 51, § 38; Laws 2002, LB 1139, § 36; Laws 2011, LB70, § 2.

44-5504 Nonadmitted insurer; surplus lines license; application; fee; expiration; renewal.

(1) No person, other than an exempt commercial purchaser, shall place, procure, or effect insurance for or on behalf of an insured whose home state is the State of Nebraska in any nonadmitted insurer until such person has first been issued a surplus lines license from the department as provided in section 44-5503.

(2) Application for a surplus lines license shall be made to the department on forms designated and furnished by the department and shall be accompanied by a license fee as established by the director not to exceed two hundred fifty dollars for each individual and corporate surplus lines license.

(3)(a) All corporate surplus lines licenses shall expire on April 30 of each year, and all individual surplus lines licenses shall expire on the licensee's birthday in the first year after issuance in which his or her age is divisible by two, and all individual surplus lines licenses may be renewed within the ninety-day period before their expiration dates and all individual surplus lines licenses also may be renewed within the thirty-day period after their expiration dates upon payment of a late renewal fee as established by the director not to exceed two hundred dollars in addition to the applicable fee otherwise required for renewal of individual surplus lines licenses as established by the director pursuant to subsection (2) of this section. All individual surplus lines licenses

renewed within the thirty-day period after their expiration dates pursuant to this subdivision shall be deemed to have been renewed before their expiration dates. The department shall establish procedures for the renewal of surplus lines licenses.

(b) Every licensee shall notify the department within thirty days of any changes in the licensee's residential or business address.

Source: Laws 1913, c. 154, § 25, p. 408; R.S.1913, § 3161; Laws 1919, c. 190, tit. V, art. III, § 18, p. 587; C.S.1922, § 7762; C.S.1929, § 44-218; R.S.1943, § 44-140; Laws 1978, LB 836, § 2; Laws 1984, LB 801, § 47; Laws 1989, LB 92, § 30; R.S.Supp.,1990, § 44-140; Laws 1992, LB 1006, § 4; Laws 1999, LB 260, § 15; Laws 2002, LB 1139, § 37; Laws 2007, LB117, § 23; Laws 2011, LB70, § 3.

44-5505 Nonadmitted insurer; surplus lines licensee; record of business; contents; how kept.

Each surplus lines licensee shall keep in the licensee's office a true and complete record of the business transacted by the licensee showing (1) the exact amount of insurance or limits of exposure, (2) the gross premiums charged therefor, (3) the return premium paid thereon, (4) the rate of premium charged for such insurance, (5) the date of such insurance and terms thereof, (6) the name and address of the nonadmitted insurer writing such insurance, (7) a copy of the declaration page of each policy and a copy of each policy form issued by the licensee, (8) a copy of the written statement described in subdivision (1)(c) of section 44-5510 or, in lieu thereof, a copy of the application containing such written statement, (9) the name of the insured, (10) the address of the principal residence of the insured or the address at which the insured maintains its principal place of business, (11) a brief and general description of the risk or exposure insured and where located, (12) documentation showing that the nonadmitted insurer writing such insurance complies with the requirements of section 44-5508, and (13) such other facts and information as the department may direct and require. Such records shall be kept by the licensee in the licensee's office within the state for not less than five years and shall at all times be open and subject to the inspection and examination of the department or its officers. The expense of any examination shall be paid by the licensee.

Source: Laws 1913, c. 154, § 25, p. 409; R.S.1913, § 3161; Laws 1919, c. 190, tit. V, art. III, § 18, p. 588; C.S.1922, § 7762; C.S.1929, § 44-218; R.S.1943, § 44-141; Laws 1978, LB 836, § 3; Laws 1989, LB 92, § 31; R.S.Supp.,1990, § 44-141; Laws 1992, LB 1006, § 5; Laws 2005, LB 119, § 20; Laws 2011, LB70, § 4.

44-5506 Surplus lines licensee; quarterly statement; tax payment.

(1) Every surplus lines licensee transacting business under the Surplus Lines Insurance Act shall, on or before March 1 for the quarter ending the preceding December 31, June 1 for the quarter ending the preceding March 31, September 1 for the quarter ending the preceding June 30, and December 1 for the quarter ending the preceding September 30 of each year, make and file with the department a verified statement upon a form prescribed by the department

or a designee of the director which shall exhibit the true amount of all such business transacted during that period.

(2)(a) Every surplus lines licensee transacting business under the Surplus Lines Insurance Act shall collect and pay to the director or the director's designee, at the time the statement required under subsection (1) of this section is filed, a sum based on the total gross premiums charged, less any return premiums, for surplus lines insurance provided by the licensee pursuant to the license on behalf of an insured whose home state is the State of Nebraska. In no event shall such taxes be determined on a retaliatory basis pursuant to section 44-150.

(b) The sum payable shall be computed based on an amount equal to three percent of the premiums for insurance that covers properties, risks, or exposures located or to be performed in the United States, to be remitted to the State Treasurer in accordance with section 77-912.

(c) The surplus lines licensee is prohibited from rebating, for any reason, any portion of the tax.

Source: Laws 1913, c. 154, § 25, p. 409; R.S.1913, § 3161; Laws 1919, c. 190, tit. V, art. III, § 18, p. 588; C.S.1922, § 7762; C.S.1929, § 44-218; R.S.1943, § 44-142; Laws 1978, LB 836, § 4; Laws 1987, LB 302, § 4; Laws 1989, LB 92, § 32; R.S.Supp.,1990, § 44-142; Laws 1992, LB 1006, § 6; Laws 2011, LB70, § 5; Laws 2016, LB837, § 1.

Operative date January 1, 2017.

44-5508 Surplus lines licensee; requirements; duties of licensee; violations; penalty; nonadmitted insurer; requirements.

(1) A surplus lines licensee shall not place coverage with a nonadmitted insurer unless, at the time of placement, the surplus lines licensee has determined that the nonadmitted insurer:

(a) Is authorized to write such insurance in its domiciliary jurisdiction;

(b) Has established satisfactory evidence of good repute and financial integrity; and

(c)(i) Possesses capital and surplus or its equivalent under the laws of its domiciliary jurisdiction that equals the greater of the minimum capital and surplus requirements under the laws of this state or fifteen million dollars; or

(ii) If minimum capital and surplus does not meet the requirements of subdivision (1)(c)(i) of this section, then upon an affirmative finding of acceptability by the director. The finding shall be based upon such factors as quality of management, capital and surplus of any parent company, company underwriting profit and investment income trends, market availability, and company record and reputation within the industry. The director shall not make an affirmative finding of acceptability if the nonadmitted insurer's capital and surplus is less than four million five hundred thousand dollars.

(2) No surplus lines licensee shall place nonadmitted insurance with or procure nonadmitted insurance from a nonadmitted insurer domiciled outside the United States unless the insurer is listed on the Quarterly Listing of Alien Insurers maintained by the International Insurers Department of the National Association of Insurance Commissioners.

(3) Any surplus lines licensee violating this section shall be guilty of a Class III misdemeanor.

(4)(a) No nonadmitted foreign or alien insurer shall transact business under the Surplus Lines Insurance Act if it does not comply with the surplus and capital requirements of subsection (1) of this section.

(b) In addition to the requirements of subdivision (a) of this subsection, no nonadmitted alien insurer shall transact business under the act if it does not comply with the requirements of subsection (2) of this section.

Source: Laws 1913, c. 154, § 26, p. 410; R.S.1913, § 3162; Laws 1919, c. 190, tit. V, art. III, § 19, p. 589; C.S.1922, § 7763; C.S.1929, § 44-219; R.S.1943, § 44-147; Laws 1951, c. 135, § 2, p. 558; Laws 1971, LB 757, § 1; Laws 1977, LB 40, § 230; Laws 1978, LB 836, § 6; Laws 1989, LB 92, § 33; R.S.Supp.,1990, § 44-147; Laws 1992, LB 1006, § 8; Laws 1994, LB 978, § 31; Laws 2005, LB 119, § 21; Laws 2011, LB70, § 6.

44-5510 Insurance; procurement from nonadmitted insurer; when; terms and conditions; surplus lines licensee; exempt from due diligence search; conditions.

(1) If an applicant for insurance is unable to procure such insurance as he or she deems reasonably necessary to insure a risk or exposure from an admitted insurer, such insurance may be procured from a nonadmitted insurer upon the following terms and conditions:

(a) The insurance shall be procured from a surplus lines licensee;

(b) The insurance procured shall not include any insurance described in subdivisions (1) through (4) of section 44-201, except that this subdivision shall not prohibit the procurement of disability insurance that has a benefit limit in excess of any benefit limit available from an admitted insurer;

(c) Not later than thirty days after the effective date of such insurance, the insured shall provide, in writing, his or her permission for such insurance to be written in a nonadmitted insurer and his or her acknowledgment that, in the event of the insolvency of such insurer, the policy will not be covered by the Nebraska Property and Liability Insurance Guaranty Association; and

(d) Compliance with section 44-5511.

(2) A surplus lines licensee seeking to procure or place nonadmitted insurance for an exempt commercial purchaser whose home state is the State of Nebraska shall not be required to make a due diligence search to determine whether the full amount or type of insurance sought by such exempt commercial purchaser can be obtained from admitted insurers if:

(a) The surplus lines licensee procuring or placing the insurance has disclosed to the exempt commercial purchaser that such insurance may or may not be available from the admitted market that may provide greater protection with more regulatory oversight; and

(b) The exempt commercial purchaser has subsequently requested in writing the surplus lines licensee to procure or place such insurance for a nonadmitted insurer.

Source: Laws 1978, LB 836, § 8; Laws 1989, LB 92, § 35; R.S.Supp.,1990, § 44-147.02; Laws 1992, LB 1006, § 10; Laws 2011, LB70, § 7; Laws 2012, LB1064, § 1.

Cross References

Nebraska Property and Liability Insurance Guaranty Association, see section 44-2404.

44-5511 Surplus lines licensee; report; contents; when due.

On or before February 15 for the quarter ending the preceding December 31, May 15 for the quarter ending the preceding March 31, August 15 for the quarter ending the preceding June 30, and November 15 for the quarter ending the preceding September 30 of each year, every surplus lines licensee shall file with the department a report containing such information as the department may require, including: (1) The name of the nonadmitted insurer; (2) the name of the licensee; (3) the number of policies issued by each nonadmitted insurer; (4) except for insurance placed or procured on behalf of an exempt commercial purchaser, a sworn statement by the licensee with regard to the coverages described in the quarterly report that, to the best of the licensee's knowledge and belief, the licensee could not reasonably procure such coverages from an admitted insurer; and (5) the premium volume for each nonadmitted insurer by line of business.

Source: Laws 1978, LB 836, § 9; Laws 1989, LB 92, § 36; R.S.Supp.,1990, § 44-147.03; Laws 1992, LB 1006, § 11; Laws 2011, LB70, § 8.

44-5515 Exempt commercial purchaser; taxes; form.

Every exempt commercial purchaser whose home state is the State of Nebraska shall, on or before March 1 for the quarter ending the preceding December 31, June 1 for the quarter ending the preceding March 31, September 1 for the quarter ending the preceding June 30, and December 1 for the quarter ending the preceding September 30 of each year, pay to the department a tax in the amount required by subsection (2) of section 44-5506. The calculation of the taxes due pursuant to this section shall be based only on those premiums remitted for the placement or procurement of insurance by an exempt commercial purchaser whose home state is the State of Nebraska. The department shall prescribe a form for an exempt commercial purchaser tax filing.

Source: Laws 2007, LB117, § 24; Laws 2011, LB70, § 9; Laws 2016, LB837, § 2.
Operative date January 1, 2017.

ARTICLE 57

PRODUCER-CONTROLLED PROPERTY AND CASUALTY INSURERS

Section
44-5702. Terms, defined.

44-5702 Terms, defined.

For purposes of the Producer-Controlled Property and Casualty Insurer Act:

(1) Accredited state shall mean a state in which the insurance department or regulatory agency has qualified as meeting the minimum financial regulatory standards established and promulgated from time to time by the National Association of Insurance Commissioners;

(2) Captive insurers shall mean insurance companies owned by another organization the exclusive purpose of which is to insure risks of the parent

organization and affiliated companies or, in the case of groups and associations, insurance organizations owned by the insureds the exclusive purpose of which is to insure risks to member organizations or group members and their affiliates;

(3) Control or controlled shall have the same meaning as in section 44-2121;

(4) Controlled insurer shall mean an insurer which is controlled, directly or indirectly, by a producer;

(5) Controlling producer shall mean a producer which, directly or indirectly, controls an insurer;

(6) Director shall mean the Director of Insurance;

(7) Insurer shall mean any person, firm, association, or corporation holding a certificate of authority to transact property and casualty insurance business in this state. Insurer shall not include:

(a) Residual market pools and joint underwriting authorities or associations; and

(b) Captive insurers other than risk retention groups as defined in 15 U.S.C. 3901 et seq. and 42 U.S.C. 9671, as such sections existed on January 1, 2014; and

(8) Producer shall mean an insurance broker or any other person, firm, association, or corporation when, for any compensation, commission, or other thing of value, such person, firm, association, or corporation acts or aids in any manner in soliciting, negotiating, or procuring the making of any insurance contract on behalf of an insured other than the person, firm, association, or corporation.

Source: Laws 1992, LB 1006, § 69; Laws 2014, LB700, § 17.

ARTICLE 60

INSURERS RISK-BASED CAPITAL ACT

Section

44-6007.02. Health organization, defined.

44-6008. Insurer, defined.

44-6009. Negative trend, with respect to a life and health insurer or a fraternal benefit society, defined.

44-6015. Risk-based capital reports.

44-6016. Company action level event.

44-6007.02 Health organization, defined.

Health organization means a health maintenance organization, prepaid limited health service organization, prepaid dental service corporation, or other managed care organization. Health organization does not include a life and health insurer, a fraternal benefit society, or a property and casualty insurer as defined in section 44-6008 that is otherwise subject to either life and health or property and casualty risk-based capital requirements.

Source: Laws 1999, LB 258, § 12; Laws 2013, LB426, § 2.

44-6008 Insurer, defined.

Insurer means an insurer as defined in section 44-103 authorized to transact the business of insurance, except that insurer does not include health organizations, unincorporated mutual associations, assessment associations, health

maintenance organizations, prepaid dental service corporations, prepaid limited health service organizations, monoline mortgage guaranty insurers, monoline financial guaranty insurers, title insurers, prepaid legal corporations, intergovernmental risk management pools, and any other kind of insurer to which the application of the Insurers and Health Organizations Risk-Based Capital Act, in the determination of the director, would be clearly inappropriate. Insurer includes a risk retention group.

Insurer, when referring to life and health insurers, means an insurer authorized to transact life insurance business and sickness and accident insurance business specified in subdivisions (1) through (4) of section 44-201, or any combination thereof, and also includes fraternal benefit societies authorized to transact business specified in sections 44-1072 to 44-10109.

Insurer, when referring to property and casualty insurers, means an insurer authorized to transact property insurance business and casualty insurance business specified in subdivisions (5) through (14) and (16) through (20) of section 44-201, or any combination thereof, and also includes an insurer authorized to transact insurance business specified in subdivision (4) of section 44-201 if also authorized to transact insurance business specified in subdivisions (5) through (14) and (16) through (20) of section 44-201.

Source: Laws 1993, LB 583, § 20; Laws 1994, LB 978, § 35; Laws 1999, LB 258, § 13; Laws 2013, LB426, § 3; Laws 2014, LB700, § 18.

44-6009 Negative trend, with respect to a life and health insurer or a fraternal benefit society, defined.

Negative trend, with respect to a life and health insurer or a fraternal benefit society, means a negative trend over a period of time, as determined in accordance with the trend test calculation included in the life risk-based capital instructions.

Source: Laws 1993, LB 583, § 21; Laws 1994, LB 978, § 36; Laws 1999, LB 258, § 14; Laws 2008, LB855, § 29; Laws 2013, LB426, § 4.

44-6015 Risk-based capital reports.

(1) Every domestic insurer or domestic health organization shall annually, on or prior to March 1, referred to in this section as the filing date, prepare and submit to the director a risk-based capital report of its risk-based capital levels as of the end of the calendar year just ended, in a form and containing such information as is required by the risk-based capital instructions. In addition, every domestic insurer or domestic health organization shall file its risk-based capital report:

(a) With the National Association of Insurance Commissioners in accordance with the risk-based capital instructions; and

(b) With the insurance commissioner in any state in which the insurer or health organization is authorized to do business if such insurance commissioner has notified the insurer or health organization of its request in writing, in which case the insurer or health organization shall file its risk-based capital report not later than the later of:

(i) Fifteen days after the receipt of notice to file its risk-based capital report with such state; or

(ii) The filing date.

(2) A life and health insurer's or a fraternal benefit society's risk-based capital shall be determined in accordance with the formula set forth in the risk-based capital instructions. The formula shall take into account and may adjust for the covariance between:

- (a) The risk with respect to the insurer's assets;
- (b) The risk of adverse insurance experience with respect to the insurer's liabilities and obligations;
- (c) The interest rate risk with respect to the insurer's business; and
- (d) All other business risks and such other relevant risks as are set forth in the risk-based capital instructions.

Such risks shall be determined in each case by applying the factors in the manner set forth in the risk-based capital instructions.

(3) A property and casualty insurer's risk-based capital shall be determined in accordance with the formula set forth in the risk-based capital instructions. The formula shall take into account and may adjust for the covariance between:

- (a) Asset risk;
- (b) Credit risk;
- (c) Underwriting risk; and
- (d) All other business risks and such other relevant risks as are set forth in the risk-based capital instructions.

Such risks shall be determined in each case by applying the factors in the manner set forth in the risk-based capital instructions.

(4) A health organization's risk-based capital shall be determined in accordance with the formula set forth in the risk-based capital instructions. The formula shall take into account and may adjust for the covariance between:

- (a) Asset risk;
- (b) Credit risk;
- (c) Underwriting risk; and
- (d) All other business risks and such other relevant risks as are set forth in the risk-based capital instructions.

Such risks shall be determined in each case by applying the factors in the manner set forth in the risk-based capital instructions.

(5) An excess of capital over the amount produced by the risk-based capital requirements contained in the Insurers and Health Organizations Risk-Based Capital Act and the formulas, schedules, and instructions referenced in the act is desirable in the business of insurance. Accordingly, insurers and health organizations should seek to maintain capital above the risk-based capital levels required by the act. Additional capital is used and useful in the insurance business and helps to secure an insurer or a health organization against various risks inherent in, or affecting, the business of insurance and not accounted for or only partially measured by the risk-based capital requirements contained in the act.

(6) If a domestic insurer or a domestic health organization files a risk-based capital report which in the judgment of the director is inaccurate, the director shall adjust the risk-based capital report to correct the inaccuracy and shall

notify the insurer or health organization of the adjustment. The notice shall contain a statement of the reason for the adjustment.

Source: Laws 1993, LB 583, § 27; Laws 1994, LB 978, § 37; Laws 1999, LB 258, § 20; Laws 2013, LB426, § 5.

44-6016 Company action level event.

(1) Company action level event means any of the following events:

(a) The filing of a risk-based capital report by an insurer or a health organization which indicates that:

(i) The insurer's or health organization's total adjusted capital is greater than or equal to its regulatory action level risk-based capital but less than its company action level risk-based capital;

(ii) If a life and health insurer or a fraternal benefit society, the insurer or society has total adjusted capital which is greater than or equal to its company action level risk-based capital but less than the product of its authorized control level risk-based capital and 3.0 and has a negative trend;

(iii) If a property and casualty insurer, the insurer has total adjusted capital which is greater than or equal to its company action level risk-based capital but less than the product of its authorized control level risk-based capital and 3.0 and triggers the trend test determined in accordance with the trend test calculation included in the property and casualty risk-based capital instructions; or

(iv) If a health organization has total adjusted capital which is greater than or equal to its company action level risk-based capital but less than the product of its authorized control level risk-based capital and 3.0 and triggers the trend test determined in accordance with the trend test calculation included in the health risk-based capital instructions;

(b) The notification by the director to the insurer or health organization of an adjusted risk-based capital report that indicates an event described in subdivision (1)(a) of this section unless the insurer or health organization challenges the adjusted risk-based capital report under section 44-6020; or

(c) If, pursuant to section 44-6020, the insurer or health organization challenges an adjusted risk-based capital report that indicates an event described in subdivision (1)(a) of this section, the notification by the director to the insurer or health organization that the director has, after a hearing, rejected the insurer's or health organization's challenge.

(2) In the event of a company action level event, the insurer or health organization shall prepare and submit to the director a risk-based capital plan which shall:

(a) Identify the conditions which contribute to the company action level event;

(b) Contain proposals of corrective actions which the insurer or health organization intends to take and would be expected to result in the elimination of the company action level event;

(c) Provide projections of the insurer's or health organization's financial results in the current year and at least the four succeeding years in the case of an insurer or at least the two succeeding years in the case of a health organization, both in the absence of proposed corrective actions and giving

effect to the proposed corrective actions, including projections of statutory balance sheets, operating income, net income, capital and surplus, and risk-based capital levels. The projections for both new and renewal business may include separate projections for each major line of business and separately identify each significant income, expense, and benefit component;

(d) Identify the key assumptions impacting the insurer's or health organization's projections and the sensitivity of the projections to the assumptions; and

(e) Identify the quality of, and problems associated with, the insurer's or health organization's business, including, but not limited to, its assets, anticipated business growth and associated surplus strain, extraordinary exposure to risk, and mix of business and use of reinsurance, if any, in each case.

(3) The risk-based capital plan shall be submitted:

(a) Within forty-five days after the occurrence of the company action level event; or

(b) If the insurer or health organization challenges an adjusted risk-based capital report pursuant to section 44-6020, within forty-five days after the notification to the insurer or health organization that the director has, after a hearing, rejected the insurer's or health organization's challenge.

(4) Within sixty days after the submission by an insurer or a health organization of a risk-based capital plan to the director, the director shall notify the insurer or health organization whether the risk-based capital plan shall be implemented or is, in the judgment of the director, unsatisfactory. If the director determines that the risk-based capital plan is unsatisfactory, the notification to the insurer or health organization shall set forth the reasons for the determination and may set forth proposed revisions which will render the risk-based capital plan satisfactory in the judgment of the director. Upon notification from the director, the insurer or health organization shall prepare a revised risk-based capital plan which may incorporate by reference any revisions proposed by the director. The insurer or health organization shall submit the revised risk-based capital plan to the director:

(a) Within forty-five days after the notification from the director; or

(b) If the insurer or health organization challenges the notification from the director under section 44-6020, within forty-five days after a notification to the insurer or health organization that the director has, after a hearing, rejected the insurer's or health organization's challenge.

(5) In the event of a notification by the director to an insurer or a health organization that the insurer's or health organization's risk-based capital plan or revised risk-based capital plan is unsatisfactory, the director may, at the director's discretion and subject to the insurer's or health organization's right to a hearing under section 44-6020, specify in the notification that the notification constitutes a regulatory action level event.

(6) Every domestic insurer or domestic health organization that files a risk-based capital plan or revised risk-based capital plan with the director shall file a copy of the risk-based capital plan or revised risk-based capital plan with the insurance commissioner of any state in which the insurer or health organization is authorized to do business if:

(a) Such state has a law substantially similar to subsection (1) of section 44-6021; and

(b) The insurance commissioner of such state has notified the insurer or health organization of its request for the filing in writing, in which case the insurer or health organization shall file a copy of the risk-based capital plan or revised risk-based capital plan in such state no later than the later of:

(i) Fifteen days after the receipt of notice to file a copy of its risk-based capital plan or revised risk-based capital plan with the state; or

(ii) The date on which the risk-based capital plan or revised risk-based capital plan is filed under subsection (3) or (4) of this section.

Source: Laws 1993, LB 583, § 28; Laws 1994, LB 978, § 38; Laws 1999, LB 258, § 21; Laws 2008, LB855, § 30; Laws 2013, LB426, § 6; Laws 2014, LB700, § 19.

ARTICLE 73

HEALTH CARRIER GRIEVANCE PROCEDURE ACT

Section

44-7306. Grievance register.

44-7308. Grievance review.

44-7309. Repealed. Laws 2013, LB 147, § 24.

44-7310. Standard review of adverse determinations.

44-7311. Expedited reviews.

44-7306 Grievance register.

(1) A health carrier shall maintain in a grievance register written records to document all grievances received during a calendar year. A request for a review of an adverse determination shall be processed in compliance with section 44-7308 but not considered a grievance for purposes of the grievance register unless such request includes a written grievance. For each grievance required to be recorded in the grievance register, the grievance register shall contain, at a minimum, the following information:

(a) A general description of the reason for the grievance;

(b) Date received;

(c) Date of each review or hearing;

(d) Resolution of the grievance;

(e) Date of resolution; and

(f) Name of the covered person for whom the grievance was filed.

(2) The grievance register shall be maintained in a manner that is reasonably clear and accessible to the director. A grievance register maintained by a health maintenance organization shall also be accessible to the Department of Health and Human Services.

(3) A health carrier shall retain the grievance register compiled for a calendar year for the longer of three years or until the director has adopted a final report of an examination that contains a review of the grievance register for that calendar year.

Source: Laws 1998, LB 1162, § 71; Laws 2007, LB296, § 201; Laws 2013, LB147, § 19.

44-7308 Grievance review.

(1) If a covered person makes a request to a health carrier for a health care service and the request is denied, the health carrier shall provide the covered person with an explanation of the reasons for the denial, a written notice of how to submit a grievance, and the telephone number to call for information and assistance. The health carrier, at the time of a determination not to certify an admission, a continued stay, or other health care service, shall inform the attending or ordering provider of the right to submit a grievance or a request for an expedited review and, upon request, shall explain the procedures established by the health carrier for initiating a review. A grievance involving an adverse determination may be submitted by the covered person, the covered person's representative, or a provider acting on behalf of a covered person, except that a provider may not submit a grievance involving an adverse determination on behalf of a covered person in a situation in which federal or other state law prohibits a provider from taking that action. A health carrier shall ensure that a majority of the persons reviewing a grievance involving an adverse determination have appropriate expertise. A health carrier shall issue a copy of the written decision to a provider who submits a grievance on behalf of a covered person. A health carrier shall conduct a review of a grievance involving an adverse determination in accordance with subsection (3) of this section and section 44-7310, but such a grievance is not subject to the grievance register reporting requirements of section 44-7306 unless it is a written grievance.

(2)(a) A grievance concerning any matter except an adverse determination may be submitted by a covered person or a covered person's representative. A health carrier shall issue a written decision to the covered person or the covered person's representative within fifteen working days after receiving a grievance. The person or persons reviewing the grievance shall not be the same person or persons who made the initial determination denying a claim or handling the matter that is the subject of the grievance. If the health carrier cannot make a decision within fifteen working days due to circumstances beyond the health carrier's control, the health carrier may take up to an additional fifteen working days to issue a written decision, if the health carrier provides written notice to the covered person of the extension and the reasons for the delay on or before the fifteenth working day after receiving a grievance.

(b) A covered person does not have the right to attend, or to have a representative in attendance, at the grievance review. A covered person is entitled to submit written material. The health carrier shall provide the covered person the name, address, and telephone number of a person designated to coordinate the grievance review on behalf of the health carrier. The health carrier shall make these rights known to the covered person within three working days after receiving a grievance.

(3) The written decision issued pursuant to the procedures described in subsections (1) and (2) of this section and section 44-7310 shall contain:

(a) The names, titles, and qualifying credentials of the person or persons acting as the reviewer or reviewers participating in the grievance review process;

(b) A statement of the reviewers' understanding of the covered person's grievance;

(c) The reviewers' decision in clear terms and the contract basis or medical rationale in sufficient detail for the covered person to respond further to the health carrier's position;

(d) A reference to the evidence or documentation used as the basis for the decision;

(e) In cases involving an adverse determination, the instructions for requesting a written statement of the clinical rationale, including the clinical review criteria used to make the determination; and

(f) Notice of the covered person's right to contact the director's office. The notice shall contain the telephone number and address of the director's office.

Source: Laws 1998, LB 1162, § 73; Laws 2013, LB147, § 20.

44-7309 Repealed. Laws 2013, LB 147, § 24.

44-7310 Standard review of adverse determinations.

(1) A health carrier shall establish written procedures for a standard review of an adverse determination. Review procedures shall be available to a covered person and to the provider acting on behalf of a covered person. For purposes of this section, covered person includes the representative of a covered person.

(2) When reasonably necessary or when requested by the provider acting on behalf of a covered person, standard reviews shall be evaluated by an appropriate clinical peer or peers in the same or similar specialty as would typically manage the case being reviewed. The clinical peer shall not have been involved in the initial adverse determination.

(3) For standard reviews the health carrier shall notify in writing both the covered person and the attending or ordering provider of the decision within fifteen working days after the request for a review. The written decision shall contain the provisions required in subsection (3) of section 44-7308.

(4) In any case in which the standard review process does not resolve a difference of opinion between the health carrier and the covered person or the provider acting on behalf of the covered person, the covered person or the provider acting on behalf of the covered person may submit a written grievance, unless the provider is prohibited from filing a grievance by federal or other state law.

Source: Laws 1998, LB 1162, § 75; Laws 2013, LB147, § 21.

44-7311 Expedited reviews.

(1) A health carrier shall establish written procedures for the expedited review of a grievance involving a situation in which the timeframe of the standard grievance procedures set forth in sections 44-7308 to 44-7310 would seriously jeopardize the life or health of a covered person or would jeopardize the covered person's ability to regain maximum function. A request for an expedited review may be submitted orally or in writing. A request for an expedited review of an adverse determination may be submitted orally or in writing and shall be subject to the review procedures of this section, if it meets the criteria of this section. However, for purposes of the grievance register requirements of section 44-7306, a request for an expedited review shall not be included in the grievance register unless the request is submitted in writing. Expedited review procedures shall be available to a covered person and to the

provider acting on behalf of a covered person. For purposes of this section, covered person includes the representative of a covered person.

(2) Expedited reviews which result in an adverse determination shall be evaluated by an appropriate clinical peer or peers in the same or similar specialty as would typically manage the case being reviewed. The clinical peer or peers shall not have been involved in the initial adverse determination.

(3) A health carrier shall provide expedited review to all requests concerning an admission, availability of care, continued stay, or health care service for a covered person who has received emergency services but has not been discharged from a facility.

(4) An expedited review may be initiated by a covered person or a provider acting on behalf of a covered person.

(5) In an expedited review, all necessary information, including the health carrier's decision, shall be transmitted between the health carrier and the covered person or the provider acting on behalf of a covered person by telephone, facsimile, or the most expeditious method available.

(6) In an expedited review, a health carrier shall make a decision and notify the covered person or the provider acting on behalf of the covered person as expeditiously as the covered person's medical condition requires, but in no event more than seventy-two hours after the review is commenced. If the expedited review is a concurrent review determination, the health care service shall be continued without liability to the covered person until the covered person has been notified of the determination.

(7) A health carrier shall provide written confirmation of its decision concerning an expedited review within two working days after providing notification of that decision, if the initial notification was not in writing. The written decision shall contain the provisions required in subsection (3) of section 44-7308.

(8) A health carrier shall provide reasonable access, not to exceed one business day after receiving a request for an expedited review, to a clinical peer who can perform the expedited review.

(9) In any case in which the expedited review process does not resolve a difference of opinion between the health carrier and the covered person or the provider acting on behalf of the covered person, the covered person or the provider acting on behalf of the covered person may submit a written grievance, unless the provider is prohibited from filing a grievance by federal or other state law. Except as expressly provided in this section, in conducting the review, the health carrier shall adhere to timeframes that are reasonable under the circumstances.

(10) A health carrier shall not be required to provide an expedited review for retrospective adverse determinations.

Source: Laws 1998, LB 1162, § 76; Laws 2013, LB147, § 22.

ARTICLE 75

PROPERTY AND CASUALTY INSURANCE RATE AND FORM ACT

Section
44-7507. Monitoring competition; determining competitive markets; hearing.

44-7507 Monitoring competition; determining competitive markets; hearing.

(1) The director shall monitor competition and the availability of insurance in commercial insurance markets. Such monitoring may include requests for information from insurers regarding the lines, types, and classes of insurance that the insurer is seeking and able to write. When requested by an insurer with its response, the director shall keep such responses confidential except as they may be compiled in summaries.

(2) If the director finds that a commercial insurance coverage is contributing to problems in the insurance marketplace due to excessive rates or lack of availability, the director shall submit electronically a report of this finding to the Legislature. Such report may be a separate report or a supplement to the annual report required by section 44-113.

(3) A competitive market is presumed to exist unless the director, after notice and hearing in accordance with the Administrative Procedure Act, determines by order that a degree of competition sufficient to warrant reliance upon competition as a regulator of rating systems, policy forms, or both does not exist in the market. In determining whether a sufficient degree of competition exists, the director may consider:

(a) Relevant tests of workable competition pertaining to market structure, market performance, and market conduct;

(b) The practical opportunities available to consumers in the market to acquire pricing and other consumer information and to compare and obtain insurance from competing insurers;

(c) Whether long-term and short-term profitability provides evidence of excessive rates;

(d) Whether rating systems filed under section 44-7508 would frequently require amendment or disapproval if filed under sections 44-7510 and 44-7511;

(e) Whether additional competition would appear likely to significantly lower rates or improve the policy forms offered to insureds;

(f) Whether rates would be lowered or policy forms would be improved by the imposition of a system of prior approval regulation;

(g) Whether policy forms filed under section 44-7508.02 would frequently require amendment or disapproval if filed under section 44-7513; and

(h) Any other relevant factors.

(4) If a market for a particular type of insurance is found to lack sufficient competition to warrant reliance upon competition as a regulator of rating systems or policy forms, the director shall identify factors that appear to be the cause and the extent to which remediation can be achieved on a short-term or long-term basis. To the extent that significant remediation can be achieved consistent with the other goals of the Property and Casualty Insurance Rate and Form Act, the director shall take such action as may be within the director's authority to accomplish such remediation or to promote the accomplishment of such remediation.

(5) If the director finds pursuant to a hearing held in accordance with subsection (3) of this section that the lack of sufficient competition warrants the application of sections 44-7510 and 44-7511 to the rates charged for a type of insurance, an order shall be issued pursuant to this section that applies sections 44-7510 and 44-7511 to the type of insurance. If the director finds pursuant to a hearing held in accordance with subsection (3) of this section that the lack of sufficient competition warrants the application of section 44-7513 to regulate

the forms offered for a type of insurance, an order shall be issued pursuant to this section that applies section 44-7513 to the type of insurance. An order issued under this subsection shall expire no later than one year after its original issue unless the director renews the order after a hearing and a finding of a continued lack of sufficient competition. Any order that is renewed after its first year shall not exceed three years after reissue unless the director renews the order after a hearing and a finding of a continued lack of sufficient competition.

(6) The director shall keep on file in one location all complaints from the public and insurance industry sources alleging that a competitive market does not exist. The director shall investigate each complaint to the extent necessary to determine the truth of the allegations. The director shall keep a summary of his or her findings and conclusions with the complaint.

Source: Laws 2000, LB 1119, § 7; Laws 2003, LB 216, § 20; Laws 2012, LB782, § 55.

Cross References

Administrative Procedure Act, see section 84-920.

ARTICLE 77

MODEL ACT REGARDING USE OF CREDIT INFORMATION IN PERSONAL INSURANCE

Section
44-7703. Act; applicability.

44-7703 Act; applicability.

The Model Act Regarding Use of Credit Information in Personal Insurance applies to personal insurance and not to commercial insurance. For purposes of the act, personal insurance means private passenger automobile, homeowners, motorcycle, autocycle, mobile homeowners, noncommercial dwelling fire, and boat, personal watercraft, snowmobile, and recreational vehicle insurance policies. Such policies must be individually underwritten for personal, family, or household use. No other type of insurance shall be included as personal insurance for purposes of the act.

Source: Laws 2003, LB 487, § 3; Laws 2015, LB231, § 1.

ARTICLE 81

NEBRASKA PROTECTION IN ANNUITY TRANSACTIONS ACT

Section
44-8101. Act, how cited.
44-8102. Purpose of act.
44-8103. Applicability of act.
44-8104. Act; exemptions.
44-8105. Terms, defined.
44-8106. Recommendation; purchase, exchange, or replacement of annuity; requirements; insurer; duties; insurance producer; prohibited acts; Director of Insurance; powers.
44-8107. Insurer; duties; Director of Insurance; powers; violations.
44-8108. Insurance producer; duties.
44-8109. Changes made to act; applicability.

44-8101 Act, how cited.

Sections 44-8101 to 44-8109 shall be known and may be cited as the Nebraska Protection in Annuity Transactions Act.

Source: Laws 2006, LB 875, § 13; Laws 2007, LB117, § 26; Laws 2012, LB887, § 21.

44-8102 Purpose of act.

The purpose of the Nebraska Protection in Annuity Transactions Act is to require insurers to establish a system to supervise recommendations and to set forth standards and procedures for recommendations made by insurance producers and insurers to consumers regarding annuity transactions so that consumers' insurance needs and financial objectives at the time of the transaction are appropriately addressed.

Source: Laws 2006, LB 875, § 14; Laws 2007, LB117, § 27; Laws 2012, LB887, § 22.

44-8103 Applicability of act.

The Nebraska Protection in Annuity Transactions Act applies to any recommendation to purchase, exchange, or replace an annuity made to a consumer by an insurance producer, or an insurer if an insurance producer is not involved, that results in the recommended purchase, exchange, or replacement.

Source: Laws 2006, LB 875, § 15; Laws 2007, LB117, § 28; Laws 2012, LB887, § 23.

44-8104 Act; exemptions.

Unless otherwise specifically included, the Nebraska Protection in Annuity Transactions Act does not apply to transactions involving:

(1) Direct response solicitations if there is no recommendation based on information collected from the consumer pursuant to the act; or

(2) Contracts used to fund:

(a) An employee pension or welfare benefit plan that is covered by the federal Employee Retirement Income Security Act of 1974;

(b) A plan described by section 401(a), 401(k), 403(b), 408(k), or 408(p) of the Internal Revenue Code if established or maintained by an employer;

(c) A government or church plan defined in section 414 of the Internal Revenue Code, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under section 457 of the Internal Revenue Code;

(d) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

(e) Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or

(f) Contracts entered into pursuant to the Burial Pre-Need Sale Act.

Source: Laws 2006, LB 875, § 16; Laws 2007, LB117, § 29; Laws 2012, LB887, § 24.

Cross References

Burial Pre-Need Sale Act, see section 12-1101.

44-8105 Terms, defined.

For purposes of the Nebraska Protection in Annuity Transactions Act:

(1) Annuity means an annuity that is an insurance product under state law and is individually solicited, whether the product is classified as an individual or group annuity;

(2) Continuing education provider means an individual or entity that is approved to offer continuing education courses pursuant to subdivision (1)(b) of section 44-3905;

(3) Insurer means a company required to be licensed under the laws of this state to provide insurance products, including annuities;

(4) Insurance producer means a person required to be licensed under the laws of this state to sell, solicit, or negotiate insurance, including annuities;

(5) Recommendation means advice provided by an insurance producer, or an insurer if an insurance producer is not involved, to a consumer that results in a purchase or exchange of an annuity in accordance with that advice;

(6) Replacement means a transaction in which a new policy or contract is to be purchased, and it is known or should be known to the proposing producer, or the proposing insurer if there is no producer, that by reason of the transaction, an existing policy or contract has been or is to be:

(a) Lapsed, forfeited, surrendered, or partially surrendered, assigned to the replacing insurer, or otherwise terminated;

(b) Converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other policy values;

(c) Amended so as to effect either a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid;

(d) Reissued with any reduction in cash value; or

(e) Used in a financed purchase; and

(7) Suitability information means information that is reasonably appropriate to determine the suitability of a recommendation, including the following:

(a) Age;

(b) Annual income;

(c) Financial situation and need, including the financial resources used for the funding of the annuity;

(d) Financial experience;

(e) Financial objectives;

(f) Intended use of the annuity;

(g) Financial time horizon;

(h) Existing assets, including investment and life insurance holdings;

(i) Liquidity needs;

(j) Liquid net worth;

(k) Risk tolerance; and

(l) Tax status.

Source: Laws 2006, LB 875, § 17; Laws 2007, LB117, § 30; Laws 2012, LB887, § 25.

44-8106 Recommendation; purchase, exchange, or replacement of annuity; requirements; insurer; duties; insurance producer; prohibited acts; Director of Insurance; powers.

(1) The insurance producer, or insurer if an insurance producer is not involved, shall have reasonable grounds to believe that the recommendation is suitable for the consumer based on the facts disclosed by the consumer before making a recommendation to a consumer under the Nebraska Protection in Annuity Transactions Act. The recommendation shall be based on the facts disclosed by the consumer relating to his or her investments, other insurance products, and the financial situation and needs of the consumer. This information shall include the consumer's suitability information, and, if there is a reasonable basis to believe the information, all of the following:

(a) That the consumer has been reasonably informed of various features of the annuity, such as the potential surrender period and surrender charge, potential tax penalty if the consumer sells, exchanges, surrenders, or annuitizes the annuity, mortality and expense fees, investment advisory fees, potential charges for and features of riders, limitations on interest returns, insurance and investment components, and market risk;

(b) That the consumer would benefit from certain features of the annuity, such as tax-deferred growth, annuitization, or death or living benefit;

(c) That the particular annuity as a whole, the underlying subaccounts to which funds are allocated at the time of purchase or exchange of the annuity, and riders and similar product enhancements, if any, are suitable, and in the case of an exchange or replacement, the transaction as a whole is suitable for the particular consumer based on his or her suitability information; and

(d) In the case of an exchange or replacement of an annuity, the exchange or replacement is suitable, including the consideration as to whether:

(i) The consumer will incur a surrender charge, be subject to the commencement of a new surrender period, lose existing benefits, such as death, living, or other contractual benefits, or be subject to increased fees, investment advisory fees, or charges for riders and similar product enhancements;

(ii) The consumer would benefit from product enhancements and improvements; and

(iii) The consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding thirty-six months.

(2) Before the execution of a purchase, exchange, or replacement of an annuity resulting from a recommendation, an insurance producer, or an insurer if an insurance producer is not involved, shall make reasonable efforts to obtain the consumer's suitability information.

(3) Except as expressly permitted under subsection (4) of this section, an insurer shall not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity is suitable based on the consumer's suitability information.

(4)(a) Except as provided under subdivision (4)(b) of this section, neither an insurance producer, nor an insurer, shall have any obligation to a consumer under subsection (1) or (3) of this section related to any annuity transaction if:

- (i) No recommendation is made;
- (ii) A recommendation was made and was later found to have been prepared based on materially inaccurate information provided by the consumer;
- (iii) A consumer refuses to provide relevant suitability information and the annuity transaction is not recommended; or
- (iv) A consumer decides to enter into an annuity transaction that is not based on a recommendation of the insurer or the insurance producer.

(b) An insurer's issuance of an annuity subject to subdivision (4)(a) of this section shall be reasonable under all the circumstances actually known to the insurer at the time the annuity is issued.

(5) An insurance producer, or if no insurance producer is involved, the responsible insurer representative, shall at the time of sale:

- (a) Make a record of any recommendation subject to subsection (1) of this section;
- (b) Obtain a customer-signed statement documenting a customer's refusal to provide suitability information, if any; and
- (c) Obtain a customer-signed statement acknowledging that an annuity transaction is not recommended if a customer decides to enter into an annuity transaction that is not based on the insurance producer's or insurer's recommendation.

(6)(a) An insurer shall establish a supervision system that is reasonably designed to achieve the insurer's and its insurance producers' compliance with this section, including, but not limited to, the following requirements:

- (i) The insurer shall maintain reasonable procedures to inform its insurance producers of the requirements of this section and shall incorporate such requirements into relevant insurance producer training manuals;
- (ii) The insurer shall establish standards for insurance producer product training and shall maintain reasonable procedures to require its insurance producers to comply with the requirements of section 44-8108;
- (iii) The insurer shall provide product-specific training and training materials which explain all material features of its annuity products to its insurance producers;
- (iv) The insurer shall maintain procedures for review of each recommendation prior to issuance of an annuity that are designed to ensure that there is a reasonable basis to determine that a recommendation is suitable. Such review procedures may apply a screening system for the purpose of identifying selected transactions for additional review and may be accomplished electronically or through other means including, but not limited to, physical review. Such an electronic or other system may be designed to require additional review only of those transactions identified for additional review by the selection criteria;
- (v) The insurer shall maintain reasonable procedures to detect recommendations that are not suitable, including, but not limited to, confirmation of consumer suitability information, systematic customer surveys, interviews, confirmation letters, and programs of internal monitoring. Nothing in this subdivision shall prevent an insurer from complying with this subdivision by applying

sampling procedures or by confirming suitability information after issuance or delivery of the annuity; and

(vi) The insurer shall annually provide a report to senior management, including the senior manager responsible for audit functions, which details a review, with appropriate testing, reasonably designed to determine the effectiveness of the supervision system, the exceptions found, and corrective action taken or recommended, if any.

(b)(i) Nothing in this subsection restricts an insurer from contracting for performance of a function, including maintenance of procedures, required under subdivision (a) of this subsection. An insurer is responsible for taking appropriate corrective action and may be subject to sanctions and penalties pursuant to section 44-8107 regardless of whether the insurer contracts for performance of a function and regardless of the insurer's compliance with subdivision (b)(ii) of this subsection.

(ii) An insurer's supervision system under subdivision (a) of this subsection shall include supervision of contractual performance under this subsection. This includes, but is not limited to, the following:

(A) Monitoring and, as appropriate, conducting audits to assure that the contracted function is properly performed; and

(B) Annually obtaining a certification from a senior manager who has responsibility for the contracted function that the manager has a reasonable basis to represent, and does represent, that the function is properly performed.

(c) An insurer is not required to supervise an insurance producer's recommendations to consumers of products other than the annuities offered by the insurer.

(7) An insurance producer shall not dissuade, or attempt to dissuade, a consumer from:

(a) Truthfully responding to an insurer's request for confirmation of suitability information;

(b) Filing a complaint; or

(c) Cooperating with the investigation of a complaint.

(8)(a) Compliance with the Financial Industry Regulatory Authority Rules pertaining to suitability and supervision of annuity transactions shall satisfy the requirements under this section if the insurer complies with the requirements of subdivision (6)(b) of this section. This subsection applies to Financial Industry Regulatory Authority broker-dealer sales of variable annuities and fixed annuities if the suitability and supervision is similar to those applied to variable annuity sales. However, nothing in this subsection shall limit the ability of the Director of Insurance to investigate potential violations of and enforce the Nebraska Protection in Annuity Transactions Act.

(b) An insurer seeking to comply with the Financial Industry Regulatory Authority broker-dealer sales of variable annuities and fixed annuities to satisfy the requirements of this section shall:

(i) Monitor the Financial Industry Regulatory Authority member broker-dealer using information collected in the normal course of an insurer's business; and

(ii) Provide to the Financial Industry Regulatory Authority member broker-dealer information and reports that are reasonably appropriate to assist the

Financial Industry Regulatory Authority member broker-dealer to maintain its supervision system.

Source: Laws 2006, LB 875, § 18; Laws 2007, LB117, § 31; Laws 2012, LB887, § 26.

44-8107 Insurer; duties; Director of Insurance; powers; violations.

(1) An insurer is responsible for compliance with the Nebraska Protection in Annuity Transactions Act. If a violation occurs, either because of the action or inaction of the insurer or its insurance producer, the Director of Insurance may order:

(a) An insurer to take reasonably appropriate corrective action for any consumer harmed by an insurance producer's or insurer's violation of the act; and

(b) An insurance producer to take reasonably appropriate corrective action for any consumer harmed by the insurance producer's violation of the act.

(2) A violation of the act shall be an unfair trade practice in the business of insurance under the Unfair Insurance Trade Practices Act.

(3) The director may reduce or eliminate any applicable penalty under section 44-1529 for a violation of subsection (1) or (2) of section 44-8106 or subdivision (4)(b) of such section if corrective action for the consumer was taken promptly after a violation was discovered or the violation was not part of a pattern or practice.

Source: Laws 2006, LB 875, § 19; Laws 2007, LB117, § 32; Laws 2012, LB887, § 27.

Cross References

Unfair Insurance Trade Practices Act, see section 44-1521.

44-8108 Insurance producer; duties.

(1) An insurance producer shall not solicit the sale of an annuity product unless the insurance producer has adequate knowledge of the product to recommend the annuity and the insurance producer is in compliance with the insurer's standards for product training. An insurance producer may rely on insurer-provided product-specific training standards and materials to comply with this subsection.

(2)(a)(i) An insurance producer who engages in the sale of annuity products shall complete a one-time four-credit training course approved by the Department of Insurance and provided by a department-approved education provider.

(ii) Insurance producers who hold a life insurance line of authority on July 19, 2012, and who desire to sell annuities shall complete the requirements of this subsection within six months after July 19, 2012. Individuals who obtain a life insurance line of authority on or after July 19, 2012, shall not engage in the sale of annuities until the annuity training course required under this subsection has been completed.

(b) The minimum length of the training required under this subsection shall be sufficient to qualify for at least four continuing education credits, but may be longer.

(c) The training required under this subsection shall include information on the following topics:

- (i) The types of annuities and various classifications of annuities;
 - (ii) Identification of the parties to an annuity;
 - (iii) How fixed, variable, and indexed annuity contract provisions affect consumers;
 - (iv) The application of income taxation of qualified and nonqualified annuities;
 - (v) The primary uses of annuities; and
 - (vi) Appropriate sales practices and replacement and disclosure requirements.
- (d) Providers of courses intended to comply with this subsection shall cover all topics listed in the prescribed outline and shall not present any marketing information or provide training on sales techniques or specific information about a particular insurer's products. Additional topics may be offered in conjunction with and in addition to the required outline.
- (e) A provider of an annuity training course intended to comply with this subsection shall register as a continuing education provider in this state and comply with the requirements applicable to insurance producer continuing education courses as set forth in section 44-3905.
- (f) Annuity training courses may be conducted and completed by classroom or self-study methods in accordance with sections 44-3901 to 44-3908.
- (g) Providers of annuity training shall comply with the reporting requirements and shall issue certificates of completion in accordance with sections 44-3901 to 44-3908.
- (h) The satisfaction of training requirements of another state that are substantially similar to the provisions of this subsection shall be deemed to satisfy the training requirements of this subsection.
- (i) An insurer shall verify that an insurance producer has completed the annuity training course required under this subsection before allowing the producer to sell an annuity product for that insurer. An insurer may satisfy its responsibility under this subsection by obtaining certificates of completion of the training course or obtaining reports provided by National Association of Insurance Commissioners-sponsored data base systems or vendors or from a reasonably reliable commercial data base vendor that has a reporting arrangement with approved insurance education providers.

Source: Laws 2012, LB887, § 28.

44-8109 Changes made to act; applicability.

The changes made to the Nebraska Protection in Annuity Transactions Act by Laws 2012, LB887, shall apply to solicitations occurring on and after January 1, 2013.

Source: Laws 2012, LB887, § 29.

ARTICLE 82
CAPTIVE INSURERS ACT

Section

44-8216. Creation of special purpose financial captive insurers; applicability of section; form of organization; powers; duties; powers of director; limitation on dividends; confidentiality.

44-8216 Creation of special purpose financial captive insurers; applicability of section; form of organization; powers; duties; powers of director; limitation on dividends; confidentiality.

(1) This section provides for the creation of special purpose financial captive insurers to diversify and broaden insurers' access to sources of capital.

(2) For purposes of this section:

(a) Counterparty means a special purpose financial captive insurer's parent or affiliated entity, which is an insurer domiciled in Nebraska that cedes life insurance risks to the special purpose financial captive insurer pursuant to the special purpose financial captive insurer contract;

(b) Guaranty of a parent means an agreement to pay specified obligations of the special purpose financial captive insurer by a parent of the special purpose financial captive insurer approved by the director that is not a counterparty and the guarantor has sufficient equity, less the equity of all counterparties that are subsidiaries of the guarantor, to satisfy the agreement during the life of the guaranty;

(c) Insolvency or insolvent means that the special purpose financial captive insurer is unable to pay its obligations when they are due, unless those obligations are the subject of a bona fide dispute;

(d) Insurance securitization means a package of related risk transfer instruments, capital market offerings, and facilitating administrative agreements, under which a special purpose financial captive insurer obtains proceeds either directly or indirectly through the issuance of securities, and may hold the proceeds in trust to secure the obligations of the special purpose financial captive insurer under one or more special purpose financial captive insurer contracts, in that the investment risk to the holders of the securities is contingent upon the obligations of the special purpose financial captive insurer to the counterparty under the special purpose financial captive insurer contract in accordance with the transaction terms and pursuant to the Captive Insurers Act;

(e) Organizational document means the special purpose financial captive insurer's articles of incorporation, articles of organization, bylaws, operating agreement, or other foundational documents that establish the special purpose financial captive insurer as a legal entity or prescribes its existence;

(f) Permitted investments means those investments that meet the qualifications set forth in section 44-8211;

(g) Securities means debt obligations, equity investments, surplus certificates, surplus notes, funding agreements, derivatives, and other legal forms of financial instruments;

(h) Special purpose financial captive insurer means a captive insurer which has received a certificate of authority from the director for the limited purposes provided for in this section;

(i) Special purpose financial captive insurer contract means a contract between the special purpose financial captive insurer and the counterparty pursuant to which the special purpose financial captive insurer agrees to provide insurance or reinsurance protection to the counterparty for risks associated with the counterparty's insurance or reinsurance business; and

(j) Special purpose financial captive insurer securities means the securities issued by a special purpose financial captive insurer.

(3)(a) The provisions of the Captive Insurers Act, other than those in subdivision (3)(b) of this section, apply to a special purpose financial captive insurer. If a conflict occurs between a provision of the act not in this section and a provision of this section, the latter controls.

(b) The requirements of this section shall not apply to specific special purpose financial captive insurers if the director finds a specific requirement is inappropriate due to the nature of the risks to be insured by the special purpose financial captive insurer and if the special purpose financial captive insurer meets criteria established by rules and regulations adopted and promulgated by the director.

(c) In determining whether to issue a certificate of authority or to approve an amended plan of operation for a special purpose financial captive insurer required under section 44-8205, the director may consider any additional factors the director may deem relevant, including the specific type of life insurance risks insured by the special purpose financial captive insurer, the financial ability of a parent that issues a guaranty pursuant to this section to satisfy such guaranty, and any actuarial opinions or other statements or documents required by the director to evaluate such application.

(d) At the time a special purpose financial captive insurer files an application for a certificate of authority or submits an amended plan of operation in accordance with section 44-8205, and on each date the special purpose financial captive insurer is required to file an annual financial statement in this state, a senior actuarial officer of each ceding insurer shall file with the director a certification that the ceding insurer's transactions with the special purpose financial captive insurer are not being used to gain an unfair advantage in the pricing of the ceding insurer's products. A ceding insurer shall not be deemed to have gained an unfair advantage if the pricing of the policies and contracts reinsured by the special purpose financial captive insurer reflects, at the time those policies and contracts were issued, a reasonable long-term estimate of the cost to the ceding insurer of an alternative third-party transaction and utilizes current pricing assumptions.

(4) A special purpose financial captive insurer may be established as a stock corporation or other form of organization approved by the director.

(5)(a) A special purpose financial captive insurer may not issue a contract for assumption of risk or indemnification of loss other than a special purpose financial captive insurer contract. However, the special purpose financial captive insurer may cede risks assumed through a special purpose financial captive insurer contract to third-party reinsurers through the purchase of reinsurance or retrocession protection if approved by the director.

(b) A special purpose financial captive insurer may enter into contracts and conduct other commercial activities related or incidental to and necessary to fulfill the purposes of the special purpose financial captive insurer contract, insurance securitization, and this section. Those activities may include, but are not limited to: Entering into special purpose financial captive insurer contracts; entering into agreements in connection with obtaining guaranties of its parent; issuing securities of the special purpose financial captive insurer in accordance with applicable securities law; complying with the terms of these contracts or securities; entering into trust, swap, tax, administration, reimbursement, or

fiscal agent transactions; or complying with trust indenture, reinsurance, retrocession, and other agreements necessary or incidental to effectuate a special purpose financial captive insurer contract or an insurance securitization in compliance with this section and in the plan of operation approved by the director.

(6)(a) A special purpose financial captive insurer may issue securities, subject to and in accordance with applicable law, its approved plan of operation, and its organization documents.

(b) A special purpose financial captive insurer, in connection with the issuance of securities, may enter into and perform all of its obligations under any required contracts to facilitate the issuance of these securities.

(c) The obligation to repay principal or interest, or both, on the securities issued by the special purpose financial captive insurer shall be designed to reflect the risk associated with the obligations of the special purpose financial captive insurer to the counterparty under the special purpose financial captive insurer contract.

(7) A special purpose financial captive insurer may enter into swap agreements, or other forms of asset management agreements, including guaranteed investment contracts, or other transactions that have the objective of leveling timing differences in funding of up-front or ongoing transaction expenses or managing asset, credit, prepayment, or interest rate risk of the investments in the trust to ensure that the investments are sufficient to assure payment or repayment of the securities, and related interest or principal payments, issued pursuant to a special purpose financial captive insurer insurance securitization transaction or the obligations of the special purpose financial captive insurer under the special purpose financial captive insurer contract or for any other purpose approved by the director. All asset management agreements entered into by the special purpose financial captive insurer must be approved by the director.

(8)(a) A special purpose financial captive insurer, at any given time, may enter into and effectuate a special purpose financial captive insurer contract with a counterparty if the special purpose financial captive insurer contract obligates the special purpose financial captive insurer to indemnify the counterparty for losses and contingent obligations of the special purpose financial captive insurer under the special purpose financial captive insurer contract are securitized through a special purpose financial captive insurer insurance securitization, which security for such obligations may be funded and secured with assets held in trust for the benefit of the counterparty pursuant to agreements contemplated by this section and invested in a manner that meet the criteria as provided in section 44-8211.

(b) A special purpose financial captive insurer may enter into agreements with affiliated companies and third parties and conduct business necessary to fulfill its obligations and administrative duties incidental to the insurance securitization and the special purpose financial captive insurer contract. The agreements may include management and administrative services agreements and other allocation and cost-sharing agreements, or swap and asset management agreements, or both, or agreements for other contemplated types of transactions provided in this section.

(c) A special purpose financial captive insurer contract must contain provisions that:

(i) Require the special purpose financial captive insurer to either (A) enter into a trust agreement specifying what recoverables or reserves, or both, the agreement is to cover and to establish a trust account for the benefit of the counterparty and the security holders or (B) establish such other method of security acceptable to the director, including letters of credit or guaranties of a parent as described in subsection (9) of this section;

(ii) Stipulate that assets deposited in the trust account must be valued in accordance with their current fair market value and must consist only of permitted investments;

(iii) If a trust arrangement is used, require the special purpose financial captive insurer, before depositing assets with the trustee, to execute assignments, to execute endorsements in blank, or to take such actions as are necessary to transfer legal title to the trustee of all shares, obligations, or other assets requiring assignments, in order that the counterparty, or the trustee upon the direction of the counterparty, may negotiate whenever necessary the assets without consent or signature from the special purpose financial captive insurer or another entity; and

(iv) If a trust arrangement is used, stipulate that the special purpose financial captive insurer and the counterparty agree that the assets in the trust account, established pursuant to the provisions of the special purpose financial captive insurer contract, may be withdrawn by the counterparty, or the trustee on its behalf, at any time, only in accordance with the terms of the special purpose financial captive insurer contract, and must be utilized and applied by the counterparty or any successor of the counterparty by operation of law, including, subject to the provisions of this section, but without further limitation, any liquidator, rehabilitator, or receiver of the counterparty, without diminution because of insolvency on the part of the counterparty or the special purpose financial captive insurer, only for the purposes set forth in the credit for reinsurance laws and rules and regulations of this state.

(d) The special purpose financial captive insurer contract may contain provisions that give the special purpose financial captive insurer the right to seek approval from the counterparty to withdraw from the trust all or part of the assets, or income from them, contained in the trust and to transfer the assets to the special purpose financial captive insurer if such provisions comply with the credit for reinsurance laws and rules and regulations of this state.

(9) A special purpose financial captive insurer contract meeting the provisions of this section must be granted credit for reinsurance treatment or otherwise qualify as an asset or a reduction from liability for reinsurance ceded by a domestic insurer to a special purpose financial captive insurer as an assuming insurer for the benefit of the counterparty if and only to the extent:

(a)(i) Of the value of:

(A) The assets held in trust;

(B) Clean, or irrevocable, unconditional letters of credit, issued or confirmed by a qualified United States financial institution as defined in section 44-416.08, or as approved by the director; or

(C) Guaranties of the parent; and

(ii) For the benefit of the counterparty under the special purpose financial captive insurer contract; and

(b) Assets of the special purpose financial captive insurer are held or invested in one or more of the forms allowed in section 44-8211.

(10)(a)(i) Notwithstanding the provisions of the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act, the director may apply to the district court of Lancaster County for an order authorizing the director to rehabilitate or liquidate a special purpose financial captive insurer domiciled in this state on one or more of the following grounds:

(A) There has been embezzlement, wrongful sequestration, dissipation, or diversion of the assets of the special purpose financial captive insurer intended to be used to pay amounts owed to the counterparty or the holders of special purpose financial captive insurer securities; or

(B) The special purpose financial captive insurer is insolvent and the holders of a majority in outstanding principal amount of each class of special purpose financial captive insurer securities request or consent to conservation, rehabilitation, or liquidation pursuant to the provisions of this section.

(ii) The court may not grant relief provided by subdivision (10)(a)(i) of this section unless, after notice and a hearing, the director establishes that relief must be granted.

(b) Notwithstanding any other applicable law, rule, or regulation, upon any order of rehabilitation or liquidation of a special purpose financial captive insurer, the receiver shall manage the assets and liabilities of the special purpose financial captive insurer pursuant to the provisions of subsection (11) of this section.

(c) With respect to amounts recoverable under a special purpose financial captive insurer contract, the amount recoverable by the receiver must not be reduced or diminished as a result of the entry of an order of conservation, rehabilitation, or liquidation with respect to the counterparty, notwithstanding another provision in the contracts or other documentation governing the special purpose financial captive insurer insurance securitization.

(d) An application or petition, or a temporary restraining order or injunction issued pursuant to the provisions of the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act, with respect to a counterparty does not prohibit the transaction of a business by a special purpose financial captive insurer, including any payment by a special purpose financial captive insurer made pursuant to a special purpose financial captive insurer security, or any action or proceeding against a special purpose financial captive insurer or its assets.

(e) Notwithstanding the provisions of any applicable law or rule or regulation, the commencement of a summary proceeding or other interim proceeding commenced before a formal delinquency proceeding with respect to a special purpose financial captive insurer, and any order issued by the court, does not prohibit the payment by a special purpose financial captive insurer made pursuant to a special purpose financial captive insurer security or special purpose financial captive insurer contract or the special purpose financial captive insurer from taking any action required to make the payment.

(f) Notwithstanding the provisions of any other applicable law, rule, or regulation:

(i) A receiver of a counterparty may not void a nonfraudulent transfer by a counterparty to a special purpose financial captive insurer of money or other property made pursuant to a special purpose financial captive insurer contract; and

(ii) A receiver of a special purpose financial captive insurer may not void a nonfraudulent transfer by the special purpose financial captive insurer of money or other property made to a counterparty pursuant to a special purpose financial captive insurer contract or made to or for the benefit of any holder of a special purpose financial captive insurer security on account of the special purpose financial captive insurer security.

(g) With the exception of the fulfillment of the obligations under a special purpose financial captive insurer contract, and notwithstanding the provisions of any other applicable law or rule or regulation, the assets of a special purpose financial captive insurer, including assets held in trust, must not be consolidated with or included in the estate of a counterparty in any delinquency proceeding against the counterparty pursuant to the provisions of this section for any purpose including, without limitation, distribution to creditors of the counterparty.

(11) A special purpose financial captive insurer may not declare or pay dividends in any form to its owners other than in accordance with the insurance securitization transaction agreements, and in no instance shall the dividends decrease the capital of the special purpose financial captive insurer below two hundred fifty thousand dollars, and, after giving effect to the dividends, the assets of the special purpose financial captive insurer, including any assets held in trust pursuant to the terms of the insurance securitization, must be sufficient to satisfy the director that it can meet its obligations. Approval by the director of an ongoing plan for the payment of dividends, interest on securities, or other distribution by a special purpose financial captive insurer must be conditioned upon the retention, at the time of each payment, of capital or surplus equal to or in excess of amounts specified by, or determined in accordance with formulas approved for the special purpose financial captive insurer by, the director.

(12) Information submitted pursuant to the provisions of this section shall be given confidential treatment, shall not be subject to subpoena, and shall not be made public by the director or any other person, except to other state, federal, foreign, and international regulatory and law enforcement agencies if the recipient agrees in writing to maintain the confidentiality of the information, without the prior written consent of the special purpose financial captive insurer unless the director, after giving the special purpose financial captive insurer notice and opportunity to be heard, determines that the best interest of policyholders, shareholders, or the public will be served by the publication thereof, in which event he or she may publish all or any part thereof in such manner as he or she may deem appropriate.

Source: Laws 2007, LB117, § 50; Laws 2012, LB887, § 30; Laws 2016, LB758, § 2.

Effective date July 21, 2016.

Cross References

Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act, see section 44-4862.

ARTICLE 84

MANDATE OPT-OUT AND INSURANCE
COVERAGE CLARIFICATION ACT

Section

- 44-8401. Act, how cited.
44-8402. Legislative findings.
44-8403. Qualified health insurance plan offered through health insurance exchange; abortion coverage; restriction; health insurance plan, contract or policy; optional rider.
44-8404. Act; not construed as right to abortion.

44-8401 Act, how cited.

Sections 44-8401 to 44-8404 shall be known and may be cited as the Mandate Opt-Out and Insurance Coverage Clarification Act.

Source: Laws 2011, LB22, § 1.

44-8402 Legislative findings.

(1) The Legislature finds that:

(a) In the federal Patient Protection and Affordable Care Act, Public Law 111-148, federal tax dollars are routed via affordability credits to qualified health insurance plans offered through a health insurance exchange created under the act, including plans that provide coverage for abortion;

(b) Federal funding for health insurance plans that cover abortions is prohibited by the federal statutory restriction commonly known as the Hyde Amendment and the Federal Employees Health Benefits Program established under Chapter 89 of Title 5 of the United States Code, as amended;

(c) Section 1303 of the federal Patient Protection and Affordable Care Act explicitly permits each state to pass laws prohibiting qualified health insurance plans offered through a health insurance exchange created under the act in such state from offering abortion coverage. Such section allows a state to prohibit the use of public funds to subsidize health insurance plans that cover abortions within the state;

(d) The laws of the State of Nebraska provide that group health insurance plans or health maintenance agreements paid for with public funds shall not cover abortion unless necessary to prevent the death of the woman;

(e) *Rust v. Sullivan*, 500 U.S. 173 (1991), states that it is permissible for a state to engage in unequal subsidization of abortion and other medical services to encourage alternative activity deemed in the public interest; and

(f) A majority of the citizens of the State of Nebraska, like other Americans, oppose the use of public funds, both federal and state, to pay for abortions.

(2) Based on the findings in subsection (1) of this section, it is the purpose of the Mandate Opt-Out and Insurance Coverage Clarification Act to affirmatively opt out of allowing qualified health insurance plans that cover abortions to participate in health insurance exchanges within the State of Nebraska. Further, it is also the purpose of the act to limit the coverage of abortion in all health insurance plans, contracts, or policies delivered or issued for delivery in the State of Nebraska.

Source: Laws 2011, LB22, § 2.

44-8403 Qualified health insurance plan offered through health insurance exchange; abortion coverage; restriction; health insurance plan, contract or policy; optional rider.

(1) No abortion coverage shall be provided by a qualified health insurance plan offered through a health insurance exchange created pursuant to the federal Patient Protection and Affordable Care Act, Public Law 111-148, within the State of Nebraska. This subsection shall not apply to coverage for an abortion which is verified in writing by the attending physician as necessary to prevent the death of the woman or to coverage for medical complications arising from an abortion.

(2) No health insurance plan, contract, or policy delivered or issued for delivery in the State of Nebraska shall provide coverage for an elective abortion except through an optional rider to the policy for which an additional premium is paid solely by the insured. This subsection applies to any health insurance plan, contract, or policy delivered or issued for delivery in the State of Nebraska by any health insurer, any nonprofit hospital, medical, surgical, dental, or health service corporation, any group health insurer, and any health maintenance organization subject to the laws of insurance in this state and any employer providing self-funded health insurance for his or her employees. This subsection also applies to any plan provision of hospital, medical, surgical, or funeral benefits or of coverage against accidental death or injury if such benefits or coverage are incidental to or a part of any other insurance plan delivered or issued for delivery in the State of Nebraska.

(3) The issuer of a health insurance plan, contract, or policy in the State of Nebraska shall not provide any incentive or discount to an insured if the insured elects abortion coverage.

(4) For purposes of this section, elective abortion means an abortion (a) other than a spontaneous abortion or (b) that is performed for any reason other than to prevent the death of the female upon whom the abortion is performed.

Source: Laws 2011, LB22, § 3.

44-8404 Act; not construed as right to abortion.

Nothing in the Mandate Opt-Out and Insurance Coverage Clarification Act shall be construed as creating a right to an abortion.

Source: Laws 2011, LB22, § 4.

ARTICLE 85

PORTABLE ELECTRONICS INSURANCE ACT

Section

- 44-8501. Act, how cited.
- 44-8502. Terms, defined.
- 44-8503. Vendor; limited lines insurance license; issuance; application; contents.
- 44-8504. Limited lines insurance license; application; contents; period valid; fees.
- 44-8505. Brochure or written material; available to customer; contents; certificate of insurance; powers of insurer.
- 44-8506. Exemption from licensure as insurance producer; conditions; vendor; duties; treatment of funds.
- 44-8507. Violations; director; powers; administrative fine.
- 44-8508. Insurer; rights; duties; notice; policy; termination; vendor; duties.
- 44-8509. Records; maintenance.

44-8501 Act, how cited.

Sections 44-8501 to 44-8509 shall be known and may be cited as the Portable Electronics Insurance Act.

Source: Laws 2011, LB535, § 1.

44-8502 Terms, defined.

For purposes of the Portable Electronics Insurance Act:

- (1) Customer means a person who purchases portable electronics;
- (2) Covered customer means a customer who elects coverage pursuant to a portable electronics insurance policy issued to a vendor of portable electronics;
- (3) Director means the Director of Insurance;
- (4) Location means any physical location in this state or any web site, call center, or other site or similar location to which Nebraska customers may be directed;
- (5) Portable electronics means a device that is personal, self-contained, easily carried by an individual, and battery-operated and includes devices used for electronic communication, viewing, listening, recording, computing, or global positioning. Portable electronics does not include telecommunications switching equipment, transmission wires, cellular site transceiver equipment, or other equipment or system used by a telecommunications company to provide telecommunications service to consumers;
- (6)(a) Portable electronics insurance means insurance that provides coverage for the repair or replacement of portable electronics and may provide coverage for portable electronics that are lost, stolen, damaged, or inoperable due to mechanical failure or malfunction or suffer other similar causes of loss; and
 - (b) Portable electronics insurance does not include:
 - (i) A service contract under the Motor Vehicle Service Contract Reimbursement Insurance Act;
 - (ii) A service contract or extended warranty providing coverage as described in subdivision (2) of section 44-102.01;
 - (iii) A policy of insurance providing coverage for a seller's or manufacturer's obligations under a warranty; or
 - (iv) A homeowner's, renter's, private passenger automobile, commercial multiperil, or other similar policy;
- (7) Portable electronics transaction means the sale or lease of portable electronics by a vendor to a customer or the sale of a service related to the use of portable electronics by a vendor to a customer;
- (8) Supervising entity means a business entity that is a licensed insurance producer or insurer; and
- (9) Vendor means a person in the business of engaging in portable electronics transactions directly or indirectly.

Source: Laws 2011, LB535, § 2.

Cross References

Motor Vehicle Service Contract Reimbursement Insurance Act, see section 44-3520.

44-8503 Vendor; limited lines insurance license; issuance; application; contents.

(1) A vendor shall hold a limited lines insurance license issued under the Portable Electronics Insurance Act to sell or offer coverage under a policy of portable electronics insurance.

(2) The director may issue a limited lines insurance license under the act. Such license shall authorize an employee or authorized representative of a vendor to sell or offer coverage under a policy of portable electronics insurance to a customer at each location at which the vendor engages in a portable electronics transaction.

(3) The vendor shall submit an application for a limited lines insurance license pursuant to section 44-8504 to the director, and a list of all locations in this state at which the vendor intends to offer such insurance coverage shall accompany the application. A vendor shall maintain such list and make it available for the director upon request.

(4) Notwithstanding any other provision of law, a limited lines insurance license issued under the act shall authorize the vendor and its employees or authorized representatives to engage in the activities permitted by the act.

Source: Laws 2011, LB535, § 3.

44-8504 Limited lines insurance license; application; contents; period valid; fees.

(1) An application for a limited lines insurance license shall be made to and filed with the director on forms prescribed and furnished by the director.

(2) An application for an initial or a renewal license shall:

(a) Provide the name, residence address, and other information required by the director for an employee or authorized representative of the vendor that is designated by the vendor as the person responsible for the vendor's compliance with the Portable Electronics Insurance Act. If the vendor derives more than fifty percent of its revenue from the sale of portable electronics insurance, the information required by this subdivision shall be provided for all persons of record having beneficial ownership of ten percent or more of any class of securities of the vendor registered under federal securities law; and

(b) Provide the location of the vendor's home office.

(3) Any application for licensure under the act for an existing vendor shall be made within ninety days after the application is made available by the director.

(4) An initial license issued pursuant to the act shall be valid for one year and expires on April 30 of each year.

(5) Any vendor licensed under the act shall pay an initial license fee to the director in an amount prescribed by the director but not to exceed one hundred dollars and shall pay a renewal fee in an amount prescribed by the director but not to exceed one hundred dollars.

Source: Laws 2011, LB535, § 4.

44-8505 Brochure or written material; available to customer; contents; certificate of insurance; powers of insurer.

(1) At each location at which portable electronics insurance is offered to a customer, a brochure or other written material shall be available to the customer which:

(a) Discloses the fact that portable electronics insurance may provide a duplication of coverage already provided by a customer's homeowner's insurance policy, renter's insurance policy, or other similar insurance coverage;

(b) States that the enrollment by the customer in a portable electronics insurance coverage program is not required in order to purchase or lease portable electronics or services;

(c) Summarizes the material terms of the portable electronics insurance, including:

(i) The identity of the insurer;

(ii) The identity of the supervising entity;

(iii) The amount of any applicable deductible and how it is to be paid;

(iv) The benefits of the coverage; and

(v) The key terms and conditions of the coverage, including whether portable electronics may be repaired or replaced with a similar reconditioned make or model or with nonoriginal manufacturer parts or equipment;

(d) Summarizes the process for filing a claim, including a description of how to return the portable electronics and the maximum fee applicable if the customer fails to comply with any equipment return requirements; and

(e) States that the customer may cancel enrollment for portable electronics insurance coverage at any time and receive any applicable unearned premium refund on a pro rata basis.

(2) Portable electronics insurance may be offered on a month-to-month or other periodic basis as a group or master commercial inland marine policy issued to a vendor for its covered customers. A covered customer who elects to enroll for coverage shall receive a certificate of insurance and an explanation of coverage or instructions on how to obtain such materials upon request.

(3) Eligibility and underwriting standards for customers who elect to enroll in portable electronics insurance coverage shall be established by the insurer for each portable electronics insurance program.

Source: Laws 2011, LB535, § 5.

44-8506 Exemption from licensure as insurance producer; conditions; vendor; duties; treatment of funds.

(1) An employee or authorized representative of a vendor may sell or offer for sale portable electronics insurance to customers and shall not be subject to licensure as an insurance producer if:

(a) The vendor obtains a limited lines insurance license pursuant to section 44-8503 that authorizes its employees or authorized representatives to sell or offer for sale portable electronics insurance under this section;

(b) The insurer issuing the portable electronics insurance directly supervises or appoints a supervising entity to supervise the administration of the insurance program, including development of a training program for employees and authorized representatives of a vendor. The training required by this subdivision shall comply with the following:

(i) The training shall be delivered to employees and authorized representatives of a vendor who are directly involved in the activity of selling or offering for sale portable electronics insurance;

(ii) The training may be provided in electronic form. If the training is provided in electronic form, the supervising entity shall implement a supplemental education program that is conducted and overseen by licensed employees of the supervising entity; and

(iii) Each employee and authorized representative shall receive basic instruction on the portable electronics insurance offered to customers and the disclosures required by section 44-8505; and

(c) The vendor does not advertise, represent, or otherwise hold itself or any of its employees or authorized representatives out as authorized insurers or licensed insurance producers.

(2) The charges for portable electronics insurance coverage may be billed and collected by the vendor. Any charge to the customer for coverage that is not included in the cost associated with the purchase or lease of portable electronics shall be separately itemized on the covered customer's bill. If the portable electronics insurance coverage is included in the purchase or lease of portable electronics or related services, the vendor shall clearly and conspicuously disclose to the customer that portable electronics insurance coverage is included with the portable electronics or related services. No vendor shall require the purchase of any kind of insurance specified in this section as a condition of the purchase or lease of portable electronics or services. If such insurance is purchased, the portable electronics insurance coverage offered by the limited lines insurance licensee to a customer is primary over any other insurance coverage applicable to the portable electronics. A vendor who bills and collects such charges shall not be required to maintain such funds in a segregated account if the vendor is authorized by the insurer to hold such funds in an alternative manner and remits such amounts to the supervising entity within sixty days after receipt. All funds received by a vendor from a covered customer for the sale of portable electronics insurance shall be considered funds held in trust by the vendor in a fiduciary capacity for the benefit of the insurer. A vendor may receive compensation for billing and collection services.

Source: Laws 2011, LB535, § 6.

44-8507 Violations; director; powers; administrative fine.

If a vendor violates any provision of the Portable Electronics Insurance Act, the director may, after notice and a hearing:

(1) Revoke or suspend a limited lines insurance license issued under the act;

(2) Impose such other penalties, including suspension of the transaction of insurance at specific vendor locations where violations have occurred, as the director deems necessary or convenient to carry out the purposes of the act; and

(3) Impose an administrative fine of not more than one thousand dollars per violation or five thousand dollars in the aggregate.

Source: Laws 2011, LB535, § 7.

44-8508 Insurer; rights; duties; notice; policy; termination; vendor; duties.

Notwithstanding any other provision of law:

(1) An insurer may terminate or otherwise change the terms and conditions of a policy of portable electronics insurance only upon providing the vendor and enrolled customers with at least sixty days' notice, except that:

(a) An insurer may terminate an enrolled customer's insurance policy upon fifteen days' notice for:

(i) Discovery of fraud or material misrepresentation in obtaining coverage or in the presentation of a claim under such policy; or

(ii) Nonpayment of premium; or

(b) An insurer may immediately terminate an enrolled customer's insurance policy:

(i) If the enrolled customer ceases to have active service with the vendor of portable electronics; or

(ii) If an enrolled customer exhausts the aggregate limit of liability, if any, under the portable electronics insurance policy and the insurer sends notice of termination to the customer within thirty days after exhaustion of the limit. If such notice is not sent within the thirty-day period, the customer shall continue to be enrolled in such insurance policy notwithstanding the aggregate limit of liability until the insurer sends notice of termination to the customer;

(2) If the insurer changes the terms and conditions, the insurer shall provide the vendor with a revised policy or endorsement and each enrolled customer with a revised certificate, endorsement, updated brochure, or other evidence indicating a change in the terms and conditions has occurred and a summary of the material changes;

(3) If a portable electronics insurance policy is terminated by a vendor, the vendor shall mail or deliver written notice to each enrolled customer at least thirty days prior to the termination advising the customer of such termination and of the effective date of termination; and

(4) If notice is required under this section, it shall be:

(a) In writing and may be mailed or delivered to a vendor at the vendor's mailing address and to an enrolled customer at such customer's last-known mailing address on file with the insurer. The insurer or vendor, as applicable, shall maintain proof of mailing in a form authorized or accepted by the United States Postal Service or a commercial mail delivery service; or

(b) In electronic form. If notice is delivered in electronic form, the insurer or vendor, as applicable, shall maintain proof that the notice was sent.

Source: Laws 2011, LB535, § 8.

44-8509 Records; maintenance.

Any records pertaining to transactions under the Portable Electronics Insurance Act shall be kept available and open to inspection by the director or his or her representatives with notice and during business hours. Records shall be maintained for three years following the completion of transactions under the act.

Source: Laws 2011, LB535, § 9.

ARTICLE 86

INSURED HOMEOWNERS PROTECTION ACT

Section

44-8601. Act, how cited.

44-8602. Terms, defined.

44-8603. Contract to be paid from proceeds of property and casualty insurance policy; right to cancel; notice; residential contractor; duties.

44-8604. Residential contractor; prohibited acts.

44-8601 Act, how cited.

Sections 44-8601 to 44-8604 shall be known and may be cited as the Insured Homeowners Protection Act.

Source: Laws 2012, LB943, § 1.

44-8602 Terms, defined.

For purposes of the Insured Homeowners Protection Act:

(1) Residential contractor means a person in the business of contracting or offering to contract with an owner or possessor of residential real estate to (a) repair or replace a roof system or perform any other exterior repair, replacement, construction, or reconstruction work on residential real estate or (b) perform interior or exterior cleanup services on residential real estate;

(2) Residential real estate means a new or existing building, including a detached garage, constructed for habitation by at least one but no more than four families; and

(3) Roof system means and includes roof coverings, roof sheathing, roof weatherproofing, and insulation.

Source: Laws 2012, LB943, § 2.

44-8603 Contract to be paid from proceeds of property and casualty insurance policy; right to cancel; notice; residential contractor; duties.

(1) A person who has entered into a written contract with a residential contractor to provide goods or services to be paid from the proceeds of a property and casualty insurance policy may cancel the contract prior to midnight on the later of the third business day after the person has (a) entered into the written contract or (b) received written notice from the person's insurer that all or part of the claim or contract is not a covered loss under the insurance policy. Cancellation shall be evidenced by the person giving written notice of the cancellation to the residential contractor at the address of the residential contractor's place of business as stated in the contract. Written notice of cancellation may be given by delivering or mailing a signed and dated copy of the written notice of cancellation to the residential contractor at the address of the residential contractor's place of business as stated in the contract. The notice of cancellation shall include a copy of the written notice from the person's insurer, if applicable, to the effect that all or part of the claim or contract is not a covered loss under the insurance policy. Notice of cancellation given by mail shall be effective upon deposit in the United States mail, postage prepaid, if properly addressed to the residential contractor. Notice of cancellation is not required to be in any particular form and is sufficient if the

notice indicates, by any form of written expression, the intent of the insured not to be bound by the contract.

(2) Within ten days after a contract to provide goods or services to be paid from the proceeds of a property and casualty insurance policy has been canceled by notification pursuant to this section, the residential contractor shall tender to the person canceling the contract any payments, partial payments, or deposits made by the person and any note or other evidence of indebtedness, except that if the residential contractor has provided any goods or services agreed to by such person in writing to be necessary to prevent damage to the premises, the residential contractor shall be entitled to be paid the reasonable value of such goods or services. Any provision in a contract to provide goods or services to be paid from the proceeds of a property and casualty insurance policy that requires the payment of any fee which is not for such goods or services shall not be enforceable against any person who has canceled a contract pursuant to this section.

Source: Laws 2012, LB943, § 3.

44-8604 Residential contractor; prohibited acts.

A residential contractor shall not promise to rebate any portion of an insurance deductible as an inducement to the sale of goods or services. A promise to rebate any portion of an insurance deductible includes granting any allowance or offering any discount against the fees to be charged or paying an insured or a person directly or indirectly associated with the residential real estate any form of compensation, except for any item of nominal value.

Source: Laws 2012, LB943, § 4.

ARTICLE 87

NEBRASKA EXCHANGE TRANSPARENCY ACT

Section

- 44-8701. Act, how cited.
- 44-8702. Purpose of act.
- 44-8703. Nebraska Exchange Stakeholder Commission; created; members; terms; vacancy; removal; hearing.
- 44-8704. Nebraska Exchange Stakeholder Commission; officers; meetings; quorum; expenses.
- 44-8705. Nebraska Exchange Stakeholder Commission; duties.
- 44-8706. Act; termination.

44-8701 Act, how cited.

Sections 44-8701 to 44-8706 shall be known and may be cited as the Nebraska Exchange Transparency Act.

Source: Laws 2013, LB384, § 1.

Termination date July 1, 2016.

44-8702 Purpose of act.

The purpose of the Nebraska Exchange Transparency Act is to provide state-based recommendations and transparency regarding the implementation and operation of an affordable insurance exchange, as required by the federal Patient Protection and Affordable Care Act, 42 U.S.C. 18001 et seq., by creating the Nebraska Exchange Stakeholder Commission.

Source: Laws 2013, LB384, § 2.

Termination date July 1, 2016.

44-8703 Nebraska Exchange Stakeholder Commission; created; members; terms; vacancy; removal; hearing.

(1) The Nebraska Exchange Stakeholder Commission is created. For administrative and budgetary purposes only, the commission shall be housed within the Department of Insurance. The commission shall be composed of eleven members as follows:

(a) Nine members shall be appointed by the Governor in the following manner:

(i) Four members to represent the interests of consumers who will access health insurance in the exchange with at least one of such members to represent the interests of rural consumers who will access health insurance in the exchange;

(ii) One member to represent the interests of small businesses who are qualified to purchase health insurance in the exchange;

(iii) Two members to represent the interests of health care providers in the state;

(iv) One member to represent the interests of health insurance carriers who are eligible to offer health plans in the exchange; and

(v) One member to represent the interests of health insurance agents. This member shall not be a captive agent of any health insurance carrier;

(b) The Director of Insurance or his or her designee is a nonvoting, ex officio member of the commission; and

(c) The director of the Division of Medicaid and Long-Term Care of the Department of Health and Human Services or his or her designee is a nonvoting, ex officio member of the commission.

(2) The terms of appointed members of the commission shall commence on July 1, 2013.

(3) The appointed members of the commission shall serve for terms of three years, except that of the members first appointed, the Governor shall designate:

(a) One of the members representing the interests of health care providers in the state to serve a term of three years and the other to serve a term of two years;

(b) The member representing the interests of health insurance carriers to serve a term of two years;

(c) The member representing the interests of health insurance agents to serve a term of three years; and

(d) All other members to serve for terms of three years.

(4) A member may be reappointed at the expiration of his or her term. All succeeding appointments to the commission shall be made in the same manner as the original appointments are made, and succeeding appointees shall have the same qualifications as their predecessors.

(5) An individual appointed to fill a vacancy occurring other than by the expiration of a term of office shall be appointed for the unexpired term of the member such individual succeeds and shall be eligible for appointment to subsequent full terms thereafter.

(6) All appointments whether initial or subsequent shall be subject to the approval of a majority of the members of the Legislature, if the Legislature is in

session, and, if the Legislature is not in session, any appointment shall be temporary until the next session of the Legislature, at which time a majority of the members of the Legislature may approve or disapprove such appointment.

(7) A member shall have his or her membership terminated if he or she ceases to meet the qualification for his or her appointment. A member may be removed from the commission for good cause upon written notice and upon an opportunity to be heard before the Governor. After the hearing, the Governor shall file in the office of the Secretary of State a complete statement of the charges and the findings and disposition together with a complete record of the proceedings.

Source: Laws 2013, LB384, § 3; Laws 2016, LB770, § 1.
Effective date April 7, 2016.
Termination date July 1, 2016.

44-8704 Nebraska Exchange Stakeholder Commission; officers; meetings; quorum; expenses.

(1) The Nebraska Exchange Stakeholder Commission shall organize by selecting a chairperson and a vice-chairperson who shall hold office at the pleasure of the commission. The vice-chairperson shall act as chairperson in the absence of the chairperson or in the event of a vacancy in that position.

(2) The commission shall hold at least three meetings annually, at times and places fixed by the chairperson.

(3) A majority of the members of the commission shall constitute a quorum.

(4) Members of the commission shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

Source: Laws 2013, LB384, § 4; Laws 2015, LB456, § 1.
Termination date July 1, 2016.

44-8705 Nebraska Exchange Stakeholder Commission; duties.

The Nebraska Exchange Stakeholder Commission shall:

(1) Work with state and federal agencies and policymakers to provide recommendations regarding implementation and operation of the exchange, including, but not limited to:

(a) Improving access to high-quality, affordable health coverage options and improving policies and processes on the exchange to ensure a positive and seamless consumer experience;

(b) Promoting competitiveness of the exchange, minimizing administrative burden for issuers, and ensuring consumer protections;

(c) Incorporating existing state policies, capabilities, and infrastructure that can also assist in exchange implementation and operations;

(d) Ensuring the effectiveness of the navigator grant program;

(e) Promoting a seamless integration with the medicaid program and continuity of care for those transitioning between publicly funded coverage and private coverage; and

(f) Ensuring the small business health options program or SHOP Exchange meets the needs and provides value to small businesses;

(2) Create technical and advisory groups as needed to discuss issues related to the exchange and make recommendations to the commission, state or federal agencies, and the Legislature;

(3) Assist the exchange in meeting the stakeholder consultation requirements established in 45 C.F.R. 155.130, as such regulations existed on January 1, 2013;

(4) Identify challenges and problems in the implementation and operation of the exchange and prepare recommendations to alleviate the problems identified; and

(5) Provide a report on or before December 1, 2013, and each December 1 thereafter, to the Governor and the Legislature concerning the implementation and operation of the exchange, challenges and problems identified in the implementation and operation of the exchange, and recommendations to address such problems and challenges. The report to the Legislature shall be submitted electronically.

Source: Laws 2013, LB384, § 5.
Termination date July 1, 2016.

44-8706 Act; termination.

The Nebraska Exchange Transparency Act terminates on July 1, 2016.

Source: Laws 2013, LB384, § 6; Laws 2016, LB770, § 2.
Effective date April 7, 2016.
Termination date July 1, 2016.

ARTICLE 88

HEALTH INSURANCE EXCHANGE NAVIGATOR REGISTRATION ACT

Section

44-8801. Act, how cited.

44-8802. Terms, defined.

44-8803. Navigator; registration required; prohibited acts.

44-8804. Individual navigator registration; application; form; contents; fee; entity navigator registration; application; form; contents; fee; notice of federal action; list of employees.

44-8805. Registrations; term; renewal; application; fee; federal training and continuing education requirements.

44-8806. Navigator; individual with existing health insurance coverage; information.

44-8807. Director; disciplinary actions authorized; powers to examine business affairs and records; notice; hearing.

44-8808. Rules and regulations.

44-8801 Act, how cited.

Sections 44-8801 to 44-8808 shall be known and may be cited as the Health Insurance Exchange Navigator Registration Act.

Source: Laws 2013, LB568, § 1.

44-8802 Terms, defined.

For purposes of the Health Insurance Exchange Navigator Registration Act:

(1) Director means the Director of Insurance;

(2) Exchange means any health insurance exchange established or operating in this state, including any exchange established or operated by the United States Department of Health and Human Services; and

(3) Navigator means any individual or entity, other than an insurance producer or consultant, that receives any funding, directly or indirectly, from an exchange, the state, or the federal government to perform the duties identified in 42 U.S.C. 18031(i)(3), as such section existed on January 1, 2013.

Source: Laws 2013, LB568, § 2.

44-8803 Navigator; registration required; prohibited acts.

(1) No individual or entity shall perform, offer to perform, or advertise any service as a navigator in this state unless registered as a navigator by the director.

(2) A navigator shall not:

- (a) Engage in any activities that would require an insurance producer license;
- (b) Violate section 44-4050;
- (c) Recommend or endorse a particular health plan;
- (d) Accept any compensation or consideration from an insurance company, broker, or consultant that is dependent, in whole or in part, on whether a person enrolls in or purchases a qualified health plan; or
- (e) Fail to respond to any written inquiry from the director regarding the navigator's duties as a navigator or fail to request additional reasonable time to respond within fifteen working days.

Source: Laws 2013, LB568, § 3.

44-8804 Individual navigator registration; application; form; contents; fee; entity navigator registration; application; form; contents; fee; notice of federal action; list of employees.

(1) An individual applying for an individual navigator registration shall make application to the director on a form developed by the director which, unless preempted by federal law, is accompanied by the initial individual registration fee in an amount not to exceed twenty-five dollars as established by the director. The individual shall declare in the application under penalty of refusal, suspension, or revocation of the registration that the statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. Before approving the application, the director shall find that the individual:

- (a) Is at least eighteen years of age;
- (b) Has successfully passed an examination prescribed by an exchange established or operating in this state and has been authorized to act as a navigator; and
- (c) Has identified any entity navigator with which he or she is affiliated and supervised.

(2) An entity applying for an entity navigator registration shall make application on a form developed by the director and which contains the information prescribed by the director and which, unless preempted by federal law, is accompanied by the initial entity registration fee in an amount not to exceed fifty dollars as established by the director.

(3) The director may require any documents deemed necessary to verify the information contained in an application submitted in accordance with subsections (1) and (2) of this section.

(4) A registered navigator shall, in a manner prescribed by the director, notify the director within thirty days of any federal action that restricts or terminates the navigator's authorization to act as a navigator.

(5) A registered entity navigator shall, in a manner prescribed by the director, provide the director with a list of all individual navigators that it employs, supervises, or is affiliated with.

Source: Laws 2013, LB568, § 4.

44-8805 Registrations; term; renewal; application; fee; federal training and continuing education requirements.

(1) Individual and entity registrations shall expire one year after the date of issuance.

(2) An individual navigator may file an application for renewal of a registration on a form developed by the director and, unless preempted by federal law, shall pay the renewal fee in an amount not to exceed twenty-five dollars as established by the director, and an entity navigator may file an application for renewal of a registration on a form developed by the director and, unless preempted by federal law, shall pay the renewal fee in an amount not to exceed fifty dollars as established by the director. An individual navigator who fails to file prior to the expiration of the current registration for registration renewal, unless preempted by federal law, shall pay a late fee in an amount not to exceed fifty dollars as established by the director, and an entity navigator that fails to file prior to the expiration of the current registration for registration renewal, unless preempted by federal law, shall pay a late fee in an amount not to exceed fifty dollars as established by the director.

(3) Any failure to fulfill the federal ongoing training and continuing education requirements shall result in the expiration of the registration.

Source: Laws 2013, LB568, § 5.

44-8806 Navigator; individual with existing health insurance coverage; information.

On contact with an individual who acknowledges having existing health insurance coverage obtained through a licensed insurance producer, a navigator shall make a reasonable effort to inform the individual that he or she may, but is not required to, seek further assistance from that producer or another licensed producer for information, assistance, and any other services and that tax credits may not be available to offset the premium cost of plans that are marketed outside of the exchange.

Source: Laws 2013, LB568, § 6.

44-8807 Director; disciplinary actions authorized; powers to examine business affairs and records; notice; hearing.

(1) The director, after notice and hearing, may place on probation, suspend, revoke, or refuse to issue, renew, or reinstate a navigator registration for violation of the Health Insurance Exchange Navigator Registration Act.

(2) Except as otherwise provided by law, the director may examine and investigate the business affairs and records of any navigator as such business affairs and records regard the navigator's duties as a navigator to determine whether the navigator has engaged or is engaging in any violation of the act.

(3) An entity navigator registration may be suspended or revoked or renewal or reinstatement thereof may be refused if the director finds, after notice and hearing, that an individual navigator's violation was known by the employing or supervising entity navigator and the violation was not reported to the director and no corrective action was undertaken.

Source: Laws 2013, LB568, § 7.

44-8808 Rules and regulations.

The director may adopt and promulgate rules and regulations to carry out the Health Insurance Exchange Navigator Registration Act.

Source: Laws 2013, LB568, § 8.

ARTICLE 89

STANDARD VALUATION ACT

Section

- 44-8901. Act, how cited.
- 44-8902. Applicability of act.
- 44-8903. Terms, defined.
- 44-8904. Director; valuation of reserves; duties; powers.
- 44-8905. Company; opinion of actuary; contents; standards; liability; confidentiality; director; powers; release of material; when.
- 44-8906. Minimum standard of valuation; applicability to contracts; when.
- 44-8907. Life insurance; standards of valuation; policies issued on or after operative date of law; reserves required.
- 44-8908. Valuation manual; director prescribe; designate operative date; when effective; contents; director; powers.
- 44-8909. Reserves; company; duties.
- 44-8910. Company; submit data.
- 44-8911. Confidential information; how treated; director; powers; release of material; when.
- 44-8912. Director; exempt specific product forms or product lines; provisions applicable.

44-8901 Act, how cited.

Sections 44-8901 to 44-8912 shall be known and may be cited as the Standard Valuation Act.

Source: Laws 2014, LB755, § 1.

44-8902 Applicability of act.

Except as provided in sections 44-8905, 44-8906, and 44-8907, the Standard Valuation Act applies to those policies and contracts issued on or after the operative date of the valuation manual designated in subsection (2) of section 44-8908.

Source: Laws 2014, LB755, § 2.

44-8903 Terms, defined.

For the purposes of the Standard Valuation Act:

(1) Accident and health insurance contract means a contract that incorporates morbidity risk and provides protection against economic loss resulting from accident, sickness, or medical conditions and as may be specified in the valuation manual;

(2) Appointed actuary means a qualified actuary who is appointed in accordance with the valuation manual to prepare the actuarial opinion required in sections 44-421 to 44-425 and 44-8905;

(3) Company means an entity which has (a) written, issued, or reinsured life insurance contracts, accident and health insurance contracts, or deposit-type contracts in this state and has at least one such policy in force or on claim or (b) written, issued, or reinsured life insurance contracts, accident and health insurance contracts, or deposit-type contracts in any state and is required to hold a certificate of authority to write life insurance, accident and health insurance, or deposit-type contracts in this state;

(4) Deposit-type contract means a contract that does not incorporate mortality or morbidity risks and as may be specified in the valuation manual;

(5) Director means the Director of Insurance;

(6) Life insurance contract means a contract that incorporates mortality risk, including annuity and pure endowment contracts, and as may be specified in the valuation manual;

(7) Policyholder behavior means any action a policyholder, a contract holder, or any other person with the right to elect options, such as a certificate holder, may take under a policy or contract subject to the act including, but not limited to, lapse, withdrawal, transfer, deposit, premium payment, loan, annuitization, or benefit elections prescribed by the policy or contract but excluding events of mortality or morbidity that result in benefits prescribed in their essential aspects by the terms of the policy or contract;

(8) Principle-based valuation means a reserve valuation that uses one or more methods or one or more assumptions determined by the insurer and is required to comply with section 44-8909 as specified in the valuation manual;

(9) Qualified actuary means an individual who is qualified to sign the applicable statement of actuarial opinion in accordance with the American Academy of Actuaries qualification standards for actuaries signing such statements and who meets the requirements specified in the valuation manual;

(10) Reserves means reserve liabilities;

(11) Tail risk means a risk that occurs either when the frequency of low probability events is higher than expected under a normal probability distribution or when there are observed events of very significant size or magnitude; and

(12) Valuation manual means the valuation manual prescribed by the director which conforms substantially to the valuation manual developed and adopted by the National Association of Insurance Commissioners.

Source: Laws 2014, LB755, § 3.

44-8904 Director; valuation of reserves; duties; powers.

The director shall annually value, or cause to be valued, the reserves for all outstanding life insurance contracts, accident and health insurance contracts, and deposit-type contracts of every company issued on or after the operative date of the valuation manual. In lieu of the valuation of the reserves required of a foreign or alien company, the director may accept a valuation made, or caused to be made, by the insurance supervisory official of any state or other

jurisdiction when the valuation complies with the minimum standard provided in the Standard Valuation Act.

Source: Laws 2014, LB755, § 4.

Cross References

For operative date of valuation manual, see section 44-8908.

44-8905 Company; opinion of actuary; contents; standards; liability; confidentiality; director; powers; release of material; when.

(1) Every company with outstanding life insurance contracts, accident and health insurance contracts, or deposit-type contracts in this state and subject to regulation by the director shall annually submit the opinion of the appointed actuary as to whether the reserves and related actuarial items held in support of the policies and contracts are computed appropriately, are based on assumptions that satisfy contractual provisions, are consistent with prior reported amounts, and comply with applicable laws of this state. The valuation manual shall prescribe the specifics of this opinion including any items deemed to be necessary to its scope.

(2) Every company with outstanding life insurance contracts, accident and health insurance contracts, or deposit-type contracts in this state and subject to regulation by the director, except as exempted in the valuation manual, shall also annually include in the opinion required by subsection (1) of this section an opinion of the same appointed actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified in the valuation manual, when considered in light of the assets held by the company with respect to the reserves and related actuarial items, including, but not limited to, the investment earnings on the assets and the considerations anticipated to be received and retained under the policies and contracts, make adequate provision for the company's obligations under the policies and contracts, including, but not limited to, the benefits under and expenses associated with the policies and contracts.

(3) Each opinion required by subsection (2) of this section shall be governed by the following provisions:

(a) A memorandum, in form and substance as specified in the valuation manual, and acceptable to the director, shall be prepared to support each actuarial opinion; and

(b) If the company fails to provide a supporting memorandum at the request of the director within a period specified in the valuation manual or the director determines that the supporting memorandum provided by the company fails to meet the standards prescribed by the valuation manual or is otherwise unacceptable to the director, the director may engage a qualified actuary at the expense of the company to review the opinion and the basis for the opinion and prepare the supporting memorandum required by the director.

(4) Every opinion shall be governed by the following provisions:

(a) The opinion shall be in form and substance as specified in the valuation manual and acceptable to the director;

(b) The opinion shall be submitted with the annual statement reflecting the valuation of the reserves for each year ending on or after the operative date of the valuation manual;

(c) The opinion shall apply to all policies and contracts subject to subsection (2) of this section, plus other actuarial liabilities as may be specified in the valuation manual;

(d) The opinion shall be based on standards adopted from time to time by the Actuarial Standards Board or its successor and on such additional standards as may be prescribed in the valuation manual;

(e) In the case of an opinion required to be submitted by a foreign or alien company, the director may accept the opinion filed by that company with the insurance supervisory official of another state if the director determines that the opinion reasonably meets the requirements applicable to a company domiciled in this state;

(f) Except in cases of fraud or willful misconduct, the appointed actuary shall not be liable for damages to any person other than the insurance company and the director for any act, error, omission, decision, or conduct with respect to the appointed actuary's opinion; and

(g) Disciplinary action by the director against the company or the appointed actuary shall be as set forth in rules and regulations adopted and promulgated by the director.

(5)(a) Documents, materials, or other information in the possession or control of the director that are a memorandum in support of the opinion and any other material provided by the company to the director in connection with the memorandum shall be confidential by law and privileged, shall not be a public record subject to disclosure by the director pursuant to sections 84-712 to 84-712.09, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. The director may use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the director's official duties. Neither the director nor any person who received documents, materials, or other information while acting under the authority of the director shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or other information.

(b) In order to assist in the performance of the director's duties, the director:

(i) May share documents, materials, or other information, including the confidential and privileged documents, materials, or information, with other state, federal, and international regulatory agencies, with the National Association of Insurance Commissioners and its affiliates and subsidiaries, and with state, federal, and international law enforcement authorities if the recipient agrees to maintain the confidentiality and privileged status of the document, material, or other information; and

(ii) May receive documents, materials, or other information, including otherwise confidential and privileged documents, materials, or other information, from the National Association of Insurance Commissioners and its affiliates and subsidiaries and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material, or other information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or other information.

(c) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or other information shall occur as a result of disclosure

to the director under this section or as a result of sharing information pursuant to this subsection.

(d) A memorandum in support of the opinion, and any other material provided by the company to the director in connection with the memorandum, may be subject to subpoena for the purpose of defending an action seeking damages from the actuary submitting the memorandum by reason of an action required by this section or by rules and regulations.

(e) The memorandum or other material may otherwise be released by the director with the written consent of the company or to the American Academy of Actuaries pursuant to a request stating that the memorandum or other material is required for the purpose of professional disciplinary proceedings and setting forth procedures satisfactory to the director for preserving the confidentiality of the memorandum or other material.

(f) Once any portion of the confidential memorandum is cited by the company in its marketing or is cited before a governmental agency other than a state insurance department or is released by the company to the news media, all portions of the confidential memorandum shall be no longer confidential.

Source: Laws 2014, LB755, § 5.

Cross References

For operative date of valuation manual, see section 44-8908.

44-8906 Minimum standard of valuation; applicability to contracts; when.

For accident and health insurance contracts issued on or after the operative date of the valuation manual designated in subsection (2) of section 44-8908, the standard prescribed in the valuation manual is the minimum standard of valuation required under section 44-8904. For disability and sickness and accident insurance contracts issued on or after the operative date defined in section 44-407.07 and prior to the operative date of the valuation manual, the minimum standard of valuation is the standard adopted and promulgated by the director by rule and regulation.

Source: Laws 2014, LB755, § 6.

44-8907 Life insurance; standards of valuation; policies issued on or after operative date of law; reserves required.

(1) This section shall apply to only those policies and contracts issued on or after the operative date defined in section 44-407.07 (the Standard Nonforfeiture Law for Life Insurance), except as otherwise provided in subsection (3) of this section for all annuities and pure endowments purchased on or after the operative date of such subsection (3) under group annuity and pure endowment contracts issued prior to such operative date defined in section 44-407.07. This section shall apply to all policies and contracts issued prior to the operative date of the valuation manual designated in subsection (2) of section 44-8908, and sections 44-8908 and 44-8909 shall not apply to any such policies and contracts.

(2) Except as otherwise provided in subsections (3) and (4) of this section, the minimum standard for the valuation of all such policies and contracts issued prior to August 30, 1981, shall be that provided by the laws in effect immediately prior to such date. Except as otherwise provided in subsections (3) and (4) of this section, the minimum standard for the valuation of all such policies and

contracts shall be the Commissioners Reserve Valuation Methods defined in subsections (5), (6), and (9) of this section; five percent interest for group annuity and pure endowment contracts and three and one-half percent interest for all other such policies and contracts, or in the cases of policies and contracts, other than annuity and pure endowment contracts, issued on or after September 2, 1973, four percent interest for such policies issued prior to August 24, 1979, and four and one-half percent interest for such policies issued on or after August 24, 1979; and the following tables: (a) For all ordinary policies of life insurance issued on the standard basis, excluding any disability and accidental death benefits in such policies,—the Commissioners 1941 Standard Ordinary Mortality Table for such policies issued prior to the operative date of section 44-407.08 (Standard Nonforfeiture Law for Life Insurance), the Commissioners 1958 Standard Ordinary Mortality Table for such policies issued on or after such operative date and prior to the operative date of section 44-407.24, except that for any category of such policies issued on female risks, all modified net premiums and present values referred to in this section may be calculated according to an age not more than six years younger than the actual age of the insured; and for such policies on or after the operative date of section 44-407.24 (i) the Commissioners 1980 Standard Ordinary Mortality Table, or (ii) at the election of the company for any one or more specified plans of life insurance, the Commissioners 1980 Standard Ordinary Mortality Table with Ten-Year Select Mortality Factors, or (iii) any ordinary mortality table, adopted after 1980 by the National Association of Insurance Commissioners, that is approved by regulation promulgated by the Department of Insurance for use in determining the minimum standard of valuation for such policies; (b) for all industrial life insurance policies issued on the standard basis, excluding any disability and accidental death benefits in such policies,—the 1941 Standard Industrial Mortality Table for such policies issued prior to the operative date of section 44-407.09 (Standard Nonforfeiture Law for Life Insurance), and for such policies issued on or after such operative date, the Commissioners 1961 Standard Industrial Mortality Table or any industrial mortality table, adopted after 1980 by the National Association of Insurance Commissioners, that is approved by regulation promulgated by the Department of Insurance for use in determining the minimum standard of valuation for such policies; (c) for individual annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies,—the 1937 Standard Annuity Mortality Table, or at the option of the company, the Annuity Mortality Table for 1949, Ultimate, or any modification of either of these tables approved by the Department of Insurance; (d) for group annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies,—the Group Annuity Mortality Table for 1951, any modification of such table approved by the Department of Insurance, or, at the option of the company, any of the tables or modifications of tables specified for individual annuity and pure endowment contracts; (e) for total and permanent disability benefits in or supplementary to ordinary policies or contracts—for policies or contracts issued on or after January 1, 1966, the tables of Period 2 disablement rates and the 1930 to 1950 termination rates of the 1952 Disability Study of the Society of Actuaries, with due regard to the type of benefit, or any tables of disablement rates and termination rates, adopted after 1980 by the National Association of Insurance Commissioners, that are approved by regulation promulgated by the Department of Insurance for use in determining the minimum standard of valuation for such policies; for policies or contracts issued on or after January

1, 1961, and prior to January 1, 1966, either such tables or, at the option of the company, the Class (3) Disability Table (1926); and for policies issued prior to January 1, 1961, the Class (3) Disability Table (1926). Any such table shall, for active lives, be combined with a mortality table permitted for calculating the reserves for life insurance policies; (f) for accidental death benefits in or supplementary to policies—for policies issued on or after January 1, 1966, the 1959 Accidental Death Benefits Table; for policies issued on or after January 1, 1961, and prior to January 1, 1966, either such table or, at the option of the company, the Inter-Company Double Indemnity Mortality Table; and for policies issued prior to January 1, 1961, the Inter-Company Double Indemnity Mortality Table. Either table shall be combined with a mortality table permitted for calculating the reserves for life insurance policies; and (g) for group life insurance, life insurance issued on the substandard basis and other special benefits—such tables as may be approved by the Department of Insurance.

(3) Except as provided in subsection (4) of this section, the minimum standard for the valuation of all individual annuity and pure endowment contracts issued on or after the operative date of this subsection, as defined herein, and for all annuities and pure endowments purchased on or after such operative date under group annuity and pure endowment contracts, shall be the Commissioners Reserve Valuation Methods defined in subsections (5) and (6) of this section and the following tables and interest rates:

(a) For individual annuity and pure endowment contracts issued prior to August 24, 1979, excluding any disability and accidental death benefits in such contracts—the 1971 Individual Annuity Mortality Table, or any modification of this table approved by the Department of Insurance, and six percent interest for single premium immediate annuity contracts, and four percent interest for all other individual annuity and pure endowment contracts;

(b) For individual single premium immediate annuity contracts issued on or after August 24, 1979, excluding any disability and accidental death benefits in such contracts—the 1971 Individual Annuity Mortality Table, or any individual annuity mortality table, adopted after 1980 by the National Association of Insurance Commissioners, that is approved by regulation promulgated by the Department of Insurance for use in determining the minimum standard of valuation for such contracts, or any modification of these tables approved by the director, and seven and one-half percent interest;

(c) For individual annuity and pure endowment contracts issued on or after August 24, 1979, other than single premium immediate annuity contracts, excluding any disability and accidental death benefits in such contracts—the 1971 Individual Annuity Table, or any individual annuity mortality table, adopted after 1980 by the National Association of Insurance Commissioners, that is approved by regulation promulgated by the Department of Insurance for use in determining the minimum standard of valuation for such contracts, or any modification of these tables approved by the director, and five and one-half percent interest for single premium deferred annuity and pure endowment contracts and four and one-half percent interest for all other such individual annuity and pure endowment contracts;

(d) For all annuities and pure endowments purchased prior to August 24, 1979, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts—the

1971 Group Annuity Mortality Table, or any modification of this table approved by the Department of Insurance, and six percent interest; and

(e) For all annuities and pure endowments purchased on or after August 24, 1979, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts—the 1971 Group Annuity Mortality Table, or any group annuity mortality table, adopted after 1980 by the National Association of Insurance Commissioners, that is approved by regulation promulgated by the Department of Insurance for use in determining the minimum standard of valuation for such annuities and pure endowments, or any modification of these tables approved by the director, and seven and one-half percent interest.

(4)(a) The calendar year statutory valuation interest rates as defined in this subsection shall be used in determining the minimum standard for the valuation of all life insurance policies issued in a particular calendar year, on or after the operative date of section 44-407.02; all individual annuity and pure endowment contracts issued in a particular calendar year on or after January 1 of the calendar year next following August 30, 1981; all annuities and pure endowments purchased in a particular calendar year on or after January 1 of the calendar year next following August 30, 1981, under group annuity and pure endowment contracts; and the net increase, if any, in a particular calendar year after January 1 of the calendar year next following August 30, 1981, in amounts held under guaranteed interest contracts.

(b)(i) The calendar year statutory valuation interest rates shall be determined as provided in subdivision (4)(b)(i) of this section and the results rounded to the nearer one-quarter of one percent: (A) For life insurance, the calendar year statutory valuation interest rate shall be equal to the sum of (I) three percent; (II) the weighting factor defined in this subsection multiplied by the difference between the lesser of the reference interest rate defined in this subsection and nine percent, and three percent; and (III) one-half the weighting factor defined in this subsection multiplied by the difference between the greater of the reference interest rate defined in this subsection and nine percent, and nine percent. (B) For single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and from guaranteed interest contracts with cash settlement options, the calendar year statutory valuation interest rates shall be equal to the sum of (I) three percent and (II) the weighting factor defined in this subsection multiplied by the difference between the reference interest rate defined in this subsection and three percent. (C) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on an issue-year basis, except as stated in subdivision (4)(b)(i)(B) of this section, the formula for life insurance in subdivision (4)(b)(i)(A) of this section shall apply to annuities and guaranteed interest contracts with guarantee durations in excess of ten years, and the formula for single premium immediate annuities in subdivision (4)(b)(i)(B) of this section shall apply to annuities and guaranteed interest contracts with guarantee duration of ten years or less. (D) For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the formula for single premium immediate annuities in subdivision (4)(b)(i)(B) of this section shall apply. (E) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, the formula for single premium immediate annuities in subdivision (4)(b)(i)(B) of this section

shall apply. (F) However, if the calendar year statutory valuation interest rate for any life insurance policies issued in any calendar year determined without reference to this sentence differs from the corresponding actual rate for similar policies issued in the immediately preceding calendar year by less than one-half of one percent, the calendar year statutory valuation interest rate for such life insurance policies shall be equal to the corresponding actual rate for the immediately preceding calendar year. For purposes of applying the immediately preceding sentence, the calendar year statutory valuation interest rate for life insurance policies issued in a calendar year shall be determined for 1980 (using the reference interest rate defined for 1979) and shall be determined for each subsequent calendar year regardless of when section 44-407.24 becomes operative.

(ii) The weighting factors referred to in the formulas stated in this subsection are as follows: (A) For life insurance, with a guarantee duration of ten years or less, the weighting factor is .50; with a guarantee duration of more than ten years but not more than twenty years, the weighting factor is .45; and with a guarantee duration of more than twenty years, the weighting factor is .35. For life insurance, the guarantee duration is the maximum number of years the life insurance can remain in force on a basis guaranteed in the policy or under options to convert to plans of life insurance with premium rates or nonforfeiture values or both which are guaranteed in the original policy. (B) The weighting factor for single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options is .80. (C) The weighting factors for other annuities and for guaranteed interest contracts, except as stated in subdivision (4)(b)(ii)(B) of this section, are as follows, according to plan type as defined in this subdivision: (I) For annuities and guaranteed interest contracts valued on an issue-year basis with a guarantee duration of five years or less, the weighting factor is .80 for plan type A, .60 for plan type B, and .50 for plan type C; with a guarantee duration of more than five years but not more than ten years, the weighting factor is .75 for plan type A, .60 for plan type B, and .50 for plan type C; with a guarantee duration of more than ten years but not more than twenty years, the weighting factor is .65 for plan type A, .50 for plan type B, and .45 for plan type C; and with more than twenty years guarantee duration the weighting factor is .45 for plan type A, .35 for plan type B, and .35 for plan type C. (II) For annuities and guaranteed interest contracts valued on an issue-year basis (other than those with no cash settlement options) which do not guarantee interest on considerations received more than one year after issue or purchase, the weighting factors are the factors shown in subdivision (4)(b)(ii)(C)(I) of this section increased by .05 for all plan types. (III) For annuities and guaranteed interest contracts valued on a change in fund basis, the weighting factors are the factors as computed in subdivision (4)(b)(ii)(C)(II) of this section increased by .10 for plan type A, increased by .20 for plan type B, and not increased for plan type C. (IV) For annuities and guaranteed interest contracts valued on a change in fund basis which do not guarantee interest rates on considerations received more than twelve months beyond the valuation date, the weighting factors are the factors as computed in subdivision (4)(b)(ii)(C)(III) of this section increased by .05 for all plan types. For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the guarantee duration is the number of years for which the contract guarantees interest rates

in excess of the calendar year statutory valuation interest rate for life insurance policies with guarantee duration in excess of twenty years. For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the guarantee duration is the number of years from the date of issue or date of purchase to the date annuity benefits are scheduled to commence.

(c) Plan types used in this subsection are defined as follows: Under plan type A, at any time a policyholder may withdraw funds only with an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company, without such an adjustment but in installments over five years or more, or as an immediate life annuity, or no withdrawal may be permitted. Under plan type B, before expiration of the interest rate guarantee, a policyholder may withdraw funds only with an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company or without such an adjustment but in installments over five years or more, or no withdrawal may be permitted. At the end of interest rate guarantee, funds may be withdrawn without such adjustment in a single sum or installments over less than five years. Under plan type C, a policyholder may withdraw funds before expiration of the interest rate guarantee in a single sum or installments over less than five years either without an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company, or subject only to a fixed surrender charge stipulated in the contract as a percentage of the fund.

(d) A company may elect to value guaranteed interest contracts with cash settlement options and annuities with cash settlement options on either an issue-year basis or on a change in fund basis. Guaranteed interest contracts with no cash settlement options and other annuities with no cash settlement options must be valued on an issue-year basis. As used in this subsection, an issue-year basis of valuation refers to a valuation basis under which the interest rate used to determine the minimum valuation standard for the entire duration of the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of issue or year of purchase of the annuity or guaranteed interest contract, and the change in fund basis of valuation refers to a valuation basis under which the interest rate used to determine the minimum valuation standard applicable to each change in the fund held under the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of the change in the fund.

(e) The reference interest rate referred to in this subsection shall be defined as follows: (i) For all life insurance, the lesser of the average over a period of thirty-six months and the average over a period of twelve months, ending on June 30 of the calendar year next preceding the year of issue, of the reference monthly average as defined in this subsection. (ii) For single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the average over a period of twelve months, ending on June 30 of the calendar year of issue or year of purchase, of the reference monthly average as defined in this subsection. (iii) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a year of issue basis, except as stated in subdivision (4)(e)(ii) of this section, with guarantee duration in excess of ten years the lesser of the average over a period of thirty-six months and the average over a

period of twelve months, ending on June 30 of the calendar year of issue or purchase, of the reference monthly average as defined in this subsection. (iv) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a year of issue basis, except as stated in subdivision (4)(e)(ii) of this section, with guarantee duration of ten years or less, the average over a period of twelve months, ending on June 30 of the calendar year of issue or purchase, of the reference monthly average as defined in this subsection. (v) For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the average over a period of twelve months, ending on June 30 of the calendar year of issue or purchase, of the reference monthly average as defined in this subsection. (vi) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, except as stated in subdivision (4)(e)(ii) of this section, the average over a period of twelve months, ending on June 30 of the calendar year of the change in the fund, of the reference monthly average as defined in this subsection.

(f) The reference monthly average referred to in this subsection shall mean a monthly bond yield average which is published by a national financial statistical organization, recognized by the National Association of Insurance Commissioners, in current general use in the insurance industry, and designated by the Director of Insurance. In the event that the National Association of Insurance Commissioners determines that an alternative method for determination of the reference interest rate is necessary, an alternative method, which is adopted by the National Association of Insurance Commissioners and approved by regulation promulgated by the Department of Insurance, may be substituted.

(5)(a) Except as otherwise provided in subsections (6) and (9) of this section and section 44-8906, reserves according to the Commissioners Reserve Valuation Methods, for the life insurance and endowment benefits of policies providing for a uniform amount of insurance and requiring the payment of uniform premiums shall be the excess, if any, of the present value, at the date of valuation, of such future guaranteed benefits provided for by such policies, over the then present value of any future modified net premiums therefor. The modified net premiums for any such policy shall be such uniform percentage of the respective contract premiums for such benefits that the present value, at the date of issue of the policy, of all such modified net premiums shall be equal to the sum of the then present value of such benefits provided for by the policy and the excess of (i) over (ii), as follows: (i) A net level annual premium equal to the present value, at the date of issue, of such benefits provided for after the first policy year, divided by the present value, at the date of issue, of an annuity of one per annum payable on the first and each subsequent anniversary of such policy on which a premium falls due, except that such net level annual premium shall not exceed the net level annual premium on the nineteen year premium whole life plan for insurance of the same amount at an age one year higher than the age at issue of such policy; (ii) a net one year term premium for such benefits provided for in the first policy year.

(b) For any life insurance policy issued on or after January 1 of the fourth calendar year commencing after August 30, 1981, for which the contract premium in the first policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year for such excess and which provides an endowment benefit or a cash surrender value or a combination thereof in an amount greater than such excess premium, the

reserve according to the Commissioners Reserve Valuation Methods as of any policy anniversary occurring on or before the assumed ending date defined herein as the first policy anniversary on which the sum of any endowment benefit and any cash surrender value then available is greater than such excess premium shall, except as otherwise provided in subsection (9) of this section, be the greater of the reserve as of such policy anniversary calculated as described in subdivision (5)(a) of this section, and the reserve as of such policy anniversary calculated as described in subdivision (5)(a) of this section but with (i) the net level annual premium calculated as described in subdivision (5)(a) of this section being reduced by fifteen percent of the amount of such excess first year premium, (ii) all present values of benefits and premiums being determined without reference to premiums or benefits provided for by the policy after the assumed ending date, (iii) the policy being assumed to mature on such date as an endowment, and (iv) the cash surrender value provided on such date being considered as an endowment benefit. In making the above comparison the mortality and interest bases stated in subsections (2) and (4) of this section shall be used.

(c) Reserves according to the Commissioners Reserve Valuation Methods for (i) life insurance policies providing for a varying amount of insurance or requiring the payment of varying premiums, (ii) group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation, established or maintained by an employer, including a partnership, limited liability company, or sole proprietorship, or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the Internal Revenue Code, (iii) disability and accidental death benefits in all policies and contracts, and (iv) all other benefits, except life insurance and endowment benefits in life insurance policies and benefits provided by all other annuity and pure endowment contracts, shall be calculated by a method consistent with the principles of this subsection, except that any extra premiums charged because of impairments or special hazards shall be disregarded in the determination of modified net premiums.

(6) This subsection shall apply to all annuity and pure endowment contracts other than group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation, established or maintained by an employer, including a partnership, limited liability company, or sole proprietorship, or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the Internal Revenue Code.

Reserves according to the commissioners annuity reserve method for benefits under annuity or pure endowment contracts, excluding any disability and accidental death benefits in such contracts, shall be the greatest of the respective excesses of the present values, at the date of valuation, of the future guaranteed benefits, including guaranteed nonforfeiture benefits, provided for by such contracts at the end of each respective contract year, over the present value, at the date of valuation, of any future valuation considerations derived from future gross considerations, required by the terms of such contract, that become payable prior to the end of such respective contract year. The future guaranteed benefits shall be determined by using the mortality table, if any, and the interest rate, or rates, specified in such contracts for determining guaranteed benefits. The valuation considerations shall be the portions of the respec-

tive gross considerations applied under the terms of such contracts to determine nonforfeiture values.

(7)(a) In no event shall a company's aggregate reserves for all life insurance policies, excluding disability and accidental death benefits, be less than the aggregate reserves calculated in accordance with the methods set forth in subsections (5), (6), (9), and (10) of this section and the mortality table or tables and rate or rates of interest used in calculating nonforfeiture benefits for such policies.

(b) In no event shall the aggregate reserves for all policies, contracts, and benefits be less than the aggregate reserves determined by the appointed actuary to be necessary to render the opinion required by sections 44-420 to 44-427.

(8)(a) Reserves for all policies and contracts issued prior to August 30, 1981, may be calculated, at the option of the company, according to any standards which produce greater aggregate reserves for all such policies and contracts than the minimum reserves required by the laws in effect immediately prior to such date.

(b) Reserves for any category of policies, contracts, or benefits as established by the Department of Insurance, may be calculated, at the option of the company, according to any standards which produce greater aggregate reserves for such category than those calculated according to the minimum standard provided under the Standard Valuation Act, but the rate or rates of interest used for policies and contracts, other than annuity and pure endowment contracts, shall not be greater than the corresponding rate or rates of interest used in calculating any nonforfeiture benefits provided for therein.

(c) A company which adopts at any time a standard of valuation producing greater aggregate reserves than those calculated according to the minimum standard provided under the Standard Valuation Act may adopt a lower standard of valuation with the approval of the director, but not lower than the minimum standard provided under the act. For the purposes of this subdivision, the holding of additional reserves previously determined by the appointed actuary to be necessary to render the opinion required by section 44-8905 shall not be deemed to be the adoption of a higher standard of valuation.

(9) If in any contract year the gross premium charged by any life insurance company on any policy or contract is less than the valuation net premium for the policy or contract calculated by the method used in calculating the reserve thereon but using the minimum valuation standards of mortality and rate of interest, the minimum reserve required for such policy or contract shall be the greater of either the reserve calculated according to the mortality table, rate of interest, and method actually used for such policy or contract, or the reserve calculated by the method actually used for such policy or contract, but using the minimum valuation standards of mortality and rate of interest and replacing the valuation net premium by the actual gross premium in each contract year for which the valuation net premium exceeds the actual gross premium. The minimum valuation standards of mortality and rate of interest referred to in this subsection are those standards stated in subsections (2) and (4) of this section.

For any life insurance policy issued on or after January 1 of the fourth calendar year commencing after August 30, 1981, for which the gross premium in the first policy year exceeds that of the second year and for which no

comparable additional benefit is provided in the first year for such excess and which provides an endowment benefit or a cash surrender value or a combination thereof in an amount greater than such excess premium, the foregoing provisions of this subsection shall be applied as if the method actually used in calculating the reserve for such policy were the method described in subsection (5) of this section, ignoring subdivision (5)(b) of this section. The minimum reserve at each policy anniversary of such a policy shall be the greater of the minimum reserve calculated in accordance with subsection (5) of this section, including subdivision (5)(b) of this section, and the minimum reserve calculated in accordance with this subsection.

(10) In the case of any plan of life insurance which provides for future premium determination, the amounts of which are to be determined by the insurance company based on then estimates of future experience, or in the case of any plan of life insurance or annuity which is of such a nature that the minimum reserves cannot be determined by the methods described in subsections (5), (6), and (9) of this section, the reserves which are held under any such plan must (a) be appropriate in relation to the benefits and the pattern of premiums for that plan, and (b) be computed by a method which is consistent with the principles of this section as determined by regulations promulgated by the Department of Insurance.

Source: Laws 1913, c. 154, § 94, p. 437; R.S.1913, § 3231; Laws 1919, c. 190, tit. V, art. VI, § 2, p. 618; C.S.1922, § 7830; C.S.1929, § 44-502; Laws 1943, c. 106, § 1(3), p. 356; R.S.1943, § 44-404; Laws 1959, c. 205, § 1, p. 715; Laws 1961, c. 221, § 2, p. 655; Laws 1963, c. 266, § 2, p. 796; Laws 1965, c. 262, § 1, p. 732; Laws 1967, c. 270, § 1, p. 730; Laws 1973, LB 309, § 2; Laws 1979, LB 354, § 2; Laws 1981, LB 355, § 1; Laws 1993, LB 121, § 224; Laws 1995, LB 574, § 43; R.S.1943, (2010), § 44-404; Laws 2014, LB755, § 7.

Cross References

For determination of operative date, see section 44-407.23.

Mortality tables, see Appendix.

44-8908 Valuation manual; director prescribe; designate operative date; when effective; contents; director; powers.

(1) For policies issued on or after the operative date of the valuation manual designated in subsection (2) of this section, the standard prescribed in the valuation manual is the minimum standard of valuation required under section 44-8905 except as provided under subsections (5) and (7) of this section.

(2) The director shall prescribe the valuation manual no later than July 1, 2017. The director shall designate the operative date of the valuation manual as of January 1 after the date on which the director prescribes the valuation manual.

(3) Unless a change in the valuation manual specifies a later effective date, the changes adopted by the director to the valuation manual shall be effective on January 1 following the adoption of the change by the director.

(4) The valuation manual must specify all of the following:

(a) Minimum valuation standards for and definitions of the policies or contracts subject to section 44-8904. Such minimum valuation standards shall be:

(i) The director's reserve valuation method for life insurance contracts, other than annuity contracts, subject to section 44-8904;

(ii) The director's annuity reserve valuation method for annuity contracts subject to section 44-8904; and

(iii) Minimum reserves for all other policies or contracts subject to section 44-8904;

(b) Which policies or contracts or types of policies or contracts are subject to the requirements of a principle-based valuation in subsection (1) of section 44-8909 and the minimum valuation standards consistent with those requirements;

(c) For policies and contracts subject to a principle-based valuation under section 44-8909:

(i) Requirements for the format of reports to the director under subdivision (2)(c) of section 44-8909 which shall include information necessary to determine if the valuation is appropriate and in compliance with the Standard Valuation Act;

(ii) Assumptions shall be prescribed for risks over which the company does not have significant control or influence; and

(iii) Procedures for corporate governance and oversight of the actuarial function, and a process for appropriate waiver or modification of such procedures;

(d) For policies not subject to a principle-based valuation under section 44-8909, the minimum valuation standard shall either:

(i) Be consistent with the minimum standard of valuation prior to the operative date of the valuation manual designated in subsection (2) of this section; or

(ii) Develop reserves that quantify the benefits and guarantees, and the funding, associated with the contracts and their risks at a level of conservatism that reflects conditions that include unfavorable events that have a reasonable probability of occurring;

(e) Other requirements, including, but not limited to, those relating to reserve methods, models for measuring risk, generation of economic scenarios, assumptions, margins, use of company experience, risk measurement, disclosure, certifications, reports, actuarial opinions and memorandums, transition rules, and internal controls; and

(f) The data and form of the data required under section 44-8910 and with whom the data must be submitted.

The valuation manual may specify other requirements, including data analyses and reporting of analyses.

(5) In the absence of a specific valuation requirement or if a specific valuation requirement in the valuation manual is not, in the opinion of the director, in compliance with the act, then the company shall, with respect to such requirements, comply with minimum valuation standards prescribed by the director by rule and regulation.

(6) The director may employ or contract with a qualified actuary, at the expense of the company, to perform an actuarial examination of the company and opine on the appropriateness of any reserve assumption or method used by the company or to review and opine on a company's compliance with any

requirement set forth in the act. The director may rely upon the opinion, regarding provisions contained within the act, of a qualified actuary engaged by the insurance commissioner of another state, district, or territory of the United States.

(7) The director may require a company to change any assumption or method that in the opinion of the director is necessary in order to comply with the requirements of the valuation manual or the act and the company shall adjust the reserves as required by the director. The director may take other disciplinary action pursuant to law.

Source: Laws 2014, LB755, § 8.

44-8909 Reserves; company; duties.

(1) A company must establish reserves using a principle-based valuation that meets the following conditions for policies or contracts as specified in the valuation manual:

(a) Quantify the benefits and guarantees, and the funding, associated with the contracts and their risks at a level of conservatism that reflects conditions that include unfavorable events that have a reasonable probability of occurring during the lifetime of the contracts. For policies or contracts with significant tail risk, the valuation must reflect conditions appropriately adverse to quantify the tail risk;

(b) Incorporate assumptions, risk analysis methods, and financial models and management techniques that are consistent with, but not necessarily identical to, those utilized within the company's overall risk assessment process, while recognizing potential differences in financial reporting structures and any prescribed assumptions or methods;

(c) Incorporate assumptions that are derived in one of the following manners:

(i) The assumption is prescribed in the valuation manual; or

(ii) For assumptions that are not prescribed, the assumptions shall:

(A) Be established utilizing the company's available experience, to the extent it is relevant and statistically credible; or

(B) To the extent that company data is not available, relevant, or statistically credible, be established utilizing other relevant, statistically credible experience; and

(d) Provide margins for uncertainty including adverse deviation and estimation error, such that the greater the uncertainty the larger the margin and resulting reserve.

(2) A company using a principle-based valuation for one or more policies or contracts subject to this section as specified in the valuation manual shall:

(a) Establish procedures for corporate governance and oversight of the actuarial valuation function consistent with those described in the valuation manual;

(b) Provide to the director and the board of directors an annual certification of the effectiveness of the internal controls with respect to the principle-based valuation. Such controls shall be designed to assure that all material risks inherent in the liabilities and associated assets subject to such valuation are included in the valuation and that valuations are made in accordance with the

valuation manual. The certification shall be based on the controls in place as of the end of the preceding calendar year; and

(c) Develop, and file with the director upon request, a principle-based valuation report that complies with standards prescribed in the valuation manual.

(3) A principle-based valuation may include a prescribed formulaic reserve component.

Source: Laws 2014, LB755, § 9.

44-8910 Company; submit data.

A company shall submit mortality, morbidity, policyholder behavior, or expense experience and other data as prescribed in the valuation manual.

Source: Laws 2014, LB755, § 10.

44-8911 Confidential information; how treated; director; powers; release of material; when.

(1) For purposes of this section, confidential information means:

(a) A memorandum in support of an opinion submitted under section 44-8905 and any other documents, materials, and other information, including, but not limited to, all working papers, and copies thereof, created, produced, or obtained by or disclosed to the director or any other person in connection with such memorandum;

(b) All documents, materials, and other information, including, but not limited to, all working papers, and copies thereof, created, produced, or obtained by or disclosed to the director or any other person in the course of an examination made under subsection (6) of section 44-8908, except that if an examination report or other material prepared in connection with an examination made under the Insurers Examination Act is not held as private and confidential information under the act, an examination report or other material prepared in connection with an examination made under subsection (6) of section 44-8908 shall not be confidential information to the same extent as if such examination report or other material had been prepared under the Insurers Examination Act;

(c) Any reports, documents, materials, and other information developed by a company in support of, or in connection with, an annual certification by the company under subdivision (2)(b) of section 44-8909 evaluating the effectiveness of the company's internal controls with respect to a principle-based valuation and any other documents, materials, and other information, including, but not limited to, all working papers, and copies thereof, created, produced, or obtained by or disclosed to the director or any other person in connection with such reports, documents, materials, and other information;

(d) Any principle-based valuation report developed under subdivision (2)(c) of section 44-8909 and any other documents, materials, and other information, including, but not limited to, all working papers, and copies thereof, created, produced, or obtained by or disclosed to the director or any other person in connection with such report; and

(e) Any data, documents, materials, and other information submitted by a company under section 44-8910, known as experience data, and any other data, documents, materials, and information, including, but not limited to, all work-

ing papers, and copies thereof, created or produced in connection with such experience data, known as experience materials, in each case that includes any potentially company-identifying or personally identifiable information, that is provided to or obtained by the director and any other documents, materials, data, and other information, including, but not limited to, all working papers, and copies thereof, created, produced, or obtained by or disclosed to the director or any other person in connection with such experience data and experience materials.

(2)(a) Except as provided in this section, a company's confidential information is confidential by law and privileged and shall not be a public record subject to disclosure by the director pursuant to sections 84-712 to 84-712.09, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action, except that the director may use the confidential information in the furtherance of any regulatory or legal action brought against the company as a part of the director's official duties.

(b) Neither the director nor any person who received confidential information while acting under the authority of the director shall be permitted or required to testify in any private civil action concerning any confidential information.

(c) In order to assist in the performance of the director's duties, the director may share confidential information (i) with other state, federal, and international regulatory agencies and with the National Association of Insurance Commissioners and its affiliates and subsidiaries and (ii) in the case of confidential information specified in subdivisions (1)(a) and (b) of this section, with the Actuarial Board for Counseling and Discipline or its successor upon request stating that the confidential information is required for the purpose of professional disciplinary proceedings. The recipient must agree, and must have the legal authority to agree, to maintain the confidentiality and privileged status of such data, documents, materials, and other information in the same manner and to the same extent as required for the director.

(d) The director may receive data, documents, materials, and other information, including otherwise confidential and privileged data, documents, materials, or information, from the National Association of Insurance Commissioners and its affiliates and subsidiaries, from regulatory or law enforcement officials of other foreign or domestic jurisdictions, and from the Actuarial Board for Counseling and Discipline or its successor and shall maintain as confidential or privileged any data, document, material, or other information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the data, document, material, or other information.

(e) The director may enter into agreements governing sharing and use of information consistent with this subsection.

(f) No waiver of any applicable privilege or claim of confidentiality in the confidential information shall occur as a result of disclosure to the director under this section or as a result of sharing as authorized in subdivision (2)(c) of this section.

(g) A privilege established under the law of any state or jurisdiction that is substantially similar to the privilege established under subsection (2) of this section shall be available and enforced in any proceeding in, and in any court of, this state.

(h) Regulatory agency, law enforcement agency, and the National Association of Insurance Commissioners include employees, agents, consultants, and contractors of such entities.

(3) Notwithstanding subsection (2) of this section, any confidential information specified in subdivisions (1)(a) and (d) of this section:

(a) May be subject to subpoena for the purpose of defending an action seeking damages from the appointed actuary submitting the related memorandum in support of an opinion submitted under section 44-8905 or principle-based valuation report developed under subdivision (2)(c) of section 44-8909 by reason of an action required by the Standard Valuation Act or by rule and regulation;

(b) May otherwise be released by the director with the written consent of the company; and

(c) Once any portion of a memorandum in support of an opinion submitted under section 44-8905 or a principle-based valuation report developed under subdivision (2)(c) of section 44-8909 is cited by the company in its marketing or is publicly volunteered to or before a governmental agency other than a state insurance department or is released by the company to the news media, all portions of such memorandum or report shall no longer be confidential.

Source: Laws 2014, LB755, § 11.

Cross References

Insurers Examination Act, see section 44-5901.

44-8912 Director; exempt specific product forms or product lines; provisions applicable.

(1) The director may exempt specific product forms or product lines of a domestic company that is licensed and doing business only in this state from the requirements of section 44-8908 if:

(a) The director has issued an exemption in writing to the company and has not subsequently revoked the exemption in writing; and

(b) The company computes reserves using assumptions and methods used prior to the operative date of the valuation manual designated in subsection (2) of section 44-8908 in addition to any requirements established by the director and by rule and regulation.

(2) For any company granted an exemption under this section, sections 44-420 to 44-427, 44-8906, and 44-8907 shall be applicable. With respect to any company applying this exemption, any reference to section 44-8908 found in such sections shall not be applicable.

Source: Laws 2014, LB755, § 12.

ARTICLE 90

RISK MANAGEMENT AND OWN RISK AND SOLVENCY ASSESSMENT ACT

Section

- 44-9001. Act, how cited.
- 44-9002. Purposes of act; applicability.
- 44-9003. Legislative findings and declaration.
- 44-9004. Terms, defined.
- 44-9005. Risk management framework.

Section

- 44-9006. Own risk and solvency assessment.
- 44-9007. Own risk and solvency assessment summary report; submission; contents; similar report accepted; when.
- 44-9008. Act; exemptions; waiver; director; considerations; director; powers.
- 44-9009. Own risk and solvency assessment summary report; documentation and supporting information.
- 44-9010. Confidentiality; director; powers; sharing and use of information; written agreement; contents.
- 44-9011. Failure to file own risk and solvency assessment summary report; penalty.

44-9001 Act, how cited.

Sections 44-9001 to 44-9011 shall be known and may be cited as the Risk Management and Own Risk and Solvency Assessment Act.

Source: Laws 2014, LB700, § 1.

44-9002 Purposes of act; applicability.

(1) The purposes of the Risk Management and Own Risk and Solvency Assessment Act are to provide requirements for maintaining a risk management framework and completing an own risk and solvency assessment and to provide guidance and instructions for filing an own risk and solvency assessment summary report with the director.

(2) The requirements of the act apply to all insurers domiciled in this state unless exempt pursuant to section 44-9008.

Source: Laws 2014, LB700, § 2.

44-9003 Legislative findings and declaration.

The Legislature finds and declares that the own risk and solvency assessment summary report will contain confidential and sensitive information related to an insurer's or insurance group's identification of risks that is material and relevant to the insurer or insurance group filing the report. The information will include proprietary and trade secret information that has the potential for harm and competitive disadvantage to the insurer or insurance group if the information is made public. It is the intent of the Legislature that the own risk and solvency assessment summary report shall be a confidential document filed with the director, that the own risk and solvency assessment summary report shall be shared only as provided in the Risk Management and Own Risk and Solvency Assessment Act and to assist the director in the performance of his or her duties, and that in no event shall the own risk and solvency assessment summary report be subject to public disclosure.

Source: Laws 2014, LB700, § 3.

44-9004 Terms, defined.

For purposes of the Risk Management and Own Risk and Solvency Assessment Act:

(1) Director means the Director of Insurance;

(2) Insurance group means those insurers and affiliates included within an insurance holding company system as defined in subdivision (6) of section 44-2121;

(3) Insurer has the same meaning as in section 44-103, except that it does not include agencies, authorities, or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state;

(4) Own risk and solvency assessment means a confidential internal assessment, appropriate to the nature, scale, and complexity of an insurer or insurance group, conducted by the insurer or insurance group, of the material and relevant risks associated with the insurer's or insurance group's current business plan and the sufficiency of capital resources to support those risks;

(5) Own risk and solvency assessment guidance manual means the own risk and solvency assessment guidance manual prescribed by the director which conforms substantially to the Own Risk and Solvency Assessment Guidance Manual developed and adopted by the National Association of Insurance Commissioners. A change in the own risk and solvency assessment guidance manual shall be effective on the January 1 following the calendar year in which the change has been adopted by the director; and

(6) Own risk and solvency assessment summary report means a confidential, high-level summary of an insurer's or insurance group's own risk and solvency assessment.

Source: Laws 2014, LB700, § 4; Laws 2016, LB772, § 16.
Operative date March 31, 2016.

44-9005 Risk management framework.

An insurer shall maintain a risk management framework to assist the insurer with identifying, assessing, monitoring, managing, and reporting on its material and relevant risks. This requirement is satisfied if the insurance group of which the insurer is a member maintains a risk management framework applicable to the operations of the insurer.

Source: Laws 2014, LB700, § 5.

44-9006 Own risk and solvency assessment.

Subject to section 44-9008, an insurer, or the insurance group of which the insurer is a member, shall regularly conduct an own risk and solvency assessment consistent with a process comparable to the own risk and solvency assessment guidance manual. The own risk and solvency assessment shall be conducted no less than annually but also at any time when there are significant changes to the risk profile of the insurer or the insurance group of which the insurer is a member.

Source: Laws 2014, LB700, § 6.

44-9007 Own risk and solvency assessment summary report; submission; contents; similar report accepted; when.

(1) Upon the director's request, and no more than once each year, an insurer shall submit to the director an own risk and solvency assessment summary report or any combination of reports that together contain the information described in the own risk and solvency assessment guidance manual applicable to the insurer or the insurance group of which the insurer is a member. Notwithstanding any request from the director, if the insurer is a member of an

insurance group, the insurer shall submit the report required by this subsection if the director is the lead state insurance commissioner of the insurance group.

(2) The report shall include a signature of the insurer's or insurance group's chief risk officer or other executive having responsibility for the oversight of the insurer's enterprise risk management process attesting to the best of his or her belief and knowledge that the insurer applies the enterprise risk management process described in the own risk and solvency assessment summary report and that a copy of the report has been provided to the insurer's board of directors or the appropriate committee thereof.

(3) An insurer may comply with subsection (1) of this section by providing the most recent and substantially similar report provided by the insurer or another member of an insurance group of which the insurer is a member to the insurance commissioner of another state or to a supervisor or regulator of a foreign jurisdiction if that report provides information that is comparable to the information described in the own risk and solvency assessment guidance manual. Any such report in a language other than English must be accompanied by a translation of that report into the English language.

(4) The first filing of the own risk and solvency assessment summary report shall be in 2015.

Source: Laws 2014, LB700, § 7.

44-9008 Act; exemptions; waiver; director; considerations; director; powers.

(1) An insurer shall be exempt from the requirements of the Risk Management and Own Risk and Solvency Assessment Act if:

(a) The insurer has annual direct written and unaffiliated assumed premium, including international direct and assumed premium but excluding premiums reinsured with the Federal Crop Insurance Corporation and National Flood Insurance Program, of less than five hundred million dollars; and

(b) The insurance group of which the insurer is a member has annual direct written and unaffiliated assumed premium, including international direct and assumed premium but excluding premiums reinsured with the Federal Crop Insurance Corporation and National Flood Insurance Program, of less than one billion dollars.

(2) If an insurer qualifies for exemption pursuant to subdivision (1)(a) of this section, but the insurance group of which the insurer is a member does not qualify for exemption pursuant to subdivision (1)(b) of this section, then the own risk and solvency assessment summary report required pursuant to section 44-9007 shall include every insurer within the insurance group. This requirement may be satisfied by the submission of more than one own risk and solvency assessment summary report for any combination of insurers if the combination of reports includes every insurer within the insurance group.

(3) If an insurer does not qualify for exemption pursuant to subdivision (1)(a) of this section, but the insurance group of which the insurer is a member qualifies for exemption pursuant to subdivision (1)(b) of this section, then the only own risk and solvency assessment summary report required pursuant to section 44-9007 shall be the report applicable to that insurer.

(4) An insurer that does not qualify for exemption pursuant to subsection (1) of this section may apply to the director for a waiver from the requirements of the act based upon unique circumstances. In deciding whether to grant the

insurer's request for waiver, the director may consider the type and volume of business written, ownership and organizational structure, and any other factor the director considers relevant to the insurer or insurance group of which the insurer is a member. If the insurer is part of an insurance group with insurers domiciled in more than one state, the director shall coordinate with the lead state insurance commissioner and with the other domiciliary insurance commissioners in considering whether to grant the insurer's request for a waiver.

(5) Notwithstanding the exemptions stated in this section:

(a) The director may require that an insurer maintain a risk management framework, conduct an own risk and solvency assessment, and file an own risk and solvency assessment summary report based on unique circumstances, including, but not limited to, the type and volume of business written, ownership and organizational structure, federal agency requests, and international supervisor requests; and

(b) The director may require that an insurer maintain a risk management framework, conduct an own risk and solvency assessment, and file an own risk and solvency assessment summary report if the insurer has risk-based capital for a company action level event as set forth in section 44-6016, meets one or more of the standards of an insurer deemed to be in hazardous financial condition as defined by rule and regulation adopted and promulgated by the director to define standards for companies deemed to be in hazardous financial condition, or otherwise exhibits qualities of a troubled insurer as determined by the director.

(6) If an insurer that qualified for an exemption pursuant to subsection (1) of this section no longer qualifies for that exemption due to changes in premium as reflected in the insurer's most recent annual statement or in the most recent annual statements of the insurers within the insurance group of which the insurer is a member, the insurer shall have one year after the year the threshold is exceeded to comply with the requirements of the act.

Source: Laws 2014, LB700, § 8.

44-9009 Own risk and solvency assessment summary report; documentation and supporting information.

(1) An own risk and solvency assessment summary report shall be prepared consistent with the own risk and solvency assessment guidance manual, subject to the requirements of subsection (2) of this section. Documentation and supporting information shall be maintained and made available upon examination or upon request of the director.

(2) The review of the own risk and solvency assessment summary report, and any additional requests for information, shall be made using similar procedures currently used in the analysis and examination of multistate or global insurers and insurance groups.

Source: Laws 2014, LB700, § 9.

44-9010 Confidentiality; director; powers; sharing and use of information; written agreement; contents.

(1) Documents, materials, or other information, including the own risk and solvency assessment summary report, in the possession or control of the director that are obtained by, created by, or disclosed to the director or any

other person under the Risk Management and Own Risk and Solvency Assessment Act, is recognized by this state as being proprietary and to contain trade secrets. All such documents, materials, or other information shall be confidential by law and privileged, shall not be a public record subject to disclosure by the director pursuant to sections 84-712 to 84-712.09, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. The director may use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the director's official duties. The director shall not otherwise make the documents, materials, or other information public without the prior written consent of the insurer.

(2) Neither the director nor any person who received documents, materials, or other own risk and solvency assessment related information through examination or otherwise while acting under the authority of the director or with whom such documents, materials, or other information are shared pursuant to the act shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to subsection (1) of this section.

(3) In order to assist in the performance of the director's regulatory duties, the director:

(a) May, upon request, share documents, materials, or other own risk and solvency assessment information, including the confidential and privileged documents, materials, or information subject to subsection (1) of this section, including proprietary and trade secret documents and materials, with other state, federal, and international financial regulatory agencies, including members of any supervisory college under section 44-2137.01, with the National Association of Insurance Commissioners, and with any third-party consultants designated by the director, if the recipient agrees in writing to maintain the confidentiality and privileged status of the documents, materials, or other information and has verified in writing the legal authority to maintain confidentiality; and

(b) May receive documents, materials, or other own risk and solvency assessment information, including otherwise confidential and privileged documents, materials, or information, including proprietary and trade secret documents and materials, from regulatory officials of other foreign or domestic jurisdictions, including members of any supervisory college under section 44-2137.01, and from the National Association of Insurance Commissioners, and shall maintain as confidential or privileged any documents, materials, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information.

(4) The director shall enter into a written agreement with the National Association of Insurance Commissioners or a third-party consultant governing sharing and use of information provided pursuant to the act that:

(a) Specifies procedures and protocols regarding the confidentiality and security of information shared with the National Association of Insurance Commissioners or a third-party consultant pursuant to the act, including procedures and protocols for sharing by the National Association of Insurance Commissioners with other state regulators from states in which the insurance group has domiciled insurers. The agreement shall provide that the recipient

agrees in writing to maintain the confidentiality and privileged status of the documents, materials, or other information and has verified in writing the legal authority to maintain confidentiality;

(b) Specifies that ownership of information shared with the National Association of Insurance Commissioners or a third-party consultant pursuant to the act remains with the director and that the National Association of Insurance Commissioners' or a third-party consultant's use of the information is subject to the direction of the director;

(c) Prohibits the National Association of Insurance Commissioners or a third-party consultant from storing the information shared pursuant to the act in a permanent data base after the underlying analysis is completed;

(d) Requires prompt notice to be given to an insurer whose confidential information in the possession of the National Association of Insurance Commissioners or a third-party consultant pursuant to the act is subject to a request or subpoena to the National Association of Insurance Commissioners or a third-party consultant for disclosure or production;

(e) Requires the National Association of Insurance Commissioners or a third-party consultant to consent to intervention by an insurer in any judicial or administrative action in which the National Association of Insurance Commissioners or a third-party consultant may be required to disclose confidential information about the insurer shared with the National Association of Insurance Commissioners or a third-party consultant pursuant to the act; and

(f) As part of the retention process, requires a third-party consultant to verify to the director, with notice to the insurer, that it is free of any conflict of interest and that it has internal procedures in place to monitor compliance with any conflicts and to comply with the act's confidentiality standards and requirements. The retention agreement with a third-party consultant shall require prior written consent of the insurer before making public any information provided pursuant to the act as required in subsection (1) of this section.

(5) The sharing of information and documents by the director pursuant to the act shall not constitute a delegation of regulatory authority or rulemaking, and the director is solely responsible for the administration, execution, and enforcement of the provisions of the act.

(6) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or other own risk and solvency assessment information shall occur as a result of disclosure of such documents, materials, or other information to the director under this section or as a result of sharing as authorized in the act.

(7) Documents, materials, or other information in the possession or control of the National Association of Insurance Commissioners or a third-party consultant pursuant to the act shall be confidential by law and privileged, shall not be a public record subject to disclosure by the director pursuant to sections 84-712 to 84-712.09, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action.

Source: Laws 2014, LB700, § 10.

44-9011 Failure to file own risk and solvency assessment summary report; penalty.

Any insurer failing, without just cause, to timely file its own risk and solvency assessment summary report as required in the Risk Management and Own Risk and Solvency Assessment Act shall be required, after notice and hearing, to pay a penalty of not to exceed two hundred dollars for each day's delay. The maximum penalty under this section is ten thousand dollars. The director may reduce the penalty if the insurer demonstrates to the director that the imposition of the penalty would constitute a financial hardship to the insurer. The director shall remit any penalties collected under this section to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 2014, LB700, § 11.

ARTICLE 91

CORPORATE GOVERNANCE ANNUAL DISCLOSURE ACT

Section

- 44-9101. Act, how cited.
- 44-9102. Purposes of act.
- 44-9103. Terms, defined.
- 44-9104. Corporate governance annual disclosure; submission to director; review; cross reference to other documents.
- 44-9105. Corporate governance annual disclosure; contents; request for additional information.
- 44-9106. Documents, materials, and other information; proprietary and trade secrets; confidential; use by director; director; powers.
- 44-9107. Review of corporate governance annual disclosure; third-party consultants; National Association of Insurance Commissioners; written agreement; contents.
- 44-9108. Failure to file corporate governance annual disclosure; forfeiture; suspension of certificate of authority.
- 44-9109. Rules and regulations.

44-9101 Act, how cited.

Sections 44-9101 to 44-9109 shall be known and may be cited as the Corporate Governance Annual Disclosure Act.

Source: Laws 2016, LB772, § 1.
Operative date January 1, 2017.

44-9102 Purposes of act.

- (1) The purposes of the Corporate Governance Annual Disclosure Act are to:
- (a) Provide the director a summary of an insurer's or insurance group's corporate governance structure, policies, and practices to permit the director to gain and maintain an understanding of the insurer's or insurance group's corporate governance framework;
 - (b) Outline the requirements for completing a corporate governance annual disclosure with the director; and
 - (c) Provide for the confidential treatment of the corporate governance annual disclosure and related information that contains confidential and sensitive information related to an insurer's or insurance group's internal operations and proprietary and trade secret information which, if made public, could potentially cause the insurer or insurance group competitive harm or disadvantage.

(2) Nothing in the Corporate Governance Annual Disclosure Act shall be construed (a) to prescribe or impose corporate governance standards and internal procedures beyond that which is required under applicable state corporate law or (b) to limit the director's authority, or the rights or obligations of third parties, under the Insurers Examination Act.

(3) The requirements of the Corporate Governance Annual Disclosure Act shall apply to all insurers that are domiciled in this state.

Source: Laws 2016, LB772, § 2.

Operative date January 1, 2017.

Cross References

Insurers Examination Act, see section 44-5901.

44-9103 Terms, defined.

For purposes of the Corporate Governance Annual Disclosure Act:

(1) Corporate governance annual disclosure means a confidential report filed by an insurer or insurance group made in accordance with the requirements of the Corporate Governance Annual Disclosure Act;

(2) Director means the Director of Insurance;

(3) Insurance group means those insurers and affiliates included within an insurance holding company system as defined in section 44-2121; and

(4) Insurer has the same meaning as in section 44-103, except that it shall not include agencies, authorities, or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state.

Source: Laws 2016, LB772, § 3.

Operative date January 1, 2017.

44-9104 Corporate governance annual disclosure; submission to director; review; cross reference to other documents.

(1) An insurer, or the insurance group of which the insurer is a member, shall, no later than June 1 of each calendar year, submit to the director a corporate governance annual disclosure that contains the information described in section 44-9105. Notwithstanding any request from the director made pursuant to subsection (3) of this section, if the insurer is a member of an insurance group, the insurer shall submit the disclosure required by this section to the director of the lead state for the insurance group, in accordance with the laws of the lead state, as determined by the procedures outlined in the Financial Analysis Handbook adopted by the National Association of Insurance Commissioners.

(2) The corporate governance annual disclosure must include a signature of the insurer's or insurance group's chief executive officer or corporate secretary attesting to the best of that individual's belief and knowledge that the insurer or insurance group has implemented the corporate governance practices contained in the corporate governance annual disclosure and that a copy of the disclosure has been provided to the insurer's board of directors or the appropriate committee thereof.

(3) An insurer not required to submit a corporate governance annual disclosure under this section shall do so upon the director's request.

(4) For purposes of completing the corporate governance annual disclosure, the insurer or insurance group may provide information regarding corporate governance at the ultimate controlling parent level, an intermediate holding company level, or the individual legal entity level, depending upon how the insurer or insurance group has structured its system of corporate governance. The insurer or insurance group is encouraged to make the corporate governance annual disclosure at the level at which the insurer's or insurance group's risk appetite is determined, the level at which the earnings, capital, liquidity, operations, and reputation of the insurer are overseen collectively and at which the supervision of those factors are coordinated and exercised, or the level at which legal liability for failure of general corporate governance duties would be placed. If the insurer or insurance group determines the level of reporting based on one of these three criteria, it shall indicate which of the three criteria was used to determine the level of reporting and explain any subsequent changes in the level of reporting.

(5) The review of the corporate governance annual disclosure and any additional requests for information shall be made through the lead state as determined by the procedures within the Financial Analysis Handbook adopted by the National Association of Insurance Commissioners.

(6) Insurers providing information substantially similar to the information required by the Corporate Governance Annual Disclosure Act in other documents provided to the director, including proxy statements filed in conjunction with the requirements of section 44-2132 or other state or federal filings provided to the director, shall not be required to duplicate such information in the corporate governance annual disclosure, but shall only be required to cross reference the document in which such information is included.

Source: Laws 2016, LB772, § 4.

Operative date January 1, 2017.

44-9105 Corporate governance annual disclosure; contents; request for additional information.

The corporate governance annual disclosure shall be prepared in a manner prescribed by the director. The insurer or insurance group shall have discretion over the responses to the corporate governance annual disclosure inquiries, except that the corporate governance annual disclosure shall contain the material information necessary to permit the director to gain an understanding of the insurer's or insurance group's corporate governance structure, policies, and practices. The director may request additional information that he or she deems material and necessary to provide the director with a clear understanding of the corporate governance policies, reporting or information systems, or controls implementing the corporate governance policies. Documentation and supporting information shall be maintained and made available upon examination or upon request of the director.

Source: Laws 2016, LB772, § 5.

Operative date January 1, 2017.

44-9106 Documents, materials, and other information; proprietary and trade secrets; confidential; use by director; director; powers.

(1) Documents, materials, or other information, including the corporate governance annual disclosure, in the possession or control of the Department of

Insurance that are obtained by, created by, or disclosed to the director or any other person under the Corporate Governance Annual Disclosure Act are recognized by this state as being proprietary and to contain trade secrets. All such documents, materials, or other information shall be confidential by law and privileged, shall not be a public record subject to disclosure by the director pursuant to sections 84-712 to 84-712.09, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. However, the director is authorized to use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the director's official duties. The director shall not otherwise make the documents, materials, or other information public without the prior written consent of the insurer. Nothing in this section shall be construed to require written consent of the insurer before the director may share or receive confidential documents, materials, or other information related to the corporate governance annual disclosure pursuant to subsection (3) of this section to assist in the performance of the director's regular duties.

(2) Neither the director nor any person who received documents, materials, or other information related to the corporate governance annual disclosure, through examination or otherwise, while acting under the authority of the director, or with whom such documents, materials, or other information are shared pursuant to the Corporate Governance Annual Disclosure Act, shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or other information subject to subsection (1) of this section.

(3) In order to assist in the performance of the director's regulatory duties, the director:

(a) May, upon request, share documents, materials, or other information related to the corporate governance annual disclosure, including the confidential and privileged documents, materials, or other information subject to subsection (1) of this section, including proprietary and trade secret documents and materials, with other state, federal, and international financial regulatory agencies, including members of any supervisory college as described in section 44-2137.01, with the National Association of Insurance Commissioners, and with third-party consultants pursuant to section 44-9107 if the recipient agrees in writing to maintain the confidentiality and privileged status of such documents, materials, or other information and has verified in writing the legal authority to maintain confidentiality; and

(b) May receive documents, materials, or other information related to the corporate governance annual disclosure, including otherwise confidential and privileged documents, materials, or other information, including proprietary and trade secret documents and materials, from regulatory officials of other state, federal, and international financial regulatory agencies, including members of any supervisory college as described in section 44-2137.01 and from the National Association of Insurance Commissioners, and shall maintain as confidential or privileged any documents, materials, or other information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or other information.

(4) The sharing of information and documents by the director pursuant to the Corporate Governance Annual Disclosure Act shall not constitute a delegation

of regulatory authority or rulemaking, and the director is solely responsible for the administration, execution, and enforcement of the provisions of the act.

(5) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or other information related to the corporate governance annual disclosure shall occur as a result of disclosure of such documents, materials, or other information to the director under this section or as a result of sharing as authorized in the Corporate Governance Annual Disclosure Act.

Source: Laws 2016, LB772, § 6.

Operative date January 1, 2017.

44-9107 Review of corporate governance annual disclosure; third-party consultants; National Association of Insurance Commissioners; written agreement; contents.

(1) The director may retain, at the insurer's expense, third-party consultants, including attorneys, actuaries, accountants, and other experts not otherwise a part of the director's staff, as may be reasonably necessary to assist the director in reviewing the corporate governance annual disclosure and related information or the insurer's compliance with the Corporate Governance Annual Disclosure Act.

(2) Any persons retained under subsection (1) of this section shall be under the direction and control of the director and shall act in a purely advisory capacity.

(3) The National Association of Insurance Commissioners and third-party consultants shall be subject to the same confidentiality standards and requirements as the director.

(4) As part of the retention process, a third-party consultant shall verify to the director, with notice to the insurer, that the third-party consultant is free of a conflict of interest and that it has internal procedures in place to monitor compliance with a conflict of interest and to comply with the confidentiality standards and requirements of the Corporate Governance Annual Disclosure Act.

(5) A written agreement with the National Association of Insurance Commissioners or a third-party consultant governing sharing and use of information provided pursuant to the Corporate Governance Annual Disclosure Act shall contain the following provisions and expressly require the written consent of the insurer prior to making public information provided under the act:

(a) Specific procedures and protocols for maintaining the confidentiality and security of information related to the corporate governance annual disclosure that is shared with the National Association of Insurance Commissioners or a third-party consultant pursuant to the act;

(b) Procedures and protocols for sharing by the National Association of Insurance Commissioners only with other state regulators from states in which the insurance group has domiciled insurers. The agreement shall provide that the recipient agrees in writing to maintain the confidentiality and privileged status of the documents, materials, or other information related to the corporate governance annual disclosure and has verified in writing the legal authority to maintain confidentiality.

(c) A provision specifying that (i) ownership of the information related to the corporate governance annual disclosure that is shared with the National

Association of Insurance Commissioners or a third-party consultant remains with the Department of Insurance and (ii) the National Association of Insurance Commissioners' or third-party consultant's use of the information is subject to the direction of the director;

(d) A provision that prohibits the National Association of Insurance Commissioners or a third-party consultant from storing the information shared pursuant to the Corporate Governance Annual Disclosure Act in a permanent database after the underlying analysis is completed;

(e) A provision requiring the National Association of Insurance Commissioners or third-party consultant to provide prompt notice to the director and to the insurer or insurance group regarding any subpoena, request for disclosure, or request for production of the insurer's or insurance group's information related to the corporate governance annual disclosure; and

(f) A requirement that the National Association of Insurance Commissioners or a third-party consultant consent to intervention by an insurer in any judicial or administrative action in which the National Association of Insurance Commissioners or a third-party consultant may be required to disclose confidential information about the insurer shared with the National Association of Insurance Commissioners or a third-party consultant pursuant to the Corporate Governance Annual Disclosure Act.

Source: Laws 2016, LB772, § 7.
Operative date January 1, 2017.

44-9108 Failure to file corporate governance annual disclosure; forfeiture; suspension of certificate of authority.

Any insurer failing, without just cause, to timely file the corporate governance annual disclosure as required in the Corporate Governance Annual Disclosure Act shall forfeit fifty dollars each day thereafter such failure continues. The maximum forfeit shall not exceed ten thousand dollars. In addition to the forfeiture, the director may suspend, after notice and hearing, the certificate of authority of the insurer until it has complied with the act. The director may reduce the forfeiture if the insurer demonstrates to the director that the forfeiture would constitute a financial hardship to the insurer. The director shall remit any forfeiture collected pursuant to this section to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 2016, LB772, § 8.
Operative date January 1, 2017.

44-9109 Rules and regulations.

The director may adopt and promulgate rules and regulations to carry out the Corporate Governance Annual Disclosure Act.

Source: Laws 2016, LB772, § 9.
Operative date January 1, 2017.



CHAPTER 45

INTEREST, LOANS, AND DEBT

Article.

1. Interest Rates and Loans.
 - (f) Loan Brokers. 45-189 to 45-191.10.
3. Installment Sales. 45-334 to 45-356.
6. Collection Agencies. 45-621.
7. Residential Mortgage Licensing. 45-701 to 45-742.01.
9. Delayed Deposit Services Licensing Act. 45-901 to 45-930.
10. Nebraska Installment Loan Act. 45-1002 to 45-1024.
12. Nebraska Construction Prompt Pay Act. 45-1201 to 45-1211.

ARTICLE 1

INTEREST RATES AND LOANS

(f) LOAN BROKERS

Section

- 45-189. Loan brokers; legislative findings.
45-190. Terms, defined.
45-191.10. Persons exempt.

(f) LOAN BROKERS

45-189 Loan brokers; legislative findings.

The Legislature finds that:

(1) Many professional groups are presently licensed or otherwise regulated by the State of Nebraska in the interest of public protection;

(2) Certain questionable business practices, such as the collection of an advance fee prior to the performance of the service, misleads the public;

(3) Such practices are avoided by many professional groups and many professional groups are regulated by the state to restrict practices which tend to mislead or deceive the public;

(4) Loan brokers in Nebraska have engaged in the practice of collecting an advance fee from borrowers in consideration for attempting to procure a loan of money;

(5) Such practice, as well as others, by loan brokers has led the public to believe that the loan broker has agreed to procure a loan for the borrower when in fact the loan broker has merely promised to attempt to procure a loan; and

(6) Regulation of loan brokers by the state, in similar fashion to that of other professions, is necessary in order to protect the public welfare and to promote the use of fair and equitable business practices.

Source: Laws 1981, LB 154, § 1; Laws 2011, LB75, § 2.

45-190 Terms, defined.

For purposes of sections 45-189 to 45-191.11, unless the context otherwise requires:

(1) Advance fee means any fee, deposit, or consideration which is assessed or collected, prior to the closing of a loan, by a loan broker and includes, but is not limited to, any money assessed or collected for processing, appraisals, credit checks, consultations, or expenses;

(2) Borrower means a person obtaining or desiring to obtain a loan of money;

(3) Department means the Department of Banking and Finance;

(4) Director means the Director of Banking and Finance;

(5)(a) Loan broker means any person who:

(i) For or in expectation of consideration from a borrower, procures, attempts to procure, arranges, or attempts to arrange a loan of money for a borrower;

(ii) For or in expectation of consideration from a borrower, assists a borrower in making an application to obtain a loan of money;

(iii) Is employed as an agent for the purpose of soliciting borrowers as clients of the employer; or

(iv) Holds himself or herself out, through advertising, signs, or other means, as a loan broker; and

(b) Loan broker does not include: (i) A bank, trust company, savings and loan association or subsidiary of a savings and loan association, building and loan association, or credit union which is subject to regulation or supervision under the laws of the United States or any state; (ii) a mortgage banker or installment loan company licensed or registered under the laws of the State of Nebraska; (iii) a credit card company; (iv) an insurance company authorized to conduct business under the laws of the State of Nebraska; or (v) a lender approved by the Federal Housing Administration or the United States Department of Veterans Affairs, if the loan is secured or covered by guarantees, commitments, or agreements to purchase or take over the same by the Federal Housing Administration or the United States Department of Veterans Affairs;

(6) Loan brokerage agreement means any agreement for services between a loan broker and a borrower; and

(7) Person means natural persons, corporations, trusts, unincorporated associations, joint ventures, partnerships, and limited liability companies.

Source: Laws 1981, LB 154, § 2; Laws 1982, LB 751, § 1; Laws 1985, LB 86, § 1; Laws 1989, LB 272, § 3; Laws 1993, LB 121, § 271; Laws 1993, LB 270, § 1; Laws 1995, LB 599, § 11; Laws 2001, LB 53, § 87; Laws 2003, LB 131, § 26; Laws 2009, LB327, § 16; Laws 2011, LB75, § 3; Laws 2013, LB279, § 1.

45-191.10 Persons exempt.

The following persons are exempt from sections 45-189 to 45-191.11 if such person does not hold himself or herself out, through advertising, signs, or other means, as a loan broker: Securities broker-dealer, real estate broker or salesperson, attorney, certified public accountant, or investment adviser.

Source: Laws 1993, LB 270, § 12; Laws 1995, LB 599, § 12; Laws 2013, LB279, § 2.

ARTICLE 3
INSTALLMENT SALES

Section

- 45-334. Act, how cited.
 45-335. Terms, defined.
 45-336. Installment contract; requirements.
 45-345. License; requirement; exception.
 45-346. License; application; issuance; bond; fee; term; director; duties.
 45-346.01. Licensee; move of place of business; maintain minimum net worth; bond.
 45-348. License; renewal; licensee; duties; fee; voluntary surrender of license.
 45-351. Licensee; investigation and inspection; director; appoint examiners; charges; fines; lien.
 45-354. Nationwide Mortgage Licensing System and Registry; department; participation; requirements; director; duties; department; duties.
 45-355. Nationwide Mortgage Licensing System and Registry; information sharing; director; powers.
 45-356. Acquisition of licensee; notice; filing fee; director; duties; disapproval; grounds; notice; hearing.

45-334 Act, how cited.

Sections 45-334 to 45-356 shall be known and may be cited as the Nebraska Installment Sales Act.

Source: Laws 1965, c. 268, § 1, p. 756; Laws 1994, LB 979, § 11; Laws 2007, LB124, § 31; Laws 2012, LB965, § 1; Laws 2016, LB778, § 3.

Effective date July 21, 2016.

45-335 Terms, defined.

For purposes of the Nebraska Installment Sales Act, unless the context otherwise requires:

(1) Goods means all personal property, except money or things in action, and includes goods which, at the time of sale or subsequently, are so affixed to realty as to become part thereof whether or not severable therefrom;

(2) Services means work, labor, and services of any kind performed in conjunction with an installment sale but does not include services for which the prices charged are required by law to be established and regulated by the government of the United States or any state;

(3) Buyer means a person who buys goods or obtains services from a seller in an installment sale;

(4) Seller means a person who sells goods or furnishes services to a buyer under an installment sale;

(5) Installment sale means any transaction, whether or not involving the creation or retention of a security interest, in which a buyer acquires goods or services from a seller pursuant to an agreement which provides for a time-price differential and under which the buyer agrees to pay all or part of the time-sale price in one or more installments and within one hundred forty-five months, except that installment contracts for the purchase of mobile homes may exceed such one-hundred-forty-five-month limitation. Installment sale does not include a consumer rental purchase agreement defined in and regulated by the Consumer Rental Purchase Agreement Act;

(6) Installment contract means an agreement entered into in this state evidencing an installment sale except those otherwise provided for in separate acts;

(7) Cash price or cash sale price means the price stated in an installment contract for which the seller would have sold or furnished to the buyer and the buyer would have bought or acquired from the seller goods or services which are the subject matter of the contract if such sale had been a sale for cash instead of an installment sale. It may include the cash price of accessories or services related to the sale such as delivery, installation, alterations, modifications, and improvements and may include taxes to the extent imposed on the cash sale;

(8) Basic time price means the cash sale price of the goods or services which are the subject matter of an installment contract plus the amount included therein, if a separate identified charge is made therefor and stated in the contract, for insurance, registration, certificate of title, debt cancellation contract, debt suspension contract, electronic title and lien services, guaranteed asset protection waiver, and license fees, filing fees, an origination fee, and fees and charges prescribed by law which actually are or will be paid to public officials for determining the existence of or for perfecting, releasing, or satisfying any security related to the credit transaction or any charge for nonfiling insurance if such charge does not exceed the amount of fees and charges prescribed by law which would have been paid to public officials for filing, perfecting, releasing, and satisfying any security related to the credit transaction and less the amount of the buyer's downpayment in money or goods or both;

(9) Time-price differential, however denominated or expressed, means the amount, as limited in the Nebraska Installment Sales Act, to be added to the basic time price;

(10) Time-sale price means the total of the basic time price of the goods or services, the amount of the buyer's downpayment in money or goods or both, and the time-price differential;

(11) Sales finance company means a person purchasing one or more installment contracts from one or more sellers. Sales finance company includes, but is not limited to, a financial institution or installment loan licensee, if so engaged;

(12) Department means the Department of Banking and Finance;

(13) Director means the Director of Banking and Finance;

(14) Financial institution has the same meaning as in section 8-101;

(15) Debt cancellation contract means a loan term or contractual arrangement modifying loan terms under which a financial institution or licensee agrees to cancel all or part of a buyer's obligation to repay an extension of credit from the financial institution or licensee upon the occurrence of a specified event. The debt cancellation contract may be separate from or a part of other loan documents. The term debt cancellation contract does not include loan payment deferral arrangements in which the triggering event is the buyer's unilateral election to defer repayment or the financial institution's or licensee's unilateral decision to allow a deferral of repayment;

(16) Debt suspension contract means a loan term or contractual arrangement modifying loan terms under which a financial institution or licensee agrees to

suspend all or part of a buyer's obligation to repay an extension of credit from the financial institution or licensee upon the occurrence of a specified event. The debt suspension contract may be separate from or a part of other loan documents. The term debt suspension contract does not include loan payment deferral arrangements in which the triggering event is the buyer's unilateral election to defer repayment or the financial institution's or licensee's unilateral decision to allow a deferral of repayment;

(17) Guaranteed asset protection waiver means a waiver that is offered, sold, or provided in accordance with the Guaranteed Asset Protection Waiver Act;

(18) Licensee means any person who obtains a license under the Nebraska Installment Sales Act;

(19) Person means individual, partnership, limited liability company, association, financial institution, trust, corporation, and any other legal entity;

(20) 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;

(21) 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; and

(22)(a) Control in the case of a corporation means (i) direct or indirect ownership of or the right to control twenty-five percent or more of the voting shares of the corporation or (ii) the ability of a person or group acting in concert to elect a majority of the directors or otherwise effect a change in policy.

(b) Control in the case of any other entity means (i) the power, directly or indirectly, to direct the management or policies of the entity, (ii) the contribution of twenty-five percent or more of the capital of the entity, or (iii) the right to receive, upon dissolution, twenty-five percent or more of the capital of the entity.

Source: Laws 1965, c. 266, § 1, p. 751; Laws 1965, c. 268, § 2, p. 757; Laws 1969, c. 379, § 1, p. 1340; Laws 1969, c. 380, § 1, p. 1343; Laws 1969, c. 381, § 1, p. 1345; Laws 1973, LB 455, § 1; Laws 1978, LB 373, § 1; Laws 1989, LB 94, § 1; Laws 1989, LB 681, § 16; Laws 1992, LB 269, § 1; Laws 2003, LB 217, § 34; Laws 2006, LB 876, § 25; Laws 2010, LB571, § 8; Laws 2011, LB77, § 1; Laws 2012, LB965, § 2; Laws 2016, LB778, § 4.
Effective date July 21, 2016.

Cross References

Consumer Rental Purchase Agreement Act, see section 69-2101.

Guaranteed Asset Protection Waiver Act, see section 45-1101.

45-336 Installment contract; requirements.

(1) Each retail installment contract shall be in writing, shall be signed by both the buyer and the seller, and shall contain the following items and a copy thereof shall be delivered to the buyer at the time the instrument is signed,

except for contracts made in conformance with section 45-340: (a) The cash sale price; (b) the amount of the buyer's downpayment, and whether made in money or goods, or partly in money and partly in goods, including a brief description of any goods traded in; (c) the difference between subdivisions (a) and (b) of this subsection; (d) the amount included for insurance if a separate charge is made therefor, specifying the types of coverages; (e) the amount included for a debt cancellation contract or a debt suspension contract if the debt cancellation contract or debt suspension contract is a contract of a financial institution or licensee, such contract is sold directly by such financial institution or licensee or by an unaffiliated, nonexclusive agent of such financial institution or licensee in accordance with 12 C.F.R. part 37, as such part existed on January 1, 2011, and the financial institution or licensee is responsible for the unaffiliated, nonexclusive agent's compliance with such part, and a separate charge is made therefor; (f) the amount included for electronic title and lien services other than fees and charges prescribed by law which actually are or will be paid to public officials for determining the existence of or for perfecting, releasing, or satisfying any security related to the credit transaction; (g) the basic time price, which is the sum of subdivisions (c), (d), (e), and (f) of this subsection; (h) the time-price differential; (i) the amount of the time-price balance, which is the sum of subdivisions (g) and (h) of this subsection, payable in installments by the buyer to the seller; (j) the number, amount, and due date or period of each installment; (k) the time-sales price; and (l) the amount included for a guaranteed asset protection waiver.

(2) The contract shall contain substantially the following notice: NOTICE TO THE BUYER. DO NOT SIGN THIS CONTRACT BEFORE YOU READ IT OR IF IT CONTAINS BLANK SPACES. YOU ARE ENTITLED TO A COPY OF THE CONTRACT YOU SIGN.

(3) The items listed in subsection (1) of this section need not be stated in the sequence or order set forth in such subsection. Additional items may be included to explain the computations made in determining the amount to be paid by the buyer. No installment contract shall be signed by the buyer or proffered by seller when it contains blank spaces to be filled in after execution, except that if delivery of the goods or services is not made at the time of the execution of the contract, the identifying numbers or marks of the goods, or similar information, and the due date of the first installment may be inserted in the contract after its execution.

(4) If a seller proffers an installment contract as part of a transaction which delays or cancels, or promises to delay or cancel, the payment of the time-price differential on the contract if the buyer pays the basic time price, cash price, or cash sale price within a certain period of time, the seller shall, in clear and conspicuous writing, either within the installment contract or in a separate document, inform the buyer of the exact date by which the buyer must pay the basic time price, cash price, or cash sale price in order to delay or cancel the payment of the time-price differential. The seller or any subsequent purchaser of the installment contract, including a sales finance company, shall not be allowed to change such date.

(5) Upon written request from the buyer, the holder of an installment contract shall give or forward to the buyer a written statement of the dates and amounts of payments and the total amount unpaid under such contract. A buyer shall be given a written receipt for any payment when made in cash.

(6) After payment of all sums for which the buyer is obligated under a contract, the holder shall deliver or mail to the buyer at his or her last-known address one or more good and sufficient instruments or copies thereof to acknowledge payment in full and shall release all security in the goods and mark canceled and return to the buyer the original agreement or copy thereof or instruments or copies thereof signed by the buyer. For purposes of this section, a copy shall meet the requirements of section 25-12,112.

Source: Laws 1965, c. 268, § 3, p. 758; Laws 1994, LB 979, § 12; Laws 1994, LB 980, § 3; Laws 1999, LB 396, § 28; Laws 2006, LB 876, § 26; Laws 2010, LB571, § 9; Laws 2011, LB77, § 2.

45-345 License; requirement; exception.

(1) No person shall act as a sales finance company in this state without obtaining a license therefor from the department as provided in the Nebraska Installment Sales Act whether or not such person maintains an office, place of doing business, or agent in this state, unless such person meets the requirements of section 45-340.

(2) No financial institution or installment loan licensee authorized to do business in this state shall be required to obtain a license under the act but shall comply with all of the other provisions of the act.

(3) A seller who does not otherwise act as a sales finance company shall not be required to obtain a license under the act but shall comply with all of the other provisions of the act in order to charge the time-price differential allowed by section 45-338.

Source: Laws 1965, c. 268, § 12, p. 763; Laws 1973, LB 39, § 4; Laws 1996, LB 1053, § 10; Laws 2003, LB 131, § 28; Laws 2003, LB 217, § 36; Laws 2012, LB965, § 3.

45-346 License; application; issuance; bond; fee; term; director; duties.

(1) A license issued under the Nebraska Installment Sales Act is nontransferable and nonassignable. The same person may obtain additional licenses for each place of business operating as a sales finance company in this state upon compliance with the act as to each license.

(2) Application for a license shall be on a form prescribed and furnished by the director and shall include audited financial statements showing a minimum net worth of one hundred thousand dollars. If the applicant is an individual or a sole proprietorship, the application shall include the applicant's social security number.

(3) An applicant for a license shall file with the department a surety bond in the amount of fifty thousand dollars, furnished by a surety company authorized to do business in this state. The bond shall be for the use of the State of Nebraska and any Nebraska resident who may have claims or causes of action against the applicant. The surety may cancel the bond only upon thirty days' written notice to the director.

(4) A license fee of one hundred fifty dollars and any processing fee allowed under subsection (2) of section 45-354 shall be submitted along with each application.

(5) An initial license shall remain in full force and effect until the next succeeding December 31. Each license shall remain in force until revoked, suspended, canceled, expired, or surrendered.

(6) The director shall, after an application has been filed for a license under the act, investigate the facts, and if he or she finds that the experience, character, and general fitness of the applicant, of the members thereof if the applicant is a corporation or association, and of the officers and directors thereof if the applicant is a corporation, are such as to warrant belief that the business will be operated honestly, fairly, and efficiently within the purpose of the act, the director shall issue and deliver a license to the applicant to do business as a sales finance company in accordance with the license and the act. The director shall have the power to reject for cause any application for a license.

(7) The director shall, within his or her discretion, make an examination and inspection concerning the propriety of the issuance of a license to any applicant. The cost of such examination and inspection shall be borne by the applicant.

Source: Laws 1965, c. 268, § 13, p. 764; Laws 1997, LB 752, § 116; Laws 2004, LB 999, § 35; Laws 2005, LB 533, § 47; Laws 2007, LB124, § 34; Laws 2012, LB965, § 4; Laws 2016, LB778, § 5. Effective date July 21, 2016.

45-346.01 Licensee; move of place of business; maintain minimum net worth; bond.

(1) A licensee may move its place of business from one place to another without obtaining a new license if the licensee gives written notice thereof to the director at least thirty days prior to such move.

(2) A licensee shall maintain the minimum net worth as required by section 45-346 while a license issued under the Nebraska Installment Sales Act is in effect. The minimum net worth shall be proven by an annual audit conducted by a certified public accountant. A licensee shall submit a copy of the annual audit to the director as required by section 45-348 or upon written request of the director. If a licensee fails to maintain the required minimum net worth, the department may issue a notice of cancellation of the license in lieu of revocation proceedings.

(3) The surety bond or a substitute bond as required by section 45-346 shall remain in effect while a license issued under the Nebraska Installment Sales Act is in effect. If a licensee fails to maintain a surety bond or substitute bond, the licensee shall immediately cease doing business and surrender the license to the department. If the licensee does not surrender the license, the department may issue a notice of cancellation of the license in lieu of revocation proceedings.

Source: Laws 2007, LB124, § 35; Laws 2009, LB327, § 17; Laws 2012, LB965, § 5.

45-348 License; renewal; licensee; duties; fee; voluntary surrender of license.

(1) An installment sales license may be renewed annually on or before December 31 by paying to the director a fee of one hundred fifty dollars for each license held as a license fee for the succeeding year and any processing fee

allowed under subsection (2) of section 45-354 and by submitting such information as the director may require to indicate any material change in the information contained in the original application or succeeding renewal applications, including a copy of the licensee's most recent annual audit.

(2) A licensee may voluntarily surrender a license at any time by delivering to the director written notice of the surrender. The department shall issue a notice of cancellation of the license following such surrender.

(3) If a licensee fails to renew its license 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.

Source: Laws 1965, c. 268, § 15, p. 765; Laws 2005, LB 533, § 48; Laws 2009, LB327, § 18; Laws 2012, LB965, § 6; Laws 2016, LB778, § 6.

Effective date July 21, 2016.

45-351 Licensee; investigation and inspection; director; appoint examiners; charges; fines; lien.

(1) The department shall be charged with the duty of inspecting the business, records, and accounts of all persons who engage in the business of a sales finance company subject to the Nebraska Installment Sales Act. The director shall have the power to appoint examiners who shall, under his or her direction, investigate the installment contracts and business and examine the books and records of licensees when the director shall so determine. Such examinations shall not be conducted more often than annually except as provided in subsection (2) of this section.

(2) The director or his or her duly authorized representative shall have the power to make such investigations as he or she shall deem necessary, and to the extent necessary for this purpose, he or she may examine such licensee or any other person and shall have the power to compel the production of all relevant books, records, accounts, and documents.

(3) The expenses of the director incurred in the examination of the books and records of licensees shall be charged to the licensees as set forth in sections 8-605 and 8-606. The director may charge the costs of an investigation of a nonlicensed person to such person, and such costs shall be paid within thirty days after receipt of billing.

(4) Upon receipt by a licensee of a notice of investigation or inquiry request for information from the department, the licensee shall respond within twenty-one calendar days. Each day a licensee fails to respond as required by this subsection shall constitute a separate violation.

(5) If the director finds, after notice and opportunity for hearing in accordance with the Administrative Procedure Act, that any person has willfully and intentionally violated any provision of the Nebraska Installment Sales Act, any rule or regulation adopted and promulgated under the act, or any order issued by the director under the act, the director may order such person to pay (a) an administrative fine of not more than one thousand dollars for each separate violation and (b) the costs of investigation. The department shall remit fines collected under this subsection to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

(6) If a person fails to pay an administrative fine and the costs of investigation ordered pursuant to subsection (5) of this section, a lien in the amount of such fine and costs may be imposed upon all assets and property of such person in this state and may be recovered in a civil action by the director. The lien shall attach to the real property of such person when notice of the lien is filed and indexed against the real property in the office of the register of deeds in the county where the real property is located. The lien shall attach to any other property of such person when notice of the lien is filed against the property in the manner prescribed by law. Failure of the person to pay such fine and costs shall constitute a separate violation of the Nebraska Installment Sales Act.

Source: Laws 1965, c. 268, § 18, p. 767; Laws 1994, LB 979, § 13; Laws 1997, LB 137, § 22; Laws 1999, LB 396, § 29; Laws 2004, LB 999, § 36; Laws 2007, LB124, § 37; Laws 2012, LB965, § 7.

Cross References

Administrative Procedure Act, see section 84-920.

45-354 Nationwide Mortgage Licensing System and Registry; department; participation; requirements; director; duties; department; duties.

(1) Effective January 1, 2013, or within one hundred eighty days after the Nationwide Mortgage Licensing System and Registry is capable of accepting licenses issued under the Nebraska Installment Sales Act, whichever is later, the department shall require such licensees under the 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 not be limited to:

(a) Background checks of applicants and licensees, including, but not limited to:

- (i) Criminal history through fingerprint or other data bases;
- (ii) Civil or administrative records;
- (iii) 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) Compliance with precicensure education and testing and continuing education;

(d) The setting or resetting, as necessary, of renewal processing or reporting dates; 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 Nebraska Installment Sales 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 45-355.

(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 2012, LB965, § 8.

45-355 Nationwide Mortgage Licensing System and Registry; information sharing; 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 Registry, 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 mortgage 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, or other associations representing governmental agencies as established by adopting and promulgating rules and regulations or an order of the director.

Source: Laws 2012, LB965, § 9.

45-356 Acquisition of licensee; notice; filing fee; director; duties; disapproval; grounds; notice; hearing.

(1) No person acting personally or as an agent shall acquire control of any licensee under the Nebraska Installment Sales Act without first (a) giving thirty days' notice to the department on a form prescribed by the department of such proposed acquisition and (b) paying a filing fee of one hundred fifty dollars and any processing fee allowed under subsection (2) of section 45-354.

(2) The director, upon receipt of such notice, shall act upon the acquisition within thirty days, and unless he or she disapproves of the proposed acquisition within such 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 party has not furnished all the information required by the department.

(3) An acquisition may become effective 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 character and general fitness of any acquiring person or of any of the proposed management personnel indicate that the acquired installment sales licensee would not be operated honestly, fairly, or efficiently within the purpose of the Nebraska Installment Sales Act; or

(iii) Any acquiring person neglects, fails, or refuses to furnish all information required by the department.

(b) The director shall notify the acquiring party in writing of disapproval of the acquisition. The notice shall provide a statement of the basis for the disapproval.

(c) Within fifteen business days after receipt of written notice of disapproval, the acquiring party may make a written request for a hearing on the proposed

acquisition in accordance with the Administrative Procedure Act and rules and regulations adopted and promulgated by the department under the Administrative Procedure Act. The director shall, by order, approve or disapprove the proposed acquisition on the basis of the record made at the hearing.

Source: Laws 2016, LB778, § 7.
Effective date July 21, 2016.

Cross References

Administrative Procedure Act, see section 84-920.

ARTICLE 6 COLLECTION AGENCIES

Section

45-621. Nebraska Collection Agency Fund; created; use; investment; transfer.

45-621 Nebraska Collection Agency Fund; created; use; investment; transfer.

(1) All fees collected under the Collection Agency Act shall be remitted to the State Treasurer for credit to a special fund to be known as the Nebraska Collection Agency Fund. The board may use the fund as may be necessary for the proper administration and enforcement of the act. The fund shall be paid out only on proper vouchers approved by the board and upon warrants issued by the Director of Administrative Services and countersigned by the State Treasurer as provided by law. All fees and expenses of the Attorney General in representing the board pursuant to the act shall be paid out of such fund. Transfers from the fund to the Election Administration Fund or the General Fund may be made at the direction of the Legislature. Any money in the Nebraska Collection Agency 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 or before July 5, 2013, the State Treasurer shall transfer one hundred thousand dollars from the Nebraska Collection Agency Fund to the Election Administration Fund.

Source: Laws 1963, c. 500, § 25, p. 1603; Laws 1971, LB 53, § 2; R.S.1943, (1981), § 81-8,182; Laws 1984, LB 471, § 21; Laws 1989, LB 206, § 3; Laws 1993, LB 261, § 19; Laws 1994, LB 1066, § 31; Laws 2001, LB 541, § 3; Laws 2013, LB199, § 21.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

ARTICLE 7 RESIDENTIAL MORTGAGE LICENSING

Section

45-701. Act, how cited.
45-702. Terms, defined.
45-703. Act; exemptions.
45-703.01. Nonprofit organization; certificate of exemption; qualification; application; denial; notice; appeal; department; powers; revocation of certificate; grounds.

Section

- 45-706. License; issuance; denial; abandonment; appeal; renewal; fees; inactive status; renewal; reactivation of license; notice of cancellation.
- 45-727. Mortgage loan originator; license required; loan processor or underwriter; license required.
- 45-729. Issuance of mortgage loan originator license; director; findings required; denial; notice; appeal; application deemed abandoned; when; effect.
- 45-731. Written test requirement; subject areas.
- 45-734. Mortgage loan originator license; inactive status; duration; renewal; reactivation.
- 45-736. Unique identifier; use.
- 45-737. Mortgage banker; licensee; duties.
- 45-737.01. Mortgage loan originator; licensee; duties.
- 45-741. Director; examine documents and records; investigate violations or complaints; director; powers; costs; confidentiality.
- 45-742. License; suspension or revocation; administrative fine; procedure; surrender; cancellation; expiration; effect; reinstatement.
- 45-742.01. Mortgage banker or mortgage loan originator license; emergency orders authorized; grounds; notice; emergency hearing; judicial review; director; additional proceedings.

45-701 Act, how cited.

Sections 45-701 to 45-754 shall be known and may be cited as the Residential Mortgage Licensing Act.

Source: Laws 1989, LB 272, § 4; Laws 1995, LB 163, § 1; Laws 2006, LB 876, § 27; Laws 2007, LB124, § 40; Laws 2009, LB328, § 3; Laws 2010, LB892, § 3; Laws 2012, LB965, § 10; Laws 2013, LB290, § 1.

45-702 Terms, defined.

For purposes of the Residential Mortgage Licensing Act:

(1) Borrower means the mortgagor or mortgagors under a real estate mortgage or the trustor or trustors under a trust deed;

(2) Branch office means any location at which the business of a mortgage banker or mortgage loan originator is to be conducted, including (a) any offices physically located in Nebraska, (b) any offices that, while not physically located in this state, intend to transact business with Nebraska residents, and (c) any third-party or home-based locations that mortgage loan originators, agents, and representatives intend to use to transact business with Nebraska residents;

(3) 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;

(4) Clerical or support duties means tasks which occur subsequent to the receipt of a residential mortgage loan application including (a) the receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan or (b) communication with a consumer to obtain the information necessary for the processing or underwriting of a residential mortgage loan, to the extent that such communication does not include offering or negotiating loan rates or terms or counseling consumers about residential mortgage loan rates or terms;

(5) Control means the power, directly or indirectly, to direct the management or policies of a mortgage banking business, whether through ownership of

securities, by contract, or otherwise. Any person who (a) is a director, a general partner, or an executive officer, including the president, chief executive officer, chief financial officer, chief operating officer, chief legal officer, chief compliance officer, and any individual with similar status and function, (b) directly or indirectly has the right to vote ten percent or more of a class of voting security or has the power to sell or direct the sale of ten percent or more of a class of voting securities, (c) in the case of a limited liability company, is a managing member, or (d) 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 mortgage banking business;

(6) Department means the Department of Banking and Finance;

(7) Depository institution means any person (a) organized or chartered under the laws of this state, any other state, or the United States relating to banks, savings institutions, trust companies, savings and loan associations, credit unions, or industrial banks or similar depository institutions which the Board of Directors of the Federal Deposit Insurance Corporation finds to be operating substantially in the same manner as an industrial bank and (b) engaged in the business of receiving deposits other than funds held in a fiduciary capacity, including, but not limited to, funds held as trustee, executor, administrator, guardian, or agent;

(8) Director means the Director of Banking and Finance;

(9) Dwelling means a residential structure located or intended to be located in this state that contains one to four units, whether or not that structure is attached to real property, including an individual condominium unit, cooperative unit, mobile home, or trailer, if it is used as a residence;

(10) Federal banking agencies means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Deposit Insurance Corporation;

(11) Immediate family member means a spouse, child, sibling, parent, grandparent, or grandchild, including stepparents, stepchildren, stepsiblings, and adoptive relationships;

(12) Installment loan company means any person licensed pursuant to the Nebraska Installment Loan Act;

(13) Licensee means any person licensed under the Residential Mortgage Licensing Act as either a mortgage banker or mortgage loan originator;

(14) Loan processor or underwriter means an individual who (a) performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a person licensed, or exempt from licensing, under the Residential Mortgage Licensing Act or Nebraska Installment Loan Act and (b) does not represent to the public, through advertising or other means of communicating or providing information including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that such individual can or will perform any of the activities of a mortgage loan originator;

(15) Mortgage banker or mortgage banking business means any person (a) other than (i) a person exempt under section 45-703, (ii) an individual who is a loan processor or underwriter, or (iii) an individual who is licensed in this state as a mortgage loan originator and (b) who, for compensation or gain or in the

expectation of compensation or gain, directly or indirectly makes, originates, services, negotiates, acquires, sells, arranges for, or offers to make, originate, service, negotiate, acquire, sell, or arrange for a residential mortgage loan;

(16)(a) Mortgage loan originator means an individual who for compensation or gain or in the expectation of compensation or gain (i) takes a residential mortgage loan application or (ii) offers or negotiates terms of a residential mortgage loan.

(b) Mortgage loan originator does not include (i) an individual engaged solely as a loan processor or underwriter except as otherwise provided in section 45-727, (ii) a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with Nebraska law, unless the person or entity is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator, and (iii) a person solely involved in extensions of credit relating to time-share programs as defined in section 76-1702;

(17) 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;

(18) Nontraditional mortgage product means any residential mortgage loan product other than a thirty-year fixed rate residential mortgage loan;

(19) Offer means every attempt to provide, offer to provide, or solicitation to provide a residential mortgage loan or any form of mortgage banking business. Offer includes, but is not limited to, all general and public advertising, whether made in print, through electronic media, or by the Internet;

(20) Person means an association, joint venture, joint-stock company, partnership, limited partnership, limited liability company, business corporation, nonprofit corporation, individual, or any group of individuals however organized;

(21) Purchase-money mortgage means a mortgage issued to the borrower by the seller of the property as part of the purchase transaction;

(22) Real estate brokerage activity means any activity that involves offering or providing real estate brokerage services to the public, including (a) acting as a real estate salesperson or real estate broker for a buyer, seller, lessor, or lessee of real property, (b) bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property, (c) negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property, other than in connection with providing financing with respect to any such transaction, (d) engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate salesperson or real estate broker under any applicable law, and (e) offering to engage in any activity or act in any capacity described in subdivision (a), (b), (c), or (d) of this subdivision;

(23) Registered bank holding company means any bank holding company registered with the department pursuant to the Nebraska Bank Holding Company Act of 1995;

(24) Registered mortgage loan originator means any individual who (a) meets the definition of mortgage loan originator and is an employee of (i) a depository institution, (ii) a subsidiary that is (A) wholly owned and controlled by a depository institution and (B) regulated by a federal banking agency, or (iii) an institution regulated by the Farm Credit Administration and (b) is registered with, and maintains a unique identifier through, the Nationwide Mortgage Licensing System and Registry;

(25) Registrant means a person registered pursuant to section 45-704;

(26) Residential mortgage loan means any loan or extension of credit, including a refinancing of a contract of sale or an assumption or refinancing of a prior loan or extension of credit, which is primarily for personal, family, or household use and is secured by a mortgage, trust deed, or other equivalent consensual security interest on a dwelling or residential real estate upon which is constructed or intended to be constructed a dwelling;

(27) Residential real estate means any real property located in this state upon which is constructed or intended to be constructed a dwelling;

(28) Reverse-mortgage loan means a loan made by a licensee which (a) is secured by residential real estate, (b) is nonrecourse to the borrower except in the event of fraud by the borrower or waste to the residential real estate given as security for the loan, (c) provides cash advances to the borrower based upon the equity in the borrower's owner-occupied principal residence, (d) requires no payment of principal or interest until the entire loan becomes due and payable, and (e) otherwise complies with the terms of section 45-702.01;

(29) Service means accepting payments or maintenance of escrow accounts in the regular course of business in connection with a residential mortgage loan;

(30) State means any state of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, or the Northern Mariana Islands; and

(31) Unique identifier means a number or other identifier assigned by protocols established by the Nationwide Mortgage Licensing System and Registry.

Source: Laws 1989, LB 272, § 5; Laws 1993, LB 121, § 274; Laws 1993, LB 217, § 1; Laws 1995, LB 163, § 2; Laws 1995, LB 384, § 17; Laws 1999, LB 396, § 30; Laws 2003, LB 131, § 29; Laws 2003, LB 218, § 1; Laws 2006, LB 876, § 28; Laws 2007, LB124, § 41; Laws 2008, LB851, § 19; Laws 2009, LB328, § 4; Laws 2010, LB892, § 4; Laws 2012, LB965, § 11.

Cross References

Nebraska Bank Holding Company Act of 1995, see section 8-908.

Nebraska Installment Loan Act, see section 45-1001.

45-703 Act; exemptions.

(1) Except as provided in section 45-704, the following shall be exempt from the Residential Mortgage Licensing Act:

(a) Any depository institution or wholly owned subsidiary thereof;

(b) Any registered bank holding company;

(c) Any insurance company that is subject to regulation by the Department of Insurance and is either (i) organized or chartered under the laws of Nebraska or (ii) organized or chartered under the laws of any other state if such insurance company has a place of business in Nebraska;

(d) Any person licensed to practice law in this state in connection with activities that are (i) considered the practice of law by the Supreme Court, (ii) carried out within an attorney-client relationship, and (iii) accomplished by the attorney in compliance with all applicable laws, rules, ethics, and standards;

(e) Any person licensed in this state as a real estate broker or real estate salesperson pursuant to section 81-885.02 who is engaging in real estate brokerage activities unless such person is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator;

(f) Any registered mortgage loan originator when acting for an entity described in subdivision (24)(a)(i), (ii), or (iii) of section 45-702;

(g) Any sales finance company licensed pursuant to the Nebraska Installment Sales Act if such sales finance company does not engage in mortgage banking business in any capacity other than as a purchaser or servicer of an installment contract, as defined in section 45-335, which is secured by a mobile home or trailer;

(h) Any trust company chartered pursuant to the Nebraska Trust Company Act;

(i) Any wholly owned subsidiary of an organization listed in subdivisions (b) and (c) of this subsection if the listed organization maintains a place of business in Nebraska;

(j) Any individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual;

(k) Any individual who does not repetitively and habitually engage in the business of a mortgage banker, a mortgage loan originator, or a loan processor or underwriter, either inside or outside of this state, who (i) makes a residential mortgage loan with his or her own funds for his or her own investment, (ii) makes a purchase-money mortgage, or (iii) finances the sale of a dwelling or residential real estate owned by such individual without the intent to resell the residential mortgage loan;

(l) Any employee or independent agent of a mortgage banker licensed or registered pursuant to the Residential Mortgage Licensing Act or exempt from the act if such employee or independent agent does not conduct the activities of a mortgage loan originator or loan processor or underwriter;

(m) The United States of America; the State of Nebraska; any other state, district, territory, commonwealth, or possession of the United States of America; any city, county, or other political subdivision; and any agency or division of any of the foregoing;

(n) The Nebraska Investment Finance Authority;

(o) Any individual who is an employee of an entity described in subdivision (m) or (n) of this subsection and who acts as a mortgage loan originator or loan processor or underwriter only pursuant to his or her official duties as an employee of such entity;

(p) A bona fide nonprofit organization which has received a certificate of exemption pursuant to section 45-703.01; and

(q) Any employee of a bona fide nonprofit organization which has received a certificate of exemption pursuant to section 45-703.01 if such employee acts as a mortgage loan originator or mortgage loan processor or underwriter (i) only with respect to his or her work duties for the nonprofit organization and (ii) only with respect to residential mortgage loans with terms that are favorable to the borrower.

(2) It shall not be necessary to negate any of the exemptions provided in this section in any complaint, information, indictment, or other writ or proceedings brought under the Residential Mortgage Licensing Act, and the burden of establishing the right to any exemption shall be upon the person claiming the benefit of such exemption.

Source: Laws 1989, LB 272, § 6; Laws 1999, LB 396, § 31; Laws 2002, LB 957, § 22; Laws 2005, LB 533, § 50; Laws 2008, LB851, § 20; Laws 2009, LB328, § 5; Laws 2012, LB965, § 12.

Cross References

Nebraska Installment Sales Act, see section 45-334.

Nebraska Trust Company Act, see section 8-201.01.

45-703.01 Nonprofit organization; certificate of exemption; qualification; application; denial; notice; appeal; department; powers; revocation of certificate; grounds.

(1) A nonprofit organization may apply to the director for a certificate of exemption on a form as prescribed by the department. The director shall grant such certificate if the director finds that the nonprofit organization is a bona fide nonprofit organization. In order for a nonprofit organization to qualify as a bona fide nonprofit organization, the director shall find that it meets the following:

(a) Has the status of a tax exempt organization under section 501(c) of the Internal Revenue Code of 1986;

(b) Promotes affordable housing or provides homeownership education or similar services;

(c) Conducts its activities in a manner that serves public or charitable purposes rather than commercial purposes;

(d) Receives funding and revenue and charges fees in a manner that does not incentivize it or its employees to act other than in the best interests of its clients;

(e) Compensates its employees in a manner that does not incentivize employees to act other than in the best interests of its clients; and

(f) Provides or identifies for the borrower residential mortgage loans with terms favorable to the borrower and comparable to mortgage loans and housing assistance provided under government assistance programs.

(2) For residential mortgage loans to have terms that are favorable to the borrower, the director shall determine that terms are consistent with loan origination in a public or charitable context rather than in a commercial context.

(3) If the director determines that the application for a certificate of exemption should be denied, the director shall notify the applicant in writing of the denial and of the reasons for the denial. A decision of the director denying an application for a certificate of exemption pursuant to the Residential Mortgage Licensing Act may be appealed. The appeal shall be in accordance with the Administrative Procedure Act and rules and regulations adopted and promulgated by the department.

(4) The department has the authority to examine the books and activities of an organization it determines is a bona fide nonprofit organization. The director may, following a hearing under the Administrative Procedure Act, revoke the certificate of exemption granted to a bona fide nonprofit organization if he or she determines that such nonprofit organization fails to meet the requirements of subsection (1) of this section.

(5) In making its determinations and examinations under subsections (1), (2), and (4) of this section, the department may rely on its receipt and review of:

(a) Reports filed with federal, state, or local housing agencies and authorities; or

(b) Reports and attestations required by the department.

Source: Laws 2012, LB965, § 13.

Cross References

Administrative Procedure Act, see section 84-920.

45-706 License; issuance; denial; abandonment; appeal; renewal; fees; inactive status; renewal; reactivation of license; notice of cancellation.

(1) Upon the filing of an application for a license as a mortgage banker, if the director finds that the character and general fitness of the applicant, the members thereof if the applicant is a partnership, limited liability company, association, or other organization, and the officers, directors, and principal employees if the applicant is a corporation are such that the business will be operated honestly, soundly, and efficiently in the public interest consistent with the purposes of the Residential Mortgage Licensing Act, the director shall issue a license as a mortgage banker to the applicant. The director shall approve or deny an application for a license within ninety days after (a) acceptance of the application, (b) delivery of the bond required under section 45-724, and (c) payment of the required fee.

(2) If the director determines that the mortgage banker license application should be denied, the director shall notify the applicant in writing of the denial and of the reasons for the denial. The director shall not deny an application for a mortgage banker license because of the failure to submit information required under the act or rules and regulations adopted and promulgated under the act without first giving the applicant an opportunity to correct the deficiency by supplying the missing information. A decision of the director denying a mortgage banker license application pursuant to the act may be appealed. The appeal shall be in accordance with the Administrative Procedure Act and rules and regulations adopted and promulgated by the department under the act. The director may deny an application for a mortgage banker license application if (a) he or she determines that the applicant does not meet the conditions of subsection (1) of this section or (b) an officer, director, shareholder owning five percent or more of the voting shares of the applicant, partner, or member was

convicted of, pleaded guilty to, or was found guilty after a plea of nolo contendere to (i) a misdemeanor under any state or federal law which involves dishonesty or fraud or which involves any aspect of the mortgage banking business, depository institution business, or installment loan company business or (ii) any felony under state or federal law.

(3) If an applicant for a mortgage banker license does not complete the license application and fails to respond to a notice or notices from the department to correct the deficiency or deficiencies for a period of one hundred twenty days or more after the date the department sends the initial notice to correct the deficiency, the department may deem the application as abandoned and may issue a notice of abandonment of the application to the applicant in lieu of proceedings to deny the application.

(4)(a) All initial licenses shall remain in full force and effect until the next succeeding December 31. Mortgage banker licenses may be renewed annually by submitting to the director a request for renewal and any supplemental material as required by the director. The mortgage banker licensee shall certify that the information contained in the license application, as subsequently amended, that is on file with the department and the information contained in any supplemental material previously provided to the department remains true and correct.

(b) For the annual renewal of a license to conduct a mortgage banking business under the Residential Mortgage Licensing Act, the fee shall be two hundred dollars plus seventy-five dollars for each branch office, if applicable, and any processing fee allowed under subsection (2) of section 45-748.

(5)(a) The department may place a mortgage banker licensee that is a sole proprietorship on inactive status for a period of up to twelve months upon receipt of a request from the licensee for inactive status. The request shall include notice that the licensee has temporarily suspended business, is not acting as a mortgage banker in this state, and has no pending customer complaints. The department shall notify the licensee within ten business days as to whether the request has been granted and, if granted, of the date of expiration of the inactive status.

(b) If a mortgage banker license becomes inactive under this section, the license shall remain inactive until the license expires, is canceled, is surrendered, is suspended, is revoked, or is reactivated pursuant to subdivision (d) of this subsection.

(c) An inactive mortgage banker licensee may renew such inactive license if the licensee remains otherwise eligible for renewal pursuant to subdivision (4)(a) of this section, except for being covered by a surety bond pursuant to section 45-724. Such renewal shall not reactivate the license.

(d) The department has the authority to reactivate an inactive mortgage banker license following the department's receipt of a request from the inactive licensee that the licensee intends to resume business as a mortgage banker in this state if the inactive mortgage banker licensee meets the conditions for licensing at the time reactivation is requested, including, but not limited to, coverage by a surety bond pursuant to section 45-724.

(e) The department shall issue a notice of cancellation of an inactive mortgage banker license following the expiration of the period of inactive status set by the department pursuant to subdivision (a) of this subsection if the inactive

mortgage banker licensee fails to request reactivation of the license prior to the date of expiration.

(6) The director may require a mortgage banker licensee to maintain a minimum net worth, proven by an audit conducted by a certified public accountant, if the director determines that the financial condition of the licensee warrants such a requirement or that the requirement is in the public interest.

Source: Laws 1989, LB 272, § 9; Laws 1993, LB 121, § 275; Laws 1995, LB 163, § 4; Laws 2003, LB 218, § 4; Laws 2005, LB 533, § 53; Laws 2006, LB 876, § 29; Laws 2007, LB124, § 43; Laws 2008, LB380, § 2; Laws 2009, LB328, § 8; Laws 2012, LB965, § 14; Laws 2015, LB352, § 1.

Cross References

Administrative Procedure Act, see section 84-920.

45-727 Mortgage loan originator; license required; loan processor or underwriter; license required.

(1) An individual, unless specifically exempted from the Residential Mortgage Licensing Act under section 45-703, shall not engage in, or offer to engage in, the business of a mortgage loan originator with respect to any residential real estate or dwelling located or intended to be located in this state without first obtaining and maintaining annually a license under the act. Each licensed mortgage loan originator shall obtain and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry.

(2) An independent agent shall not engage in the activities as a loan processor or underwriter unless such independent agent loan processor or underwriter obtains and maintains a license under subsection (1) of this section. Each independent agent loan processor or underwriter licensed as a mortgage loan originator shall obtain and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry.

(3) For the purposes of implementing an orderly and efficient licensing process, the director may adopt and promulgate licensing rules or regulations and interim procedures for licensing and acceptance of applications. For previously registered or licensed individuals, the director may establish expedited review and licensing procedures.

Source: Laws 2009, LB328, § 12; Laws 2013, LB290, § 2.

45-729 Issuance of mortgage loan originator license; director; findings required; denial; notice; appeal; application deemed abandoned; when; effect.

(1) The director shall not issue a mortgage loan originator license unless the director makes at a minimum the following findings:

(a) The applicant has never had a mortgage loan originator license revoked in any governmental jurisdiction, except that a subsequent formal vacation of such revocation shall not be deemed a revocation;

(b) The applicant has not been convicted of, or pleaded guilty or nolo contendere or its equivalent to, in a domestic, foreign, or military court:

(i) A misdemeanor under any state or federal law which involves dishonesty or fraud or which involves any aspect of the business of a mortgage banker,

depository institution, or installment loan company unless such individual has received a pardon for such conviction or such conviction has been expunged, except that the director may consider the underlying crime, facts, and circumstances of a pardoned or expunged conviction in determining the applicant's eligibility for a license pursuant to subdivision (c) of this subsection; or

(ii) Any felony under state or federal law unless such individual has received a pardon for such conviction or such conviction has been expunged, except that the director may consider the underlying crime, facts, and circumstances of a pardoned or expunged conviction in determining the applicant's eligibility for a license pursuant to subdivision (c) of this subsection;

(c) The applicant has demonstrated financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a determination that the mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of the Residential Mortgage Licensing Act. For purposes of this subsection, an individual has shown that he or she is not financially responsible when he or she has shown a disregard in the management of his or her own financial condition. The director may consider the following factors in making a determination as to financial responsibility:

(i) The applicant's current outstanding judgments except judgments solely as a result of medical expenses;

(ii) The applicant's current outstanding tax liens or other government liens and filings;

(iii) The applicant's foreclosures within the past three years; and

(iv) A pattern of seriously delinquent accounts within the past three years by the applicant;

(d) The applicant has completed the prelicensing education requirements described in section 45-730;

(e) The applicant has passed a written test that meets the test requirement described in section 45-731; and

(f) The applicant is covered by a surety bond as required pursuant to section 45-724 or a supplemental surety bond as required pursuant to section 45-1007.

(2)(a) If the director determines that a mortgage loan originator license application should be denied, the director shall notify the applicant in writing of the denial and of the reasons for the denial.

(b) The director shall not deny an application for a mortgage loan originator license because of the failure to submit information required under the act or rules and regulations adopted and promulgated under the act without first giving the applicant an opportunity to correct the deficiency by supplying the missing information.

(c) If an applicant for a mortgage loan originator license does not complete his or her license application and fails to respond to a notice or notices from the department to correct the deficiency or deficiencies for a period of one hundred twenty days or more after the date the department sends the initial notice after initial filing of the application, the department may deem the application as abandoned and may issue a notice of abandonment of the application to the applicant in lieu of proceedings to deny the application.

(d) A decision of the director denying a mortgage loan originator license application pursuant to the Residential Mortgage Licensing Act may be appealed. The appeal shall be in accordance with the Administrative Procedure Act and rules and regulations adopted and promulgated by the department.

(3) A mortgage loan originator license shall not be assignable.

Source: Laws 2009, LB328, § 14; Laws 2012, LB965, § 15; Laws 2013, LB290, § 3.

Cross References

Administrative Procedure Act, see section 84-920.

45-731 Written test requirement; subject areas.

(1) In order to meet the written test requirement referred to in subdivision (1)(e) of section 45-729, an individual shall pass, in accordance with the standards established under this section, a qualified written test developed by the Nationwide Mortgage Licensing System and Registry and administered by a test provider approved by the Nationwide Mortgage Licensing System and Registry based upon reasonable standards.

(2) A written test shall not be treated as a qualified written test for purposes of subsection (1) of this section unless the test adequately measures the applicant's knowledge and comprehension in appropriate subject areas, including the following:

(a) Ethics;

(b) Federal laws and regulations pertaining to mortgage origination;

(c) State laws and regulations pertaining to mortgage origination; and

(d) Federal and state laws and regulations, including instruction on fraud, consumer protection, the nontraditional mortgage marketplace, and fair lending issues.

(3) Nothing in this section shall prohibit a test provider approved by the Nationwide Mortgage Licensing System and Registry from providing a test at the location of the employer of the applicant, the location of any subsidiary or affiliate of the employer of the applicant, or the location of any entity with which the applicant holds an exclusive arrangement to conduct the business of a mortgage loan originator.

(4)(a) An individual shall not be considered to have passed a qualified written test unless the individual achieves a test score of not less than seventy-five percent correct answers to questions.

(b) An individual may take a test three consecutive times with each consecutive taking occurring at least thirty days after the preceding test.

(c) After failing three consecutive tests, an individual shall wait at least six months before taking the test again.

(d) A licensed mortgage loan originator who fails to maintain a valid license for a period of five years or longer shall retake the test, not taking into account any time during which such individual is a registered mortgage loan originator.

Source: Laws 2009, LB328, § 16; Laws 2012, LB965, § 16.

45-734 Mortgage loan originator license; inactive status; duration; renewal; reactivation.

(1) A mortgage loan originator whose license is placed on inactive status under this section shall not act as a mortgage loan originator in this state until such time as the license is reactivated.

(2) The department shall place a mortgage loan originator license on inactive status upon the occurrence of one of the following:

(a) Upon receipt of a notice from either the licensed mortgage banker, registrant, installment loan company, or mortgage loan originator that the mortgage loan originator's relationship as an employee or independent agent of a licensed mortgage banker or installment loan company has been terminated;

(b) Upon the cancellation of the employing licensed mortgage banker's license pursuant to section 45-742 or upon the cancellation of the employing installment loan company's license pursuant to subdivision (3)(b) of section 45-1033 for failure to maintain the required surety bond;

(c) Upon the voluntary surrender of the employing licensed mortgage banker's license pursuant to section 45-742 or upon the voluntary surrender of the employing installment loan company's license pursuant to section 45-1032;

(d) Upon the expiration of the employing licensed mortgage banker's license pursuant to section 45-742 or upon the expiration of the employing installment loan company's license pursuant to subdivision (3)(a) of section 45-1033 if such mortgage loan originator has renewed his or her license pursuant to section 45-732;

(e) Upon the revocation or suspension of the employing licensed mortgage banker's license pursuant to section 45-742 or upon the revocation or suspension of the employing installment loan company's license pursuant to subsection (1) of section 45-1033; or

(f) Upon the cancellation, surrender, or expiration of the employing registrant's registration with the department.

(3) If a mortgage loan originator license becomes inactive under this section, the license shall remain inactive until the license expires, the licenseholder surrenders the license, the license is revoked or suspended pursuant to section 45-742, or the license is reactivated.

(4) A mortgage loan originator who holds an inactive mortgage loan originator license may renew such inactive license if he or she remains otherwise eligible for renewal pursuant to section 45-732 except for being covered by a surety bond pursuant to subdivision (1)(f) of section 45-729. Such renewal shall not reactivate the license.

(5) The department has the authority to reactivate a mortgage loan originator license upon receipt of a notice pursuant to section 45-735 that the mortgage loan originator licensee has been hired as a mortgage loan originator by a licensed mortgage banker, registrant, or installment loan company and if such mortgage loan originator meets the conditions for licensing at the time the reactivation notice is received, including, but not limited to, coverage by a surety bond pursuant to subdivision (1)(f) of section 45-729.

Source: Laws 2009, LB328, § 19; Laws 2012, LB965, § 17.

45-736 Unique identifier; use.

The unique identifier of any licensee originating a residential mortgage loan shall be clearly shown on all residential mortgage loan application forms,

solicitations, or advertisements, including business cards or web sites, and any other documents as established by rule, regulation, or order of the director.

Source: Laws 2009, LB328, § 21; Laws 2012, LB965, § 18.

45-737 Mortgage banker; licensee; duties.

A licensee licensed as a mortgage banker shall:

(1) Disburse required funds paid by the borrower and held in escrow for the payment of insurance payments no later than the date upon which the premium is due under the insurance policy;

(2) Disburse funds paid by the borrower and held in escrow for the payment of real estate taxes prior to the time such real estate taxes become delinquent;

(3) Pay any penalty incurred by the borrower because of the failure of the licensee to make the payments required in subdivisions (1) and (2) of this section unless the licensee establishes that the failure to timely make the payments was due solely to the fact that the borrower was sent a written notice of the amount due more than fifteen calendar days before the due date to the borrower's last-known address and failed to timely remit the amount due to the licensee;

(4) At least annually perform a complete escrow analysis. If there is a change in the amount of the periodic payments, the licensee shall mail written notice of such change to the borrower at least twenty calendar days before the effective date of the change in payment. The following information shall be provided to the borrower, without charge, in one or more reports, at least annually:

(a) The name and address of the licensee;

(b) The name and address of the borrower;

(c) A summary of the escrow account activity during the year which includes all of the following:

(i) The balance of the escrow account at the beginning of the year;

(ii) The aggregate amount of deposits to the escrow account during the year; and

(iii) The aggregate amount of withdrawals from the escrow account for each of the following categories:

(A) Payments applied to loan principal;

(B) Payments applied to interest;

(C) Payments applied to real estate taxes;

(D) Payments for real property insurance premiums; and

(E) All other withdrawals; and

(d) A summary of loan principal for the year as follows:

(i) The amount of principal outstanding at the beginning of the year;

(ii) The aggregate amount of payments applied to principal during the year; and

(iii) The amount of principal outstanding at the end of the year;

(5) Establish and maintain a toll-free telephone number or accept collect telephone calls to respond to inquiries from borrowers, if the licensee services residential mortgage loans. If a licensee ceases to service residential mortgage loans, it shall continue to maintain a toll-free telephone number or accept

collect telephone calls to respond to inquiries from borrowers for a period of twelve months after the date the licensee ceased to service residential mortgage loans. A telephonic messaging service which does not permit the borrower an option of personal contact with an employee, agent, or contractor of the licensee shall not satisfy the conditions of this section. Each day such licensee fails to comply with this subdivision shall constitute a separate violation of the Residential Mortgage Licensing Act;

(6) Answer in writing, within seven business days after receipt, any written request for payoff information received from a borrower or a borrower's designated representative. This service shall be provided without charge to the borrower, except that when such information is provided upon request within sixty days after the fulfillment of a previous request, a processing fee of up to ten dollars may be charged;

(7) Execute and deliver a release of mortgage pursuant to the provisions of section 76-252 or, in the case of a trust deed, execute and deliver a reconveyance pursuant to the provisions of section 76-1014.01;

(8) Maintain a copy of all documents and records relating to each residential mortgage loan and application for a residential mortgage loan, including, but not limited to, loan applications, federal Truth in Lending Act statements, good faith estimates, appraisals, notes, rights of rescission, and mortgages or trust deeds for a period of three years after the date the residential mortgage loan is funded or the loan application is denied or withdrawn;

(9) Notify the director in writing or through the Nationwide Mortgage Licensing System and Registry within three business days after the occurrence of any of the following:

(a) The filing of a voluntary petition in bankruptcy by the licensee or notice of a filing of an involuntary petition in bankruptcy against the licensee;

(b) The licensee has lost the ability to fund a loan or loans after it had made a loan commitment or commitments and approved a loan application or applications;

(c) Any other state or jurisdiction institutes license denial, cease and desist, suspension, or revocation procedures against the licensee;

(d) The attorney general of any state, the Consumer Financial Protection Bureau, or the Federal Trade Commission initiates an action to enforce consumer protection laws against the licensee or any of the licensee's officers, directors, shareholders, partners, members, employees, or agents;

(e) The Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Federal Housing Administration, or Government National Mortgage Association suspends or terminates the licensee's status as an approved seller or seller and servicer;

(f) The filing of a criminal indictment or information against the licensee or any of its officers, directors, shareholders, partners, members, employees, or agents; or

(g) The licensee or any of the licensee's officers, directors, shareholders, partners, members, employees, or agents was convicted of, pleaded guilty to, or was found guilty after a plea of nolo contendere to (i) a misdemeanor under state or federal law which involves dishonesty or fraud or which involves any aspect of the mortgage banking business, depository institution business, or

installment loan company business or (ii) any felony under state or federal law; and

(10) Notify the director in writing or through the Nationwide Mortgage Licensing System and Registry within thirty days after the occurrence of a material development other than as described in subdivision (9) of this section, including, but not limited to, any of the following:

(a) Business reorganization;

(b) A change of name, trade name, doing business as designation, or main office address;

(c) The establishment of a branch office. Notice of such establishment shall be on a form prescribed by the department and accompanied by a fee of seventy-five dollars for each branch office;

(d) The relocation or closing of a branch office; or

(e) The entry of an order against the licensee or any of the licensee's officers, directors, shareholders, partners, members, employees, or agents, including orders to which the licensee or other parties consented, by any other state or federal regulator.

Source: Laws 1989, LB 272, § 14; Laws 1994, LB 1275, § 4; Laws 1995, LB 163, § 6; Laws 1995, LB 396, § 1; Laws 1996, LB 1053, § 11; Laws 2003, LB 218, § 8; Laws 2005, LB 533, § 55; Laws 2007, LB124, § 46; R.S.Supp.,2008, § 45-711; Laws 2009, LB328, § 22; Laws 2010, LB892, § 14; Laws 2013, LB290, § 4; Laws 2015, LB352, § 2.

45-737.01 Mortgage loan originator; licensee; duties.

(1) A licensee licensed as a mortgage loan originator shall notify the director in writing or through the Nationwide Mortgage Licensing System and Registry within three business days after the occurrence of any of the following:

(a) The filing of a voluntary petition in bankruptcy by such licensee or notice of a filing of an involuntary petition in bankruptcy against such licensee;

(b) The filing of a criminal indictment or information against such licensee regarding (i) a misdemeanor under state or federal law which involves dishonesty or fraud or which involves any aspect of the mortgage banking business, depository institution business, or installment loan company business or (ii) any felony under state or federal law;

(c) Such licensee was convicted of, pleaded guilty to, or was found guilty after a plea of nolo contendere to (i) a misdemeanor under state or federal law which involves dishonesty or fraud or which involves any aspect of the mortgage banking business, depository institution business, or installment loan company business or (ii) any felony under state or federal law;

(d) Any other state or jurisdiction institutes license denial, cease and desist, suspension, or revocation procedures against such licensee;

(e) The attorney general of any state, the Consumer Financial Protection Bureau, or the Federal Trade Commission initiates an action to enforce consumer protection laws against such licensee; or

(f) The Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Federal Housing Administration, or Government National Mort-

gage Association suspends or terminates such licensee's status as an approved loan originator.

(2) A licensee licensed as a mortgage loan originator shall update through the Nationwide Mortgage Licensing System and Registry his or her employment history on file with the department no later than ten business days after the submission of the required notice of the creation or termination of an employment relationship pursuant to section 45-735.

(3) A licensee licensed as a mortgage loan originator shall notify the director in writing or through the Nationwide Mortgage Licensing System and Registry within thirty days after the occurrence of a material development other than as described in subsections (1) and (2) of this section, including, but not limited to, any of the following:

- (a) A change in such licensee's name;
- (b) A change in such licensee's residential address;
- (c) A change in such licensee's employment address;
- (d) The filing of a tax or other governmental lien against such licensee;
- (e) The entry of a monetary judgment against such licensee; or
- (f) The entry of an order against such licensee, including orders to which such licensee consented, by any other state or federal regulator.

Source: Laws 2013, LB290, § 5.

45-741 Director; examine documents and records; investigate violations or complaints; director; powers; costs; confidentiality.

(1) The director may examine documents and records maintained by a licensee, registrant, individual, or person subject to the Residential Mortgage Licensing Act. The director may investigate complaints about a licensee, registrant, individual, or person subject to the act. The director may investigate reports of alleged violations of the act, any federal law governing residential mortgage loans, or any rule, regulation, or order of the director under the act. For purposes of investigating violations or complaints arising under the act or for the purposes of examination, the director may review, investigate, or examine any licensee, registrant, individual, or person subject to the act as often as necessary in order to carry out the purposes of the act.

(2) For purposes of any investigation, examination, or proceeding, including, but not limited to, initial licensing, license renewal, license suspension, license conditioning, or license revocation, the director shall have the authority to access, receive, and use any books, accounts, records, files, documents, information, or evidence, including, but not limited to:

- (a) Criminal, civil, and administrative history information;
- (b) Personal history and experience information, including independent credit reports obtained from a consumer reporting agency described in 15 U.S.C. 1681a(p), as such section existed on January 1, 2010; and
- (c) Any other documents, information, or evidence the director deems relevant to the inquiry or investigation regardless of the location, possession, control, or custody of such documents, information, or evidence.

(3) Each licensee, registrant, individual, or person subject to the Residential Mortgage Licensing Act shall make available to the director upon request the books, accounts, records, files, or documents relating to the operations of such

licensee, registrant, individual, or person subject to the act. The director shall have access to such books, accounts, records, files, and documents and may interview the officers, principals, mortgage loan originators, employees, independent contractors, agents, and customers of the licensee, registrant, individual, or person subject to the act, concerning the business of the licensee, registrant, individual, or person subject to the act.

(4) Each licensee, registrant, individual, or person subject to the act shall make or compile reports or prepare other information as instructed by the director in order to carry out the purposes of this section, including, but not limited to:

(a) Accounting compilations;

(b) Information lists and data concerning loan transactions on a form prescribed by the director; or

(c) Such other information deemed necessary to carry out the purposes of this section.

(5) The director may send a notice of investigation or inquiry request for information to a licensee or registrant. Upon receipt by a licensee or registrant of the director's notice of investigation or inquiry request for information, the licensee or registrant shall respond within twenty-one calendar days. Each day beyond that time a licensee or registrant fails to respond as required by this subsection shall constitute a separate violation of the act. This subsection shall not be construed to require the director to send a notice of investigation to a licensee, a registrant, or any person.

(6) For the purpose of any investigation, examination, or proceeding under the act, the director or any officer designated by him or her may administer oaths and affirmations, subpoena witnesses and compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the director deems relevant or material to the inquiry. If any person refuses to comply with a subpoena issued under this section or to testify with respect to any matter relevant to the proceeding, the district court of Lancaster County may, on application of the director, issue an order requiring the person to comply with the subpoena and to testify. Failure to obey an order of the court to comply with the subpoena may be punished by the court as civil contempt.

(7) In conducting an examination or investigation under this section, the director may rely on reports made by the licensee or registrant which have been prepared within the preceding twelve months for the following federal agencies or federally related entities:

(a) The United States Department of Housing and Urban Development;

(b) The Federal Housing Administration;

(c) The Federal National Mortgage Association;

(d) The Government National Mortgage Association;

(e) The Federal Home Loan Mortgage Corporation;

(f) The United States Department of Veterans Affairs; or

(g) The Consumer Financial Protection Bureau.

(8) In order to carry out the purposes of this section, the director may:

(a) Enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce the regula-

tory burden by sharing resources, standardized or uniform methods or procedures, and documents, records, information, or evidence obtained under this section;

(b) Use, hire, contract, or employ publicly or privately available analytical systems, methods, or software to examine or investigate the licensee, registrant, individual, or person subject to the act;

(c) Accept and rely on examination or investigation reports made by other government officials, within or without this state; or

(d) Accept audit reports made by an independent certified public accountant for the licensee, registrant, individual, or person subject to the act in the course of that part of the examination covering the same general subject matter as the audit and incorporate the audit report in the report of the examination, report of investigation, or other writing of the director.

(9) If the director receives a complaint or other information concerning noncompliance with the act by an exempt person, the director shall inform the agency having supervisory authority over the exempt person of the complaint.

(10) No licensee, registrant, individual, or person subject to investigation or examination under this section shall knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other information.

(11) The total charge for an examination or investigation shall be paid by the licensee or registrant as set forth in sections 8-605 and 8-606.

(12) Examination reports shall not be deemed public records and may be withheld from the public pursuant to section 84-712.05.

(13) Complaint files shall be deemed public records.

(14) The authority of this section shall remain in effect, whether such a licensee, registrant, individual, or person subject to the Residential Mortgage Licensing Act acts or claims to act under any licensing or registration law of this state or claims to act without such authority.

Source: Laws 1989, LB 272, § 13; Laws 1993, LB 217, § 3; Laws 1995, LB 163, § 5; Laws 2003, LB 218, § 7; Laws 2007, LB124, § 45; R.S.Supp.,2008, § 45-710; Laws 2009, LB328, § 26; Laws 2010, LB892, § 15; Laws 2013, LB290, § 6.

45-742 License; suspension or revocation; administrative fine; procedure; surrender; cancellation; expiration; effect; reinstatement.

(1) The director may, following a hearing under the Administrative Procedure Act and the rules and regulations adopted and promulgated under the act, suspend or revoke any license issued under the Residential Mortgage Licensing Act. The director may also impose an administrative fine for each separate violation of the act if the director finds:

(a) The licensee has materially violated or demonstrated a continuing pattern of violating the act, rules and regulations adopted and promulgated under the act, any order, including a cease and desist order, issued under the act, or any other state or federal law applicable to the conduct of its business;

(b) A fact or condition exists which, if it had existed at the time of the original application for the license, would have warranted the director to deny the application;

(c) The licensee has violated a voluntary consent or compliance agreement which had been entered into with the director;

(d) The licensee has made or caused to be made, in any document filed with the director or in any proceeding under the act, any statement which was, at the time and in light of the circumstances under which it was made, false or misleading in any material respect or suppressed or withheld from the director any information which, if submitted by the licensee, would have resulted in denial of the license application;

(e) The licensee has refused to permit an examination by the director of the licensee's books and affairs pursuant to subsection (1) or (2) of section 45-741 or has refused or failed to comply with subsection (5) of section 45-741 after written notice of the violation by the director. Each day the licensee continues in violation of this subdivision after such written notice constitutes a separate violation;

(f) The licensee has failed to maintain records as required by subdivision (8) of section 45-737 or as otherwise required following written notice of the violation by the director. Each day the licensee continues in violation of this subdivision after such written notice constitutes a separate violation;

(g) The licensee knowingly has employed any individual or knowingly has maintained a contractual relationship with any individual acting as an agent, if such individual has been convicted of, pleaded guilty to, or was found guilty after a plea of nolo contendere to (i) a misdemeanor under any state or federal law which involves dishonesty or fraud or which involves any aspect of the mortgage banking business, depository institution business, or installment loan company business or (ii) any felony under state or federal law;

(h) The licensee knowingly has employed any individual or knowingly has maintained a contractual relationship with any individual acting as an agent, if such individual (i) has had a mortgage loan originator license revoked in any state, unless such revocation was subsequently vacated, (ii) has a mortgage loan originator license which has been suspended by the director, or (iii) while previously associated in any other capacity with another licensee, was the subject of a complaint under the act and the complaint was not resolved at the time the individual became employed by, or began acting as an agent for, the licensee and the licensee with reasonable diligence could have discovered the existence of such complaint;

(i) The licensee knowingly has employed any individual or knowingly has maintained a contractual relationship with any individual acting as an agent if such individual is conducting activities requiring a mortgage loan originator license in this state without first obtaining such license;

(j) The licensee has violated the written restrictions or conditions under which the license was issued;

(k) The licensee, or if the licensee is a business entity, one of the officers, directors, shareholders, partners, and members, was convicted of, pleaded guilty to, or was found guilty after a plea of nolo contendere to (i) a misdemeanor under any state or federal law which involves dishonesty or fraud or which involves any aspect of the mortgage banking business, depository institution business, or installment loan company business or (ii) any felony under state or federal law;

(l) The licensee has had a similar license revoked in any other jurisdiction; or

(m) The licensee has failed to reasonably supervise any officer, employee, or agent to assure his or her compliance with the act or with any state or federal law applicable to the mortgage banking business.

(2) Except as provided in this section and section 45-742.01, a license shall not be revoked or suspended except after notice and a hearing in accordance with the Administrative Procedure Act and the rules and regulations adopted and promulgated by the department.

(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, shareholders, partners, or members pursuant to section 45-743 for acts committed before the surrender. The director's approval of such license surrender shall not be required unless the director has commenced an examination or investigation pursuant to section 45-741 or has commenced a proceeding to revoke or suspend the licensee's license or impose an administrative fine pursuant to this section.

(4)(a) If a licensee fails to (i) renew its license as required by sections 45-706 and 45-732 and does not voluntarily surrender the license pursuant to this section or (ii) pay the required fee for renewal of the license, the department may issue a notice of expiration of the license to the licensee in lieu of revocation proceedings.

(b) The director may adopt by rule, regulation, or order procedures for the reinstatement of licenses for which a notice of expiration was issued in accordance with subdivision (a) of this subsection. Such procedures shall be consistent with standards established by the Nationwide Mortgage Licensing System and Registry. The fee for reinstatement shall be the same fee as the fee for the initial license application.

(c) If a licensee fails to maintain a surety bond as required by section 45-724, 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, including a borrower.

(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, shareholders, partners, or members pursuant to section 45-743 for acts committed before the revocation, suspension, cancellation, or expiration.

Source: Laws 1989, LB 272, § 10; Laws 1997, LB 137, § 23; Laws 1999, LB 396, § 33; Laws 2003, LB 218, § 5; Laws 2005, LB 533, § 54; Laws 2006, LB 876, § 30; R.S.Supp., 2008, § 45-707; Laws 2009, LB328, § 27; Laws 2010, LB892, § 16; Laws 2011, LB75, § 4; Laws 2012, LB965, § 19.

Cross References

Administrative Procedure Act, see section 84-920.

45-742.01 Mortgage banker or mortgage loan originator license; emergency orders authorized; grounds; notice; emergency hearing; judicial review; director; additional proceedings.

(1) The director may enter an emergency order suspending, limiting, or restricting the license of any mortgage banker or mortgage loan originator without notice or hearing if it appears upon grounds satisfactory to the director that:

(a) The licensee has failed to file the report of condition as required by section 45-726;

(b) The licensee has failed to increase its surety bond to the amount required by subsection (2) of section 45-724;

(c) The licensee has failed to provide any report required by the director as a condition of issuing such person a mortgage banker or mortgage loan originator license;

(d) The licensee is in such financial condition that it cannot continue in business safely with its customers;

(e) The licensee has been indicted, charged with, or found guilty of any act involving fraud, deception, theft, or breach of trust;

(f) The licensee has had its license suspended or revoked in any state based upon any act involving fraud, deception, theft, or breach of trust; or

(g) The licensee has refused to permit an examination by the director of the licensee's books and affairs pursuant to subsection (1) or (2) of section 45-741 or has refused or failed to comply with subsection (5) of section 45-741.

(2) An emergency order issued under this section becomes effective when signed by the director. Upon entry of an emergency order, the director shall promptly notify the affected person that such order has been entered, the reasons for such order, and the right to request an emergency hearing.

(3) A party aggrieved by an emergency order issued by the director under this section may request an emergency hearing. The request for hearing shall be filed with the director within ten business days after the date of the emergency order.

(4) Upon receipt of a written request for emergency hearing, the director shall conduct an emergency hearing within ten business days after the date of receipt of the request for hearing unless the parties agree to a later date or a hearing officer sets a later date for good cause shown.

(5) A person aggrieved by an emergency order of the director may obtain judicial review of the order in the manner prescribed in the Administrative Procedure Act and the rules and regulations adopted and promulgated by the department.

(6) The director may obtain an order from the district court of Lancaster County for the enforcement of the emergency order.

(7) The director may vacate or modify an emergency 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.

(8) If an emergency hearing has not been requested pursuant to subsection (3) of this section and the emergency order remains in effect sixty days after issuance, the director shall initiate proceedings pursuant to section 45-742

unless the license was surrendered or expired during the sixty-day time period after issuance of the emergency order.

(9) An emergency order issued under this section shall remain in effect until it is vacated, modified, or superseded by an order of the director, superseded by a voluntary consent or compliance agreement between the director and the licensee, or until it is terminated by a court order.

Source: Laws 2012, LB965, § 20.

Cross References

Administrative Procedure Act, see section 84-920.

ARTICLE 9

DELAYED DEPOSIT SERVICES LICENSING ACT

Section

- 45-901. Act, how cited.
- 45-910. License; posting; renewal; fee.
- 45-920. Director; examination of licensee; powers; costs.
- 45-927. Fees, charges, costs, and fines; distribution.
- 45-930. Financial Literacy Cash Fund; created; use; investment.

45-901 Act, how cited.

Sections 45-901 to 45-930 shall be known and may be cited as the Delayed Deposit Services Licensing Act.

Source: Laws 1994, LB 967, § 1; Laws 2006, LB 876, § 36; Laws 2012, LB269, § 1.

45-910 License; posting; renewal; fee.

(1) A license issued pursuant to the Delayed Deposit Services Licensing Act shall be conspicuously posted at the licensee’s place of business.

(2) All licenses shall remain in effect until the next succeeding May 1, unless earlier canceled, suspended, or revoked by the director pursuant to section 45-922 or surrendered by the licensee pursuant to section 45-911.

(3) Licenses may be renewed annually by filing with the director (a) a renewal fee consisting of five hundred dollars for the main office location and five hundred dollars for each branch office location and (b) an application for renewal containing such information as the director may require to indicate any material change in the information contained in the original application or succeeding renewal applications.

Source: Laws 1994, LB 967, § 10; Laws 2001, LB 53, § 105; Laws 2005, LB 533, § 56; Laws 2012, LB269, § 2.

45-920 Director; examination of licensee; powers; costs.

(1) The director shall examine the books, accounts, and records of each licensee no more often than annually, except as provided in section 45-921. The costs of the director incurred in an examination shall be paid by the licensee as set forth in sections 8-605 and 8-606.

(2) The director may accept any examination, report, or information regarding a licensee from the Consumer Financial Protection Bureau or a foreign state agency. The director may provide any examination, report, or information

regarding a licensee to the Consumer Financial Protection Bureau or a foreign state agency. As used in this section, unless the context otherwise requires, foreign state agency means any duly constituted regulatory or supervisory agency which has authority over delayed deposit services businesses, payday lenders, or similar entities, and which is created under the laws of any other state or any territory of the United States, including 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 1994, LB 967, § 20; Laws 2007, LB124, § 52; Laws 2013, LB279, § 3.

45-927 Fees, charges, costs, and fines; distribution.

(1) The director shall collect fees, charges, costs, and fines under the Delayed Deposit Services Licensing Act and remit them to the State Treasurer. Except as provided in subsection (2) of this section, the State Treasurer shall credit the fees, charges, and costs to the Financial Institution Assessment Cash Fund and distribute the fines in accordance with Article VII, section 5, of the Constitution of Nebraska.

(2) For fees collected pursuant to section 45-910, the State Treasurer shall (a) credit one hundred fifty dollars of each renewal fee for a main office to the Financial Institution Assessment Cash Fund and three hundred fifty dollars of each renewal fee for a main office to the Financial Literacy Cash Fund and (b) credit one hundred dollars of each renewal fee for a branch office to the Financial Institution Assessment Cash Fund and four hundred dollars of each renewal fee for a branch office to the Financial Literacy Cash Fund.

Source: Laws 1994, LB 967, § 27; Laws 1995, LB 599, § 15; Laws 2007, LB124, § 53; Laws 2012, LB269, § 3.

45-930 Financial Literacy Cash Fund; created; use; investment.

The Financial Literacy Cash Fund is created. Amounts credited to the fund shall include that portion of each renewal fee as provided in section 45-927 and such other revenue as is incidental to administration of the fund. The fund shall be administered by the University of Nebraska and shall be used to provide assistance to nonprofit entities that offer financial literacy programs to students in grades kindergarten through twelve. 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 2012, LB269, § 4.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

ARTICLE 10

NEBRASKA INSTALLMENT LOAN ACT

Section

45-1002. Terms, defined; act; applicability.

45-1008. License; issuance; requirements; term.

45-1013. Installment loans; license; renewal; fees; relocation of place of business; procedure; hearing; fee.

Section

45-1018. Licensees; reports.

45-1024. Installment loans; interest rate authorized; charges permitted; computation; application of payments; violations; restrictions.

45-1002 Terms, defined; act; applicability.

(1) For purposes of the Nebraska Installment Loan Act:

(a) Applicant means a person applying for a license under the act;

(b) 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;

(c) Department means the Department of Banking and Finance;

(d) Debt cancellation contract means a loan term or contractual arrangement modifying loan terms under which a financial institution or licensee agrees to cancel all or part of a borrower's obligation to repay an extension of credit from the financial institution or licensee upon the occurrence of a specified event. The debt cancellation contract may be separate from or a part of other loan documents. The term debt cancellation contract does not include loan payment deferral arrangements in which the triggering event is the borrower's unilateral election to defer repayment or the financial institution's or licensee's unilateral decision to allow a deferral of repayment;

(e) Debt suspension contract means a loan term or contractual arrangement modifying loan terms under which a financial institution or licensee agrees to suspend all or part of a borrower's obligation to repay an extension of credit from the financial institution or licensee upon the occurrence of a specified event. The debt suspension contract may be separate from or a part of other loan documents. The term debt suspension contract does not include loan payment deferral arrangements in which the triggering event is the borrower's unilateral election to defer repayment or the financial institution's or licensee's unilateral decision to allow a deferral of repayment;

(f) Director means the Director of Banking and Finance;

(g) Financial institution has the same meaning as in section 8-101;

(h) Guaranteed asset protection waiver means a waiver that is offered, sold, or provided in accordance with the Guaranteed Asset Protection Waiver Act;

(i) Licensee means any person who obtains a license under the Nebraska Installment Loan Act;

(j)(i) Mortgage loan originator means an individual who for compensation or gain (A) takes a residential mortgage loan application or (B) offers or negotiates terms of a residential mortgage loan.

(ii) Mortgage loan originator does not include (A) any individual who is not otherwise described in subdivision (i)(A) of this subdivision and who performs purely administrative or clerical tasks on behalf of a person who is described in subdivision (i) of this subdivision, (B) a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with applicable state law, unless the person or entity is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator, or (C) a person or

entity solely involved in extensions of credit relating to time-share programs as defined in section 76-1702;

(k) 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;

(l) Person means individual, partnership, limited liability company, association, financial institution, trust, corporation, and any other legal entity; and

(m) Real property means an owner-occupied single-family, two-family, three-family, or four-family dwelling which is located in this state, which is occupied, used, or intended to be occupied or used for residential purposes, and which is, or is intended to be, permanently affixed to the land.

(2) Except as provided in subsection (3) of section 45-1017 and subsection (4) of section 45-1019, no revenue arising under the Nebraska Installment Loan Act shall inure to any school fund of the State of Nebraska or any of its governmental subdivisions.

(3) Loan, when used in the Nebraska Installment Loan Act, does not include any loan made by a person who is not a licensee on which the interest does not exceed the maximum rate permitted by section 45-101.03.

(4) Nothing in the Nebraska Installment Loan Act applies to any loan made by a person who is not a licensee if the interest on the loan does not exceed the maximum rate permitted by section 45-101.03.

Source: Laws 1941, c. 90, § 1, p. 345; C.S.Supp.,1941, § 45-131; Laws 1943, c. 107, § 1, p. 369; R.S.1943, § 45-114; Laws 1961, c. 225, § 1, p. 668; Laws 1963, Spec. Sess., c. 7, § 7, p. 92; Laws 1979, LB 87, § 1; Laws 1982, LB 941, § 1; Laws 1993, LB 121, § 264; Laws 1997, LB 137, § 20; Laws 1997, LB 555, § 3; R.S.1943, (1998), § 45-114; Laws 2001, LB 53, § 30; Laws 2003, LB 131, § 30; Laws 2003, LB 217, § 38; Laws 2006, LB 876, § 48; Laws 2009, LB328, § 41; Laws 2010, LB571, § 10; Laws 2010, LB892, § 19; Laws 2011, LB77, § 3; Laws 2012, LB965, § 21.

Cross References

Guaranteed Asset Protection Waiver Act, see section 45-1101.

45-1008 License; issuance; requirements; term.

Upon the filing of an application under the Nebraska Installment Loan Act, the payment of the license fee, and the approval of the required bond, the director shall investigate the facts regarding the applicant. If the director finds that (1) the experience, character, and general fitness of the applicant, of the applicant's partners or members if the applicant is a partnership, limited liability company, or association, and of the applicant's officers and directors if the applicant is a corporation, are such as to warrant belief that the applicant will operate the business honestly, fairly, and efficiently within the purposes of the act, and (2) allowing the applicant to engage in business will promote the convenience and advantage of the community in which the business of the applicant is to be conducted, the department shall issue and deliver an original license to the applicant to make loans at the location specified in the applica-

tion, in accordance with the act. The license shall remain in full force and effect until the following December 31 and from year to year thereafter, if and when renewed under the act, until it is surrendered by the licensee or canceled, suspended, or revoked under the act.

Source: Laws 1941, c. 90, § 12, p. 349; C.S.Supp.,1941, § 45-140; R.S. 1943, § 45-120; Laws 1993, LB 121, § 265; Laws 1997, LB 555, § 8; R.S.1943, (1998), § 45-120; Laws 2001, LB 53, § 36; Laws 2009, LB328, § 43; Laws 2013, LB279, § 4.

45-1013 Installment loans; license; renewal; fees; relocation of place of business; procedure; hearing; fee.

(1) For the annual renewal of an original license under the Nebraska Installment Loan Act, the licensee shall file with the department a fee of two hundred fifty dollars and a renewal application containing such information as the director may require to indicate any material change in the information contained in the original application or succeeding renewal applications.

(2) For the relocation of its place of business, a licensee shall file with the department a fee of one hundred fifty dollars and an application containing such information as the director may require to determine whether the relocation should be approved. Upon receipt of the fee and application, the director shall publish a notice of the filing of the application in a newspaper of general circulation in the county where the licensee proposes to relocate. If the director receives any substantive objection to the proposed relocation within fifteen days after publication of such notice, he or she shall hold a hearing on the application in accordance with the Administrative Procedure Act and the rules and regulations adopted and promulgated under the act. The expense of any publication required by this section shall be paid by the applicant licensee.

Source: Laws 1941, c. 90, § 6, p. 347; C.S.Supp.,1941, § 45-134; R.S. 1943, § 45-126; Laws 1973, LB 39, § 2; Laws 1995, LB 599, § 9; Laws 1997, LB 555, § 10; R.S.1943, (1998), § 45-126; Laws 2001, LB 53, § 41; Laws 2005, LB 533, § 60; Laws 2007, LB124, § 54; Laws 2009, LB328, § 44; Laws 2013, LB279, § 5.

Cross References

Administrative Procedure Act, see section 84-920.

45-1018 Licensees; reports.

(1) A licensee shall on or before March 1 of each year file with the department a report of the licensee's earnings and operations for the preceding calendar year, and its assets at the end of the year, and giving such other relevant information as the department may reasonably require. The report shall be made under oath and shall be in the form and manner prescribed by the department.

(2) A licensee shall submit a mortgage report of condition as required by section 45-726, on or before a date or dates established by rule, regulation, or order of the director.

Source: Laws 1941, c. 90, § 25, p. 355; C.S.Supp.,1941, § 45-153; R.S. 1943, § 45-131; R.S.1943, (1998), § 45-131; Laws 2001, LB 53,

§ 46; Laws 2003, LB 217, § 40; Laws 2004, LB 999, § 39; Laws 2009, LB328, § 45; Laws 2010, LB892, § 21; Laws 2013, LB279, § 6.

45-1024 Installment loans; interest rate authorized; charges permitted; computation; application of payments; violations; restrictions.

(1) Except as provided in section 45-1025 and subsection (6) of this section, every licensee may make loans and may contract for and receive on such loans charges at a rate not exceeding twenty-four percent per annum on that part of the unpaid principal balance on any loan not in excess of one thousand dollars, and twenty-one percent per annum on any remainder of such unpaid principal balance. Except for loans secured by mobile homes, a licensee may not make loans for a period in excess of one hundred forty-five months if the amount of the loan is greater than three thousand dollars but less than twenty-five thousand dollars. Charges on loans made under the Nebraska Installment Loan Act shall not be paid, deducted, or received in advance. The contracting for, charging of, or receiving of charges as provided for in subsection (2) of this section shall not be deemed to be the payment, deduction, or receipt of such charges in advance.

(2) When the loan contract requires repayment in substantially equal and consecutive monthly installments of principal and charges combined, the licensee may, at the time the loan is made, precompute the charges at the agreed rate on scheduled unpaid principal balances according to the terms of the contract and add such charges to the principal of the loan. Every payment may be applied to the combined total of principal and precomputed charges until the contract is fully paid. All payments made on account of any loan except for default and deferment charges shall be deemed to be applied to the unpaid installments in the order in which they are due. The portion of the precomputed charges applicable to any particular month of the contract, as originally scheduled or following a deferment, shall be that proportion of such precomputed charges, excluding any adjustment made for a first installment period of more than one month and any adjustment made for deferment, which the balance of the contract scheduled to be outstanding during such month bears to the sum of all monthly balances originally scheduled to be outstanding by the contract. This section shall not limit or restrict the manner of calculating charges, whether by way of add-on, single annual rate, or otherwise, if the rate of charges does not exceed that permitted by this section. Charges may be contracted for and earned at a single annual rate, except that the total charges from such rate shall not be greater than the total charges from the several rates otherwise applicable to the different portions of the unpaid balance according to subsection (1) of this section. All loan contracts made pursuant to this subsection are subject to the following adjustments:

(a) Notwithstanding the requirement for substantially equal and consecutive monthly installments, the first installment period may not exceed one month by more than twenty-one days and may not fall short of one month by more than eleven days. The charges for each day exceeding one month shall be one-thirtieth of the charges which would be applicable to a first installment period of one month. The charge for extra days in the first installment period may be added to the first installment and such charges for such extra days shall be excluded in computing any rebate;

(b) If prepayment in full by cash, a new loan, or otherwise occurs before the first installment due date, the charges shall be recomputed at the rate of charges contracted for in accordance with subsection (1) or (2) of this section upon the actual unpaid principal balances of the loan for the actual time outstanding by applying the payment, or payments, first to charges at the agreed rate and the remainder to the principal. The amount of charges so computed shall be retained in lieu of all precomputed charges;

(c) If a contract is prepaid in full by cash, a new loan, or otherwise after the first installment due date, the borrower shall receive a rebate of an amount which is not less than the amount obtained by applying to the unpaid principal balances as originally scheduled or, if deferred, as deferred, for the period following prepayment, according to the actuarial method, the rate of charge contracted for in accordance with subsection (1) or (2) of this section. The licensee may round the rate of charge to the nearest one-half of one percent if such procedure is not consistently used to obtain a greater yield than would otherwise be permitted. Any default and deferment charges which are due and unpaid may be deducted from any rebate. No rebate shall be required for any partial prepayment. No rebate of less than one dollar need be made. Acceleration of the maturity of the contract shall not in itself require a rebate. If judgment is obtained before the final installment date, the contract balance shall be reduced by the rebate which would be required for prepayment in full as of the date judgment is obtained;

(d) If any installment on a precomputed or interest bearing loan is unpaid in full for ten or more consecutive days, Sundays and holidays included, after it is due, the licensee may charge and collect a default charge not exceeding an amount equal to five percent of such installment. If any installment payment is made by a check, draft, or similar signed order which is not honored because of insufficient funds, no account, or any other reason except an error of a third party to the loan contract, the licensee may charge and collect a fifteen-dollar bad check charge. Such default or bad check charges may be collected when due or at any time thereafter;

(e) If, as of an installment due date, the payment date of all wholly unpaid installments is deferred one or more full months and the maturity of the contract is extended for a corresponding period, the licensee may charge and collect a deferment charge not exceeding the charge applicable to the first of the installments deferred, multiplied by the number of months in the deferment period. The deferment period is that period during which no payment is made or required by reason of such deferment. The deferment charge may be collected at the time of deferment or at any time thereafter. The portion of the precomputed charges applicable to each deferred balance and installment period following the deferment period shall remain the same as that applicable to such balance and periods under the original loan contract. No installment on which a default charge has been collected, or on account of which any partial payment has been made, shall be deferred or included in the computation of the deferment charge unless such default charge or partial payment is refunded to the borrower or credited to the deferment charge. Any payment received at the time of deferment may be applied first to the deferment charge and the remainder, if any, applied to the unpaid balance of the contract, except that if such payment is sufficient to pay, in addition to the appropriate deferment charge, any installment which is in default and the applicable default charge, it shall be first so applied and any such installment shall not be deferred or

subject to the deferment charge. If a loan is prepaid in full during the deferment period, the borrower shall receive, in addition to the required rebate, a rebate of that portion of the deferment charge applicable to any unexpired full month or months of such deferment period; and

(f) If two or more full installments are in default for one full month or more at any installment date and if the contract so provides, the licensee may reduce the contract balance by the rebate which would be required for prepayment in full as of such installment date and the amount remaining unpaid shall be deemed to be the unpaid principal balance and thereafter in lieu of charging, collecting, receiving, and applying charges as provided in this subsection, charges may be charged, collected, received, and applied at the agreed rate as otherwise provided by this section until the loan is fully paid.

(3) The charges, as referred to in subsection (1) of this section, shall not be compounded. The charging, collecting, and receiving of charges as provided in subsection (2) of this section shall not be deemed compounding. If part or all of the consideration for a loan contract is the unpaid principal balance of a prior loan, then the principal amount payable under such loan contract may include any unpaid charges on the prior loan which have accrued within sixty days before the making of such loan contract and may include the balance remaining after giving the rebate required by subsection (2) of this section. Except as provided in subsection (2) of this section, charges shall (a) be computed and paid only as a percentage per month of the unpaid principal balance or portions thereof and (b) be computed on the basis of the number of days actually elapsed. For purposes of computing charges, whether at the maximum rate or less, a month shall be that period of time from any date in a month to the corresponding date in the next month but if there is no such corresponding date then to the last day of the next month, and a day shall be considered one-thirtieth of a month when computation is made for a fraction of a month.

(4) Except as provided in subsections (5) and (6) of this section, in addition to that provided for under the Nebraska Installment Loan Act, no further or other amount whatsoever shall be directly or indirectly charged, contracted for, or received. If any amount, in excess of the charges permitted, is charged, contracted for, or received, the loan contract shall not on that account be void, but the licensee shall have no right to collect or receive any interest or other charges whatsoever. If such interest or other charges have been collected or contracted for, the licensee shall refund to the borrower all interest and other charges collected and shall not collect any interest or other charges contracted for and thereafter due on the loan involved, as liquidated damages, and the licensee or its assignee, if found liable, shall pay the costs of any action relating thereto, including reasonable attorney's fees. No licensee shall be found liable under this subsection if the licensee shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid any such error.

(5) A borrower may be required to pay all reasonable expenses incurred in connection with the making, closing, disbursing, extending, readjusting, or renewing of loans. Such expenses may include abstracting, recording, releasing, and registration fees; premiums paid for nonfiling insurance; premiums paid on insurance policies covering tangible personal property securing the loan; amounts charged for a debt cancellation contract or a debt suspension contract, as agreed upon by the parties, if the debt cancellation contract or debt

suspension contract is a contract of a financial institution or licensee and such contract is sold directly by such financial institution or licensee or by an unaffiliated, nonexclusive agent of such financial institution or licensee in accordance with 12 C.F.R. part 37, as such part existed on January 1, 2011, and the financial institution or licensee is responsible for the unaffiliated, nonexclusive agent's compliance with such part; title examinations; credit reports; survey; taxes or charges imposed upon or in connection with the making and recording or releasing of any mortgage; amounts charged for a guaranteed asset protection waiver; and fees and expenses charged for electronic title and lien services. Except as provided in subsection (6) of this section, a borrower may also be required to pay a nonrefundable loan origination fee not to exceed the lesser of five hundred dollars or an amount equal to seven percent of that part of the original principal balance of any loan not in excess of two thousand dollars and five percent on that part of the original principal balance in excess of two thousand dollars, if the licensee has not made another loan to the borrower within the previous twelve months. If the licensee has made another loan to the borrower within the previous twelve months, a nonrefundable loan origination fee may only be charged on new funds advanced on each successive loan. Such reasonable initial charges may be collected from the borrower or included in the principal balance of the loan at the time the loan is made and shall not be considered interest or a charge for the use of the money loaned.

(6)(a) Loans secured solely by real property that are not made pursuant to subdivision (11) of section 45-101.04 on real property shall not be subject to the limitations on the rate of interest provided in subsection (1) of this section or the limitations on the nonrefundable loan origination fee under subsection (5) of this section if (i) the principal amount of the loan is seven thousand five hundred dollars or more and (ii) the sum of the principal amount of the loan and the balances of all other liens against the property do not exceed one hundred percent of the appraised value of the property. Acceptable methods of determining appraised value shall be made by the department pursuant to rule, regulation, or order.

(b) An origination fee on such loan shall be computed only on the principal amount of the loan reduced by any portion of the principal that consists of the amount required to pay off another loan made under this subsection by the same licensee.

(c) A prepayment penalty on such loan shall be permitted only if (i) the maximum amount of the penalty to be assessed is stated in writing at the time the loan is made, (ii) the loan is prepaid in full within two years from the date of the loan, and (iii) the loan is prepaid with money other than the proceeds of another loan made by the same licensee. Such prepayment penalty shall not exceed six months interest on eighty percent of the original principal balance computed at the agreed rate of interest on the loan.

(d) A licensee making a loan pursuant to this subsection may obtain an interest in any fixtures attached to such real property and any insurance proceeds payable in connection with such real property or the loan.

(e) For purposes of this subsection, principal amount of the loan means the total sum owed by the borrower including, but not limited to, insurance premiums, loan origination fees, or any other amount that is financed, except

that for purposes of subdivision (6)(b) of this section, loan origination fees shall not be included in calculating the principal amount of the loan.

Source: Laws 1941, c. 90, § 15, p. 350; C.S.Supp.,1941, § 45-143; Laws 1943, c. 107, § 3, p. 370; R.S.1943, § 45-137; Laws 1957, c. 193, § 1, p. 684; Laws 1963, c. 273, § 2, p. 821; Laws 1963, Spec. Sess., c. 7, § 9, p. 93; Laws 1963, Spec. Sess., c. 9, § 1, p. 103; Laws 1979, LB 87, § 3; Laws 1980, LB 276, § 8; Laws 1982, LB 702, § 1; Laws 1984, LB 681, § 1; Laws 1994, LB 979, § 8; Laws 1995, LB 614, § 1; Laws 1997, LB 555, § 17; Laws 1999, LB 170, § 1; Laws 2000, LB 932, § 30; R.S.Supp.,2000, § 45-137; Laws 2001, LB 53, § 52; Laws 2003, LB 218, § 14; Laws 2004, LB 999, § 40; Laws 2005, LB 533, § 61; Laws 2006, LB 876, § 50; Laws 2009, LB328, § 47; Laws 2010, LB571, § 11; Laws 2011, LB77, § 4.

ARTICLE 12

NEBRASKA CONSTRUCTION PROMPT PAY ACT

Section

45-1201. Act, how cited.

45-1202. Terms, defined.

45-1203. Contractor; payment; payment request; subcontractor; payment; retainage; payment.

45-1204. Withholdings; authorized.

45-1205. Delay in payment; additional interest payment.

45-1211. Violation of act; action for recovery; attorney's fees and costs.

45-1201 Act, how cited.

Sections 45-1201 to 45-1211 shall be known and may be cited as the Nebraska Construction Prompt Pay Act.

Source: Laws 2010, LB552, § 1; Laws 2014, LB961, § 4.

45-1202 Terms, defined.

For purposes of the Nebraska Construction Prompt Pay Act:

(1) Contractor includes individuals, firms, partnerships, limited liability companies, corporations, or other associations of persons engaged in the business of the construction, alteration, repairing, dismantling, or demolition of buildings, roads, bridges, viaducts, sewers, water and gas mains, streets, disposal plants, water filters, tanks and towers, airports, dams, levees and canals, water wells, pipelines, transmission and power lines, and every other type of structure, project, development, or improvement coming within the definition of real property and personal property, including such construction, repairing, or alteration of such property to be held either for sale or rental. Contractor also includes any subcontractor engaged in the business of such activities and any person who is providing or arranging for labor for such activities, either as an employee or as an independent contractor, for any contractor or person. Contractor does not include an individual or an entity performing work on a contract for the State of Nebraska or performing work on a federal-aid or state-aid project of a political subdivision in which the state makes payments to the contractor on behalf of the political subdivision;

(2) Owner means a person (a) who has an interest in any real property improved, (b) for whom an improvement is made, or (c) who contracted for an

improvement to be made. Owner includes a person, an entity, or any political subdivision of this state. Owner does not include the State of Nebraska;

(3) Owner's representative means an architect, an engineer, or a construction manager in charge of a project for the owner or such other contract representative or officer as designated in the contract document as the party representing the owner's interest regarding administration and oversight of the project;

(4) Real property means real estate that is improved, including private and public land, and leaseholds, tenements, and improvements placed on the real property;

(5) Receipt means actual receipt of cash or funds by the contractor or subcontractor;

(6) Subcontractor means a person or an entity that has contracted to furnish labor or materials to, or performed labor or supplied materials for, a contractor or another subcontractor in connection with a contract to improve real property. Subcontractor includes materialmen and suppliers. Subcontractor does not include an individual or an entity performing work as a subcontractor on a contract for the State of Nebraska or performing work on a federal-aid or state-aid project of a political subdivision in which the state makes payments to the contractor on behalf of the political subdivision; and

(7) Substantially complete means the stage of a construction project when the project, or a designated portion thereof, is sufficiently complete in accordance with the contract so that the owner can occupy or utilize the project for its intended use.

Source: Laws 2010, LB552, § 2; Laws 2014, LB961, § 5.

45-1203 Contractor; payment; payment request; subcontractor; payment; retainage; payment.

(1) When a contractor has performed work in accordance with the provisions of a contract with an owner, the owner shall pay the contractor within thirty days after receipt by the owner or the owner's representative of a payment request made pursuant to the contract.

(2) When a subcontractor has performed work in accordance with the provisions of a subcontract and all conditions precedent to payment contained in the subcontract have been satisfied, the contractor shall pay the subcontractor and the subcontractor shall pay his, her, or its subcontractor, within ten days after receipt by the contractor or subcontractor of each periodic or final payment, the full amount received for the subcontractor's work and materials based on work completed or service provided under the subcontract for which the subcontractor has properly requested payment, if the subcontractor provides or has provided satisfactory and reasonable assurances of continued performance and financial responsibility to complete the work.

(3) The owner or the owner's representative shall release and pay all retainage for work completed in accordance with the provisions of the contract within forty-five days after the project, or a designated portion thereof, is substantially complete. When a subcontractor has performed work in accordance with the provisions of a subcontract and all conditions precedent to payment contained in the subcontract have been satisfied, the contractor shall

pay all retainage due such subcontractor within ten days after receipt of the retainage.

Source: Laws 2010, LB552, § 3; Laws 2014, LB961, § 6.

45-1204 Withholdings; authorized.

When work has been performed pursuant to a contract, an owner, a contractor, or a subcontractor may only withhold payment:

(1) For retainage, in an amount not to exceed the amount specified in the applicable contract, which shall not exceed a rate of ten percent. If the scope of work for the contractor or subcontractor from which retainage is withheld is fifty percent complete and if the contractor or subcontractor has performed work in accordance with the provisions in the applicable contract, no more than five percent of any additional progress payment may be withheld as retainage if the contractor or subcontractor provides or has provided satisfactory and reasonable assurances of continued performance and financial responsibility to complete the work;

(2) Of a reasonable amount, to the extent that such withholding is allowed in the contract, for any of the following reasons:

(a) Reasonable evidence showing that the contractual completion date will not be met due to unsatisfactory job progress;

(b) Third-party claims filed or reasonable evidence that such a claim will be filed with respect to work under the contract; or

(c) Failure of the contractor to make timely payments for labor, equipment, subcontractors, or materials; or

(3) After substantial completion, in an amount not to exceed one hundred twenty-five percent of the estimated cost to complete the work remaining on the contract.

Source: Laws 2010, LB552, § 4; Laws 2014, LB961, § 7.

45-1205 Delay in payment; additional interest payment.

Except as provided in section 45-1204, if a periodic or final payment to (1) a contractor is delayed by more than thirty days after receipt of a properly submitted periodic or final payment request by the owner or owner's representative or (2) a subcontractor is delayed by more than ten days after receipt of a periodic or final payment by the contractor or subcontractor, then the remitting owner, contractor, or subcontractor shall pay the contractor or subcontractor interest due until such amount is paid, beginning on the day following the payment due date at the rate of one percent per month or a pro rata fraction thereof on the unpaid balance. Interest is due under this section only after the person charged the interest has been notified of the provisions of this section by the contractor or subcontractor. Acceptance of progress payments or a final payment shall release all claims for interest on such payments.

Source: Laws 2010, LB552, § 5; Laws 2014, LB961, § 9.

45-1211 Violation of act; action for recovery; attorney's fees and costs.

Any individual, partnership, firm, limited liability company, corporation, or company may bring an action to recover any damages caused to such person or entity by a violation of the Nebraska Construction Prompt Pay Act. In addition

to an award of damages, the court may award a plaintiff reasonable attorney's fees and costs as the court determines is appropriate.

Source: Laws 2014, LB961, § 8.



CHAPTER 46

IRRIGATION AND REGULATION OF WATER

Article.

1. Irrigation Districts.
 - (a) Organization of Districts. 46-101 to 46-117.
 - (d) Construction by District. 46-151.
 - (j) Change of Boundaries. 46-179.
 - (k) Discontinuance of District. 46-185.
 - (r) Contracts for Water Supply. 46-1,145.
 - (u) Merger of Districts. 46-1,160.
2. General Provisions.
 - (f) Application for Water. 46-236 to 46-241.
 - (l) Intrabasin Transfers. 46-290, 46-294.
 - (m) Underground Water Storage. 46-297.
 - (p) Water Policy Task Force. 46-2,131 to 46-2,138. Repealed.
 - (q) Storm Water Management Plan Program. 46-2,139.
 - (r) Republican River Basin Water Sustainability Task Force. 46-2,140, 46-2,141. Repealed.
5. Reclamation Districts. 46-544.
6. Ground Water.
 - (b) Ground Water Conservation Districts. 46-633, 46-634.01. Repealed.
 - (c) Pumping for Irrigation Purposes. 46-637.
 - (g) Industrial Ground Water Regulatory Act. 46-683.01.
 - (i) Republican River Basin. 46-692. Repealed.
7. Nebraska Ground Water Management and Protection Act. 46-701 to 46-756.
11. Chemigation. 46-1101 to 46-1143.
12. Water Well Standards and Contractors' Licensing. 46-1224.
13. Water Quality Monitoring. 46-1304, 46-1305.
16. Safety of Dams and Reservoirs Act. 46-1654.

ARTICLE 1

IRRIGATION DISTRICTS

(a) ORGANIZATION OF DISTRICTS

Section

- 46-101. Irrigation District Act, how cited; irrigation districts; organization; grant of authority.
- 46-102. Terms, defined.
- 46-109. District; divisions; directors; number; election; terms.
- 46-110. District; organization and officers; election; notice; voters; eligibility.
- 46-111. District; organization and officers; election; procedure; canvass of votes; order of board; filing; election precincts.
- 46-115. Subsequent elections; manner; notice.
- 46-116. Election officers; powers and duties; hours of election.
- 46-117. Elections; return and canvass of vote.

(d) CONSTRUCTION BY DISTRICT

- 46-151. Cost of construction; when payable in bonds; issuance of additional bonds; additional levy.

(j) CHANGE OF BOUNDARIES

- 46-179. Exclusion of lands; objection made; action of board; election required; notice; procedure.

Section

(k) DISCONTINUANCE OF DISTRICT

46-185. Discontinuance of district; petition; special election; notice; procedure.

(r) CONTRACTS FOR WATER SUPPLY

46-1,145. Contract for water supply; election required, when; notice; procedure; effect of affirmative vote.

(u) MERGER OF DISTRICTS

46-1,160. Merger of districts; election; ballots; canvass; board of directors.

(a) ORGANIZATION OF DISTRICTS

46-101 Irrigation District Act, how cited; irrigation districts; organization; grant of authority.

(1) Sections 46-101 to 46-1,163 shall be known and may be cited as the Irrigation District Act.

(2) Whenever a majority of the electors owning land or holding leasehold estates, or who are entrymen of government lands, in the manner and to the extent provided in the Irrigation District Act, in any district susceptible to one mode of irrigation from a common source and by the same system of works, desire to provide for the irrigation of the same, they may propose the organization of an irrigation district under the act, and when so organized, each district shall have the power conferred by law upon such irrigation district.

Source: Laws 1895, c. 70, § 1, p. 269; Laws 1903, c. 121, § 1, p. 615; Laws 1905, c. 165, § 1, p. 648; Laws 1913, c. 142, § 1, p. 343; R.S.1913, § 3457; Laws 1917, c. 80, § 1, p. 187; C.S.1922, § 2857; C.S.1929, § 46-101; Laws 1937, c. 103, § 1, p. 361; C.S.Supp.,1941, § 46-101; R.S.1943, § 46-101; Laws 2015, LB561, § 1.

46-102 Terms, defined.

(1) For purposes of the Irrigation District Act:

(a) Elector means any resident of the State of Nebraska, owning not less than fifteen acres of land, or who is an entryman of government land, within any irrigation district or proposed irrigation district, or any resident of the State of Nebraska holding a leasehold estate in not less than forty acres of state land within such irrigation district for a period of not less than five years from the date at which such elector seeks to exercise the elective franchise; and

(b) Residence means (i) that place in which a person is actually domiciled, which is the residence of an individual or family, with which a person has a settled connection for the determination of his or her civil status or other legal purposes because it is actually or legally his or her permanent and principal home, and to which, whenever he or she is absent, he or she has the intention of returning, or (ii) the place where a person has his or her family domiciled even if he or she does business in another place.

(2) If an elector resides outside of the irrigation district, the elector shall be considered an elector in the division of the irrigation district in which his or her land is situated or, if the elector is the owner of land in more than one division of the irrigation district, the elector shall be considered an elector in the division of the district in which the majority of his or her land is situated.

(3) In the case of land owned or leased by joint tenants, each joint tenant who is a resident of the State of Nebraska is an elector and entitled to vote if the

total acreage owned or leased per joint tenant is equal to or exceeds the minimum acreage requirements of subsection (1) of this section.

(4) In the case of land owned or leased by tenants in common, each tenant who is a resident of the State of Nebraska is an elector and entitled to vote if the total acreage owned or leased per tenant is equal to or exceeds the minimum acreage requirements of subsection (1) of this section.

(5) In the case of land owned or leased by a corporation, limited liability company, limited liability partnership, joint venture, or other legal entity which meets the minimum acreage requirements of subsection (1) of this section, the entity shall designate a shareholder, member, or partner of the entity who is a resident of the State of Nebraska to act as the elector on behalf of the entity. The entity shall identify its elector-designee in writing to the secretary of the board of directors of the irrigation district not less than thirty days prior to an irrigation district election.

(6) In the case of land owned or leased under a life tenancy, each remainderman who is a resident of the State of Nebraska is an elector and entitled to vote if the total acreage owned or leased per remainderman is equal to or exceeds the minimum acreage requirements of subsection (1) of this section.

(7) In the case of land held by a buyer in possession pursuant to a land-purchase contract when the total acreage under the land-purchase contract meets the minimum acreage requirements of subsection (1) of this section and the buyer in possession is a resident of the State of Nebraska and is responsible for paying the real property taxes and the irrigation fees and assessments, the buyer in possession is the elector.

(8) In the case of land owned or leased by a trust which meets the minimum acreage requirements of subsection (1) of this section, the trustee shall designate a trustor, beneficiary, or trustee of the trust who is a resident of the State of Nebraska to act as the elector on behalf of the trust. The trust shall identify its elector-designee in writing to the secretary of the board of directors not less than thirty days prior to an irrigation district election.

(9) In the case of a pending estate of a deceased elector involving land which meets the minimum acreage requirements of subsection (1) of this section, the duly appointed personal representative of the estate who is a resident of the State of Nebraska shall act as the elector on behalf of the estate.

(10) Prior to formation of an irrigation district, if two or more persons claim conflicting rights to vote on the same acreage, the election commissioner or county clerk shall determine the party entitled to vote. In such cases, the determination of the election commissioner or county clerk shall be conclusive. After formation of an irrigation district, if two or more persons claim conflicting rights to vote on the same acreage or any other conflict arises regarding the qualification of an elector, the secretary of the board of directors of the irrigation district shall determine the party entitled to vote. The secretary's determination shall be conclusive. If a claim involves the secretary of the board, the board of election for the affected irrigation district precinct shall determine the party entitled to vote. In such cases, the determination of the board of election shall be conclusive.

Source: Laws 1913, c. 142, § 1, p. 343; R.S.1913, § 3457; Laws 1917, c. 80, § 1, p. 188; C.S.1922, § 2857; C.S.1929, § 46-101; Laws 1937, c. 103, § 1, p. 362; C.S.Supp.,1941, § 46-101; R.S.1943, § 46-102; Laws 2015, LB561, § 2.

46-109 District; divisions; directors; number; election; terms.

(1) Except as otherwise provided in subsections (2) and (3) of this section, the county board shall make an order dividing the irrigation district into three divisions as nearly equal in size as may be practicable, which shall be numbered first, second, and third, and one director shall be elected for each division.

(2) After formation of an irrigation district, in districts comprising over twenty-five thousand acres, the electors thereof may determine by a majority vote to increase the number of directors in any multiple of three up to nine, whereupon the district may be divided into as many divisions as there are directors agreed upon. One-third of the number of directors so elected shall retire each year, and the order of their retirement may be agreed upon by the directors of the district, and successors shall be elected in the manner provided for the election of directors in other districts. The election for the increased number of directors shall be called upon a petition signed by twenty percent of the electors of the district presented to the then board of directors.

(3) After formation of an irrigation district, in districts comprising less than fifteen thousand acres, upon the majority vote of the board of directors, the question of whether the divisions in the irrigation district may be eliminated and the subsequent election of the directors conducted on an at-large basis may be submitted to the electors. The divisions in the district shall be eliminated and the directors elected on an at-large basis only upon the affirmative vote of two-thirds of the electors of the district.

Source: Laws 1895, c. 70, § 2, p. 271; Laws 1903, c. 121, § 1, p. 617; Laws 1909, c. 155, § 1, p. 560; R.S.1913, § 3458; Laws 1917, c. 81, § 1, p. 192; C.S.1922, § 2858; C.S.1929, § 46-102; Laws 1933, c. 87, § 1, p. 357; C.S.Supp.,1941, § 46-102; R.S.1943, § 46-109; Laws 1972, LB 1509, § 1; Laws 2015, LB561, § 3.

46-110 District; organization and officers; election; notice; voters; eligibility.

(1) After dividing the proposed irrigation district into divisions, the county board shall give notice of an election to be held in such proposed district, for the purpose of determining whether or not the same shall be organized under the Irrigation District Act. Such notice shall describe the boundaries as established and shall designate a name for such proposed district. The notice shall be published for at least three weeks prior to such election in a newspaper of general circulation in the county; and if any portion of such proposed district lies within another county or counties, then the notice shall be published in a newspaper of general circulation within each of such counties. The notice shall include the contents of the ballots to be cast and the date, time, place, and manner of the election, with instructions and deadlines to request and cast a ballot by mail. The ballot shall contain the words Irrigation district Yes, or Irrigation district No, or words equivalent thereto; and also the names of persons to be voted for to fill various elective offices prescribed in the Irrigation District Act.

(2) No person shall be entitled to vote at any election held under the Irrigation District Act unless he or she is qualified as an elector as provided in section 46-102. For any election under the Irrigation District Act, status as an elector shall be established by a record date designated by the election commissioner or county clerk for initial organization of the irrigation district or

designated by the secretary of the board of directors for all other elections. The record date shall not be more than thirty days prior to the election. After such record date, a person may be allowed to vote when such person establishes his or her status as an elector to the satisfaction of the election commissioner or county clerk for initial organization of the district or to the satisfaction of the secretary of the board of directors for all other elections. The determination of the election commissioner, county clerk, or secretary of the board of directors, as the case may be, shall be conclusive.

Source: Laws 1895, c. 70, § 2, p. 271; Laws 1903, c. 121, § 1, p. 617; Laws 1909, c. 155, § 1, p. 560; R.S.1913, § 3458; Laws 1917, c. 81, § 1, p. 193; C.S.1922, § 2858; C.S.1929, § 46-102; Laws 1933, c. 87, § 1, p. 357; C.S.Supp.,1941, § 46-102; R.S.1943, § 46-110; Laws 2015, LB561, § 4.

46-111 District; organization and officers; election; procedure; canvass of votes; order of board; filing; election precincts.

(1) Irrigation district elections shall be conducted in accordance with the Irrigation District Act.

(2) The county board shall meet on the second Monday next succeeding any irrigation district election or next succeeding the deadline for casting ballots in an irrigation district election by mail and canvass the votes cast at the election or by mail. If upon such canvass of the election for the formation of the district it appears that at least a majority of all votes cast are Irrigation district Yes, the county board shall by an order entered on its minutes, declare such territory duly organized as an irrigation district, under the name and style therefor designated, and shall declare the persons receiving, respectively, the highest number of votes for such several offices to be duly elected to such offices. The county board shall cause a copy of such order, duly certified, to be immediately filed for record in the office of the county register of deeds of each county in which any portion of such lands are situated and shall also immediately forward a copy thereof to the clerk of the county board of each of the counties in which any portion of the district may lie; and no county board of any county, including any portion of such district, shall, after the date of the organization of such district, allow another district to be formed including any of the lands of such district, without the consent of the board of directors thereof. From and after the date of such filing, the organization of such district shall be complete, and the officers thereof shall be entitled to immediately enter upon the duties of their respective offices, upon qualifying in accordance with law, and shall hold such offices respectively until their successors are elected and qualified. For the purpose of the election for the formation of the district, the county board shall establish one or more election precincts in the proposed district, and define the boundary or boundaries thereof, which may thereafter be changed by the board of directors of such district.

Source: Laws 1895, c. 70, § 3, p. 272; R.S.1913, § 3459; Laws 1919, c. 111, § 1, p. 273; C.S.1922, § 2859; C.S.1929, § 46-103; R.S.1943, § 46-111; Laws 1951, c. 148, § 1, p. 595; Laws 2015, LB561, § 5.

Cross References

Election laws, generally, see Chapter 32.

Voting by mail, absentee voters, see sections 32-938 to 32-951.

Voting by mail, special election procedures, see sections 32-952 to 32-959.

46-115 Subsequent elections; manner; notice.

(1) Fifteen days before any election which is not held by mail under the Irrigation District Act subsequent to the organization of the irrigation district, the secretary of the board of directors shall cause notice to be published in a newspaper of general circulation in each county in which the irrigation district lies. The notice shall include the date, time, place, and manner of holding the election. The secretary shall also post a general notice of the same in the office of the board, which shall be established and kept at some fixed place to be determined by the board, specifying the polling places, if any, of each precinct of the irrigation district.

(2) Each year the board of directors of an irrigation district shall determine whether to hold the subsequent regular election of the irrigation district by mail. The board of directors may determine to hold any other election by mail under the Irrigation District Act if the decision to hold the election by mail is made at least forty-five days prior to the date set for such election. The secretary of the board of directors shall, at least thirty days prior to the date set for the election, mail to the last-known post office address of each elector a ballot which lists the names of the candidates and gives instructions and the deadlines to return the ballot. The secretary shall publish notice of the election by mail in a newspaper of general circulation in each county in which the irrigation district lies. The notice shall include instructions and the deadlines for requesting a ballot and instructions and the deadlines for casting ballots by mail. The notice shall also include the time and place designated for processing and counting the ballots cast by mail.

(3) Prior to the time for posting the notices, the board of directors shall appoint three residents from each precinct, one clerk and two judges, who shall constitute a board of election for such precinct. If the board of directors fails to appoint a board of election or the members appointed do not attend at the opening of the polls on the morning of election or at the time and place for processing and counting the ballots cast by mail, as the case may be, the electors of the precinct present at that hour may appoint the board. The board of directors must, in its order appointing the board of election, designate the hour and place in the precinct where the election must be held or the time and place for processing and counting the ballots cast by mail, as the case may be.

Source: Laws 1895, c. 70, § 5, p. 274; R.S.1913, § 3461; C.S.1922, § 2861; C.S.1929, § 46-105; R.S.1943, § 46-115; Laws 1951, c. 148, § 2, p. 596; Laws 2015, LB561, § 6.

Cross References

Voting by mail, absentee voters, see sections 32-938 to 32-951.

Voting by mail, special election procedures, see sections 32-952 to 32-959.

46-116 Election officers; powers and duties; hours of election.

(1) One of the judges shall be chairperson of the board of election and may (a) administer all oaths required in the progress of an election under the Irrigation District Act and (b) appoint judges and clerks, if during the progress of the election or processing and counting ballots cast by mail, as the case may be, any judge or clerk ceases to act. Any member of the board of election, or any clerk thereof, may administer and certify oaths required to be administered during the progress of an election or the processing and counting of ballots cast by mail, as the case may be. Before opening the polls or processing and

counting ballots cast by mail, each member of the board of election must take and subscribe to an oath to faithfully perform the duties imposed upon him or her by law. Any elector of the precinct may administer and certify such oath.

(2) For elections other than those conducted by mail, the polls must be opened at 8 a.m. on the morning of the election and be kept open until 6 p.m. of the same day, except that in districts embracing twelve thousand acres or less, the polls may, by direction of the board of directors, be opened at 1 p.m. and be kept open until 5:30 p.m. of the same day.

Source: Laws 1895, c. 70, § 6, p. 274; Laws 1913, c. 22, § 1, p. 94; R.S.1913, § 3462; C.S.1922, § 2862; C.S.1929, § 46-106; R.S. 1943, § 46-116; Laws 2015, LB561, § 7.

46-117 Elections; return and canvass of vote.

(1) Elections under the Irrigation District Act, together with the ballots cast thereat, shall be certified by the boards of election for the precincts to the board of directors of the irrigation district within three days after the election or the deadline for casting ballots by mail.

(2) No lists, tally paper, or certificate returned from any election shall be set aside or rejected for want of form if it can be satisfactorily understood. The board of directors must meet at its usual place of meeting on the first Monday after each election and canvass the returns. If at the time of meeting the returns from each precinct in the district in which the polls were opened or ballots were mailed have been received, the board of directors must then and there proceed to canvass the returns; but if all the returns have not been received the canvass must be postponed from day to day until all the returns have been received or until six postponements have been had. The canvass must be made in public and by opening the returns and estimating the vote of the district for each person voted for and declaring the result thereof.

Source: Laws 1895, c. 70, § 7, p. 275; R.S.1913, § 3463; C.S.1922, § 2863; C.S.1929, § 46-107; R.S.1943, § 46-117; Laws 2015, LB561, § 8.

(d) CONSTRUCTION BY DISTRICT

46-151 Cost of construction; when payable in bonds; issuance of additional bonds; additional levy.

The cost and expense of purchasing and acquiring property and constructing the works and improvements provided for in the Irrigation District Act shall be wholly paid out of the construction fund, or in the bonds of the irrigation district at their par value, after having first advertised the same for sale as provided in section 46-1,100, and having received no bids therefor of ninety-five percent or upwards of their face value. In case such bonds or the money raised by their sale is insufficient for the purposes for which the bonds were issued, additional bonds may be issued, after submission of the question at a general or special election to the electors of the district. In case of the issuance of additional bonds, the lien for taxes for the payment of the interest and principal of such issue shall be a subsequent lien to any prior bond issue. However, the provisions of this section shall not apply where the cost and expense of purchasing and acquiring property and constructing the works and improvements provided for in the Irrigation District Act are covered by contract

between the district and the United States. In lieu of the issuance of additional bonds, the board of directors may provide for the completion of the irrigation system of the district by the levy of an assessment therefor in the same manner in which levy of an assessment is made for the other purposes provided in the Irrigation District Act.

Source: Laws 1895, c. 70, § 24, p. 287; Laws 1899, c. 78, § 2, p. 334; Laws 1913, c. 37, § 1, p. 131; R.S.1913, § 3482; Laws 1915, c. 69, § 8, p. 179; C.S.1922, § 2882; C.S.1929, § 46-127; R.S.1943, § 46-151; Laws 2015, LB561, § 9.

(j) CHANGE OF BOUNDARIES

46-179 Exclusion of lands; objection made; action of board; election required; notice; procedure.

If the assent of the holders of the bonds is filed and entered of record as provided in section 46-178, and if there are objections presented by any person showing cause which have not been withdrawn, then the board of directors may order an election to be held in the irrigation district to determine whether an order shall be made excluding such lands from the district as mentioned in the resolution. The notice of such election shall describe the boundaries of all the lands which it is proposed to exclude, and such notice shall be published for at least two weeks prior to such election in a newspaper of general circulation within the county where the office of the board of directors is situated; and if any portion of such territory to be excluded lies within another county or counties, then such notice shall be so published in a newspaper of general circulation in each of such counties. Such notice shall require the electors to cast ballots which shall contain the words For exclusion, or Against exclusion, or words equivalent thereto. Such election shall otherwise be conducted in accordance with sections 46-115 to 46-118.

Source: Laws 1895, c. 70, § 52, p. 299; R.S.1913, § 3509; C.S.1922, § 2909; C.S.1929, § 46-154; R.S.1943, § 46-179; Laws 2015, LB561, § 10.

Cross References

For election laws, see Chapter 32.

(k) DISCONTINUANCE OF DISTRICT

46-185 Discontinuance of district; petition; special election; notice; procedure.

Whenever a majority of the assessment payers, representing a majority of the number of acres of irrigable land within any irrigation district, petition the board of directors to call a special election for the purpose of submitting to the electors of such irrigation district a proposition to vote on the discontinuance of such irrigation district and a settlement of its bonded and other indebtedness, the board of directors shall call an election, setting forth the object of the same, and cause a notice of such election to be published in some newspaper of general circulation in each of the counties in which the district is located, for a period of thirty days prior to such election, setting forth the time and place for holding such election in each of the voting precincts in the district, and shall also cause a written or printed notice of such election to be posted in some

conspicuous place in each of the voting precincts. The board of directors shall provide ballots to be used at such election on which shall be written or printed the words For discontinuance Yes, and For discontinuance No. The election shall otherwise be conducted in accordance with sections 46-115 to 46-118.

Source: Laws 1897, c. 91, §§ 1, 2, p. 372; Laws 1903, c. 123, § 1, p. 625; R.S.1913, § 3521; C.S.1922, § 2921; C.S.1929, § 46-166; R.S. 1943, § 46-185; Laws 2015, LB561, § 11.

(r) CONTRACTS FOR WATER SUPPLY

46-1,145 Contract for water supply; election required, when; notice; procedure; effect of affirmative vote.

If such contract provides for payments to be made extending for a period of more than one year from the date of making the contract, the board of directors of such irrigation district shall submit the contract to the electors of the district at any general election or at a special election called therefor for the approval or disapproval of the contract. The ballots at the election shall have printed thereon For approval of contract for water supply, and Against approval of contract for water supply. The notice of the election need not give the entire contract but shall be sufficient if it states in a general way the substance of the proposed contract. The election shall otherwise be conducted in accordance with sections 46-115 to 46-118. If a majority of the electors that vote on the proposition vote for approval of the contract, the board of directors shall enter into the contract and shall thereafter, at the time the other taxes of the district are levied, levy a tax on the taxable property of the district sufficient to pay the amount due and to become due on the contract before the next annual levy in the district.

Source: Laws 1915, c. 205, § 3, p. 442; C.S.1922, § 2946; C.S.1929, § 46-203; R.S.1943, § 46-1,145; Laws 2015, LB561, § 12.

(u) MERGER OF DISTRICTS

46-1,160 Merger of districts; election; ballots; canvass; board of directors.

The board of directors of the irrigation districts to be merged shall provide ballots to be used at such election. The return of the election, together with the ballots cast thereat, shall be certified by the boards of election of such districts to the persons who will serve as the board of directors of the merged district if the merger is approved, within three days after the election or within three days after the deadline to submit ballots by mail, as the case may be, which board shall, on or before the third day after the election, canvass such returns and declare the result of such election, which result shall be at once recorded by the secretary of the board of directors in the records of the district boards and certified to the county clerk. The election and the return thereof shall otherwise be conducted in accordance with sections 46-115 to 46-118.

Source: Laws 1972, LB 1509, § 8; Laws 2015, LB561, § 13.

ARTICLE 2

GENERAL PROVISIONS

(f) APPLICATION FOR WATER

Section

- 46-236. Application for water power; lease from state required; fee; renewal; cancellation; grounds.
- 46-240.01. Supplemental additional appropriations; agricultural appropriators; application.
- 46-241. Application for water; storage reservoirs; facility for underground water storage; eminent domain; procedure; duties and liabilities of owner.

(l) INTRABASIN TRANSFERS

- 46-290. Appropriation; application to transfer or change; contents; approval.
- 46-294. Applications; approval; requirements; conditions; burden of proof.

(m) UNDERGROUND WATER STORAGE

- 46-297. Permit to appropriate water; modification to include underground water storage; procedure.

(p) WATER POLICY TASK FORCE

- 46-2,131. Repealed. Laws 2011, LB 2, § 8.
- 46-2,132. Repealed. Laws 2011, LB 2, § 8.
- 46-2,133. Repealed. Laws 2011, LB 2, § 8.
- 46-2,134. Repealed. Laws 2011, LB 2, § 8.
- 46-2,135. Repealed. Laws 2011, LB 2, § 8.
- 46-2,136. Repealed. Laws 2011, LB 2, § 8.
- 46-2,137. Repealed. Laws 2011, LB 2, § 8.
- 46-2,138. Repealed. Laws 2011, LB 2, § 8.

(q) STORM WATER MANAGEMENT PLAN PROGRAM

- 46-2,139. Storm Water Management Plan Program; created; assistance to cities and counties; grants; Department of Environmental Quality; duties.

(r) REPUBLICAN RIVER BASIN WATER SUSTAINABILITY TASK FORCE

- 46-2,140. Repealed. Laws 2015, LB 9, § 1.
- 46-2,141. Repealed. Laws 2015, LB 9, § 1.

(f) APPLICATION FOR WATER

46-236 Application for water power; lease from state required; fee; renewal; cancellation; grounds.

An application for appropriation of water for water power shall meet the requirements of section 46-234 and subsection (1) of section 46-235 to be approved. Within six months after the approval of an application for water power and before placing water to any beneficial use, the applicant shall enter into a contract with the State of Nebraska, through the department, for leasing the use of all water so appropriated. Such lease shall be upon forms prepared by the department, and the time of such lease shall not run for a greater period than fifty years; and for the use of water for power purposes the applicant shall pay into the state treasury on or before January 1 each year fifteen dollars for each one hundred horsepower for all water so appropriated. Upon application of the lessee or its assigns, the department shall renew the lease so as to continue it and the water appropriation in full force and effect for an additional period of fifty years.

Upon the failure of the applicant to comply with any of the provisions of such lease and the failure to pay any of such fees, the department shall notify the

lessee that the required fees have not been paid to the department or that the lessee is not otherwise in compliance with the provisions of the lease. If the lessee has not come into compliance with all provisions of the lease or has not paid to the department all required fees within fifteen calendar days after the date of such notice, the department shall issue an order denying the applicant the right to divert or otherwise use the water appropriation for power production. The department shall rescind the order denying use of the water appropriation at such time as the lessee has come into compliance with all provisions of the lease and has paid all required fees to the department. If after forty-five calendar days from the date of issuance of the order the lessee is not in compliance with all provisions of the lease or required fees have not been paid to the department, such lease and water appropriation shall be canceled by the department.

Source: Laws 1921, c. 291, § 1, p. 942; C.S.1922, § 8437; C.S.1929, § 81-6318; R.S.1943, § 46-236; Laws 1972, LB 1306, § 1; Laws 1987, LB 140, § 7; Laws 2000, LB 900, § 111; Laws 2011, LB27, § 1.

46-240.01 Supplemental additional appropriations; agricultural appropriators; application.

All appropriators of water for agricultural purposes of less than the statutory limit of direct flow from the public waters of this state within the drainage basin of the stream from which such waters originate shall be entitled to such additional appropriation or appropriations from the direct flow of such stream, within the statutory limits provided by law, as may be necessary and required for the production of crops in the practice of good husbandry. Applications for such supplemental additional appropriations from the direct flow, upon the approval or granting thereof, shall have priority within the drainage basin as of the date such applications are filed in the office of the department.

Source: Laws 1953, c. 160, § 1, p. 503; Laws 2000, LB 900, § 114; Laws 2011, LB31, § 1.

46-241 Application for water; storage reservoirs; facility for underground water storage; eminent domain; procedure; duties and liabilities of owner.

(1) Every person intending to construct and operate a storage reservoir for irrigation or any other beneficial purpose or intending to construct and operate a facility for intentional underground water storage and recovery shall, except as provided in subsections (2) and (3) of this section and section 46-243, make an application to the department upon the prescribed form and provide such plans, drawings, and specifications as are necessary to comply with the Safety of Dams and Reservoirs Act. Such application shall be filed and proceedings had thereunder in the same manner and under the same rules and regulations as other applications. Upon the approval of such application under this section and any approval required by the act, the applicant shall have the right to construct and impound in such reservoir, or store in and recover from such underground water storage facility, all water not otherwise appropriated and any appropriated water not needed for immediate use, to construct and operate necessary ditches for the purpose of conducting water to such storage reservoir or facility, and to condemn land for such reservoir, ditches, or other facility.

The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724.

(2) Any person intending to construct an on-channel reservoir with a water storage impounding capacity of less than fifteen acre-feet measured below the crest of the lowest open outlet or overflow shall be exempt from subsection (1) of this section as long as there will be (a) no diversion or withdrawal of water from the reservoir for any purpose other than for watering range livestock and (b) no release from the reservoir to provide water for a downstream diversion or withdrawal for any purpose other than for watering range livestock. This subsection does not exempt any person from the requirements of the Safety of Dams and Reservoirs Act or section 54-2425.

(3) Any person intending to construct a reservoir, holding pond, or lagoon for the sole purpose of holding, managing, or disposing of animal or human waste shall be exempt from subsection (1) of this section. This subsection does not exempt any person from any requirements of the Safety of Dams and Reservoirs Act or section 46-233 or 54-2425.

(4) Every person intending to modify or rehabilitate an existing storage reservoir so that its impounding capacity is to be increased shall comply with subsection (1) of this section.

(5) The owner of a storage reservoir or facility shall be liable for all damages arising from leakage or overflow of the water therefrom or from the breaking of the embankment of such reservoir. The owner or possessor of a reservoir or intentional underground water storage facility does not have the right to store water in such reservoir or facility during the time that such water is required downstream in ditches for direct irrigation or for any reservoir or facility holding a senior right. Every person who owns, controls, or operates a reservoir or intentional underground water storage facility, except political subdivisions of this state, shall be required to pass through the outlets of such reservoir or facility, whether presently existing or hereafter constructed, a portion of the measured inflows to furnish water for livestock in such amounts and at such times as directed by the department to meet the requirements for such purposes as determined by the department, except that a reservoir or facility owner shall not be required to release water for this purpose which has been legally stored. Any dam shall be constructed in accordance with the Safety of Dams and Reservoirs Act, and the outlet works shall be installed so that water may be released in compliance with this section. The requirement for outlet works may be waived by the department upon a showing of good cause. Whenever any person diverts water from a public stream and returns it into the same stream, he or she may take out the same amount of water, less a reasonable deduction for losses in transit, to be determined by the department, if no prior appropriator for beneficial use is prejudiced by such diversion.

(6) An application for storage and recovery of water intentionally stored underground may be made only by an appropriator of record who shows, by documentary evidence, sufficient interest in the underground water storage facility to entitle the applicant to the water requested.

Source: Laws 1919, c. 190, tit. VII, art. V, div. 3, § 17, p. 852; C.S.1922, § 8467; C.S.1929, § 46-617; R.S.1943, § 46-241; Laws 1951, c. 101, § 91, p. 487; Laws 1955, c. 183, § 2, p. 515; Laws 1971, LB 823, § 1; Laws 1973, LB 186, § 8; Laws 1983, LB 198, § 9; Laws 1985, LB 103, § 2; Laws 1985, LB 488, § 5; Laws 1995, LB 309,

§ 1; Laws 2000, LB 900, § 115; Laws 2003, LB 619, § 4; Laws 2004, LB 916, § 2; Laws 2004, LB 962, § 14; Laws 2005, LB 335, § 74; Laws 2014, LB1098, § 12.

Cross References

Safety of Dams and Reservoirs Act, see section 46-1601.

(I) INTRABASIN TRANSFERS

46-290 Appropriation; application to transfer or change; contents; approval.

(1)(a) Except as provided in this section and sections 46-2,120 to 46-2,130, any person having a permit to appropriate water for beneficial purposes issued pursuant to sections 46-233 to 46-235, 46-240.01, 46-241, 46-242, or 46-637 and who desires (i) to transfer the use of such appropriation to a location other than the location specified in the permit, (ii) to change that appropriation to a different type of appropriation as provided in subsection (3) of this section, or (iii) to change the purpose for which the water is to be used under a natural-flow, storage, or storage-use appropriation to a purpose not at that time permitted under the appropriation shall apply for approval of such transfer or change to the Department of Natural Resources.

(b) The application for such approval shall contain (i) the number assigned to such appropriation by the department, (ii) the name and address of the present holder of the appropriation, (iii) if applicable, the name and address of the person or entity to whom the appropriation would be transferred or who will be the user of record after a change in the location of use, type of appropriation, or purpose of use under the appropriation, (iv) the legal description of the land to which the appropriation is now appurtenant, (v) the name and address of each holder of a mortgage, trust deed, or other equivalent consensual security interest against the tract or tracts of land to which the appropriation is now appurtenant, (vi) if applicable, the legal description of the land to which the appropriation is proposed to be transferred, (vii) if a transfer is proposed, whether other sources of water are available at the original location of use and whether any provisions have been made to prevent either use of a new source of water at the original location or increased use of water from any existing source at that location, (viii) if applicable, the legal descriptions of the beginning and end of the stream reach to which the appropriation is proposed to be transferred for the purpose of augmenting the flows in that stream reach, (ix) if a proposed transfer is for the purpose of increasing the quantity of water available for use pursuant to another appropriation, the number assigned to such other appropriation by the department, (x) the purpose of the current use, (xi) if a change in purpose of use is proposed, the proposed purpose of use, (xii) if a change in the type of appropriation is proposed, the type of appropriation to which a change is desired, (xiii) if a proposed transfer or change is to be temporary in nature, the duration of the proposed transfer or change, and (xiv) such other information as the department by rule and regulation requires.

(2) If a proposed transfer or change is to be temporary in nature, a copy of the proposed agreement between the current appropriator and the person who is to be responsible for use of water under the appropriation while the transfer or change is in effect shall be submitted at the same time as the application.

(3) Regardless of whether a transfer or a change in the purpose of use is involved, the following changes in type of appropriation, if found by the

Director of Natural Resources to be consistent with section 46-294, may be approved subject to the following:

(a) A natural-flow appropriation for direct out-of-stream use may be changed to a natural-flow appropriation for aboveground reservoir storage or for intentional underground water storage;

(b) A natural-flow appropriation for intentional underground water storage may be changed to a natural-flow appropriation for direct out-of-stream use or for aboveground reservoir storage;

(c) A natural-flow appropriation for direct out-of-stream use, for aboveground reservoir storage, or for intentional underground water storage may be changed to an instream appropriation subject to sections 46-2,107 to 46-2,119 if the director determines that the resulting instream appropriation would be consistent with subdivisions (2), (3), and (4) of section 46-2,115;

(d) A natural-flow appropriation for direct out-of-stream use, for aboveground reservoir storage, or for intentional underground water storage may be changed to an appropriation for induced ground water recharge if the director determines that the resulting appropriation for induced ground water recharge would be consistent with subdivisions (2)(a)(i) and (ii) of section 46-235;

(e) An appropriation for the manufacturing of hydropower at a facility located on a natural stream channel may be permanently changed in full to an instream basin-management appropriation to be held jointly by the Game and Parks Commission and any natural resources district or combination of natural resources districts. The beneficial use of such change is to maintain the streamflow for fish, wildlife, and recreation that was available from the manufacturing of hydropower prior to the change. Such changed appropriation may also be utilized by the owners of the appropriation to assist in the implementation of an approved integrated management plan or plans developed pursuant to sections 46-714 to 46-718 for each natural resources district within the river basin. Any such change under this section shall be subject to review under sections 46-229 to 46-229.06 to ensure that the beneficial uses of the change of use are still being achieved; and

(f) The incidental underground water storage portion, whether or not previously quantified, of a natural-flow or storage-use appropriation may be separated from the direct-use portion of the appropriation and may be changed to a natural-flow or storage-use appropriation for intentional underground water storage at the same location if the historic consumptive use of the direct-use portion of the appropriation is transferred to another location or is terminated, but such a separation and change may be approved only if, after the separation and change, (i) the total permissible diversion under the appropriation will not increase, (ii) the projected consequences of the separation and change are consistent with the provisions of any integrated management plan adopted in accordance with section 46-718 or 46-719 for the geographic area involved, and (iii) if the location of the proposed intentional underground water storage is in a river basin, subbasin, or reach designated as overappropriated in accordance with section 46-713, the integrated management plan for that river basin, subbasin, or reach has gone into effect, and that plan requires that the amount of the intentionally stored water that is consumed after the change will be no greater than the amount of the incidentally stored water that was consumed prior to the change. Approval of a separation and change pursuant to this subdivision (f) shall not exempt any consumptive use associated with the

incidental recharge right from any reduction in water use required by an integrated management plan for a river basin, subbasin, or reach designated as overappropriated in accordance with section 46-713.

Whenever any change in type of appropriation is approved pursuant to this subsection and as long as that change remains in effect, the appropriation shall be subject to the statutes, rules, and regulations that apply to the type of appropriation to which the change has been made.

(4) The Legislature finds that induced ground water recharge appropriations issued pursuant to sections 46-233 and 46-235 and instream appropriations issued pursuant to section 46-2,115 are specific to the location identified in the appropriation. Neither type of appropriation shall be transferred to a different location, changed to a different type of appropriation, or changed to permit a different purpose of use.

(5) In addition to any other purposes for which transfers and changes may be approved, such transfers and changes may be approved if the purpose is (a) to maintain or augment the flow in a specific stream reach for any instream use that the department has determined, through rules and regulations, to be a beneficial use or (b) to increase the frequency that a diversion rate or rate of flow specified in another valid appropriation is achieved.

For any transfer or change approved pursuant to subdivision (a) of this subsection, the department shall be provided with a report at least every five years while such transfer or change is in effect. The purpose of such report shall be to indicate whether the beneficial instream use for which the flow is maintained or augmented continues to exist. If the report indicates that it does not or if no report is filed within sixty days after the department's notice to the appropriator that the deadline for filing the report has passed, the department may cancel its approval of the transfer or change and such appropriation shall revert to the same location of use, type of appropriation, and purpose of use as prior to such approval.

(6) A quantified or unquantified appropriation for incidental underground water storage may be transferred to a new location along with the direct-use appropriation with which it is recognized if the director finds such transfer to be consistent with section 46-294 and determines that the geologic and other relevant conditions at the new location are such that incidental underground water storage will occur at the new location. The director may request such information from the applicant as is needed to make such determination and may modify any such quantified appropriation for incidental underground water storage, if necessary, to reflect the geologic and other conditions at the new location.

(7) Unless an incidental underground water storage appropriation is changed as authorized by subdivision (3)(f) of this section or is transferred as authorized by subsection (6) of this section or subsection (1) of section 46-291, such appropriation shall be canceled or modified, as appropriate, by the director to reflect any reduction in water that will be stored underground as the result of a transfer or change of the direct-use appropriation with which the incidental underground water storage was recognized prior to the transfer or change.

(8) Any appropriation for manufacturing of hydropower changed under subdivision (3)(e) of this section shall maintain the priority date and preference category of the original manufacturing appropriation and shall be subject to condemnation and subordination pursuant to sections 70-668 and 70-669. Any

person holding a subordination agreement that was established prior to such change of appropriation shall be entitled to enter into a new subordination agreement for terms consistent with the original subordination agreement at no additional cost. Any person having obtained a condemnation award that was established prior to such change of appropriation shall be entitled to the same benefits created by such award, and any obligations created by such award shall become the obligations of the new owner of the appropriation changed under this section.

Source: Laws 1983, LB 21, § 2; Laws 1995, LB 99, § 17; Laws 2000, LB 900, § 131; Laws 2004, LB 962, § 16; Laws 2006, LB 1226, § 10; Laws 2009, LB477, § 1; Laws 2016, LB1038, § 12.
Effective date July 21, 2016.

46-294 Applications; approval; requirements; conditions; burden of proof.

(1) Except for applications approved in accordance with subsection (1) of section 46-291, the Director of Natural Resources shall approve an application filed pursuant to section 46-290 only if the application and the proposed transfer or change meet the following requirements:

(a) The application is complete and all other information requested pursuant to section 46-293 has been provided;

(b) The proposed use of water after the transfer or change will be a beneficial use of water;

(c)(i) Any requested transfer in the location of use is within the same river basin as defined in section 46-288 or (ii) the river basin from which the appropriation is to be transferred is tributary to the river basin to which the appropriation is to be transferred;

(d) Except as otherwise provided in subsection (4) of this section, the proposed transfer or change, alone or when combined with any new or increased use of any other source of water at the original location or within the same irrigation district, reclamation district, public power and irrigation district, or mutual irrigation or canal company for the original or other purposes, will not diminish the supply of water available for or otherwise adversely affect any other water appropriator and will not significantly adversely affect any riparian water user who files an objection in writing pursuant to section 46-291;

(e) The quantity of water that is transferred for diversion or other use at the new location will not exceed the historic consumptive use under the appropriation or portion thereof being transferred, except that this subdivision does not apply to (i) a transfer in the location of use if both the current use and the proposed use are for irrigation, the number of acres to be irrigated will not increase after the transfer, and the location of the diversion from the stream will not change or (ii) a transfer or change in the purpose of use of a surface water irrigation appropriation as provided for in subsection (3), (5), or (6) of section 46-290 if the transfer or change in purpose will not diminish the supply of water available or otherwise adversely affect any other water appropriator, adversely affect Nebraska's ability to meet its obligations under a multistate agreement, or result in administration of the prior appropriation system by the Department of Natural Resources, which would not have otherwise occurred;

(f) The appropriation, prior to the transfer or change, is not subject to termination or cancellation pursuant to sections 46-229 to 46-229.04;

(g) If a proposed transfer or change is of an appropriation that has been used for irrigation and is in the name of an irrigation district, reclamation district, public power and irrigation district, or mutual irrigation or canal company or is dependent upon any such district's or company's facilities for water delivery, such district or company has approved the transfer or change;

(h) If the proposed transfer or change is of a storage-use appropriation and if the owner of that appropriation is different from the owner of the associated storage appropriation, the owner of the storage appropriation has approved the transfer or change;

(i) If the proposed transfer or change is to be permanent, either (i) the purpose for which the water is to be used before the transfer or change is in the same preference category established by section 46-204 as the purpose for which the water is to be used after the transfer or change or (ii) the purpose for which the water is to be used before the transfer or change and the purpose for which the water is to be used after the transfer or change are both purposes for which no preferences are established by section 46-204;

(j) If the proposed transfer or change is to be temporary, it will be for a duration of no less than one year and, except as provided in section 46-294.02, no more than thirty years;

(k) The transfer or change will not be inconsistent with any applicable state or federal law and will not jeopardize the state's compliance with any applicable interstate water compact or decree or cause difficulty in fulfilling the provisions of any other formal state contract or agreement; and

(l) The proposed transfer or change is in the public interest. The director's considerations relative to the public interest shall include, but not be limited to, (i) the economic, social, and environmental impacts of the proposed transfer or change and (ii) whether and under what conditions other sources of water are available for the uses to be made of the appropriation after the proposed transfer or change. The Department of Natural Resources shall adopt and promulgate rules and regulations to govern the director's determination of whether a proposed transfer or change is in the public interest.

(2) The applicant has the burden of proving that the proposed transfer or change will comply with subdivisions (1)(a) through (l) of this section, except that (a) the burden is on a riparian user to demonstrate his or her riparian status and to demonstrate a significant adverse effect on his or her use in order to prevent approval of an application and (b) if both the current use and the proposed use after a transfer are for irrigation, the number of acres to be irrigated will not increase after the transfer, and the location of the diversion from the stream will not change, there is a rebuttable presumption that the transfer will be consistent with subdivision (1)(d) of this section.

(3) In approving an application, the director may impose any reasonable conditions deemed necessary to protect the public interest, to ensure consistency with any of the other criteria in subsection (1) of this section, or to provide the department with information needed to properly and efficiently administer the appropriation while the transfer or change remains in effect. If necessary to prevent diminution of supply for any other appropriator, the conditions imposed by the director shall require that historic return flows be maintained or replaced in quantity, timing, and location. After approval of any such transfer

or change, the appropriation shall be subject to all water use restrictions and requirements in effect at any new location of use and, if applicable, at any new diversion location. An appropriation for which a transfer or change has been approved shall retain the same priority date as that of the original appropriation. If an approved transfer or change is temporary, the location of use, purpose of use, or type of appropriation shall revert to the location of use, purpose of use, or type of appropriation prior to the transfer or change.

(4) In approving an application for a transfer, the director may also authorize the overlying of water appropriations on the same lands, except that if any such overlying of appropriations would result in either the authorized diversion rate or the authorized aggregate annual quantity that could be diverted to be greater than is otherwise permitted by section 46-231, the director shall limit the total diversion rate or aggregate annual quantity for the appropriations overlain to the rate or quantity that he or she determines is necessary, in the exercise of good husbandry, for the production of crops on the land involved. The director may also authorize a greater number of acres to be irrigated if the amount and rate of water approved under the original appropriation is not increased by the change of location. An increase in the number of acres to be irrigated shall be approved only if (a) such an increase will not diminish the supply of water available to or otherwise adversely affect another water appropriator or (b) the transfer would not adversely affect the water supply for any river basin, subbasin, or reach that has been designated as overappropriated pursuant to section 46-713 or determined to be fully appropriated pursuant to section 46-714 and (i) the number of acres authorized under the appropriation when originally approved has not been increased previously, (ii) the increase in the number of acres irrigated will not exceed five percent of the number of acres being irrigated under the permit before the proposed transfer or a total of ten acres, whichever acreage is less, and (iii) all the use will be either on the quarter section to which the appropriation was appurtenant before the transfer or on an adjacent quarter section.

Source: Laws 1983, LB 21, § 6; Laws 1984, LB 818, § 2; Laws 1993, LB 789, § 4; Laws 2000, LB 900, § 135; Laws 2004, LB 962, § 20; Laws 2012, LB526, § 1.

(m) UNDERGROUND WATER STORAGE

46-297 Permit to appropriate water; modification to include underground water storage; procedure.

Any person who has an approved, unperfected appropriation pursuant to Chapter 46, article 2, may apply to the department for a modification of such permit to include intentional underground water storage associated with the appropriation. The application shall be made on a form prescribed and furnished by the department without cost to the applicant. Upon receipt of such an application, the department shall proceed in accordance with rules and regulations adopted and promulgated by the department, subject to section 46-226.02.

Source: Laws 1983, LB 198, § 11; Laws 1997, LB 752, § 120; Laws 2013, LB102, § 1.

(p) WATER POLICY TASK FORCE

46-2,131 Repealed. Laws 2011, LB 2, § 8.

46-2,132 Repealed. Laws 2011, LB 2, § 8.

46-2,133 Repealed. Laws 2011, LB 2, § 8.

46-2,134 Repealed. Laws 2011, LB 2, § 8.

46-2,135 Repealed. Laws 2011, LB 2, § 8.

46-2,136 Repealed. Laws 2011, LB 2, § 8.

46-2,137 Repealed. Laws 2011, LB 2, § 8.

46-2,138 Repealed. Laws 2011, LB 2, § 8.

(q) STORM WATER MANAGEMENT PLAN PROGRAM

46-2,139 Storm Water Management Plan Program; created; assistance to cities and counties; grants; Department of Environmental Quality; duties.

The Storm Water Management Plan Program is created. The purpose of the program is to facilitate and fund the duties of cities and counties under the federal Clean Water Act, 33 U.S.C. 1251 et seq., as such act existed on January 1, 2006, regarding storm water runoff under the National Pollutant Discharge Elimination System requirements. The Storm Water Management Plan Program shall function as a grant program administered by the Department of Environmental Quality, using funds appropriated for the program. The department shall deduct from funds appropriated amounts sufficient to reimburse itself for its costs of administration of the grant program. Any city or county when applying for a grant under the program shall have a storm water management plan approved by the department which meets the requirements of the National Pollutant Discharge Elimination System. Grant applications shall be made to the department on forms prescribed by the department. Grant funds shall be distributed by the department as follows:

(1) Not less than eighty percent of the funds available for grants under this section shall be provided to cities and counties in urbanized areas, as identified in 77 Federal Register 18652-18669, that apply for grants and meet the requirements of this section. Grants made pursuant to this subdivision shall be distributed proportionately based on the population of applicants within such category, as determined by the most recent federal census update or recount certified by the United States Department of Commerce, Bureau of the Census. For the purpose of distributing grant funds to a county pursuant to this subdivision, the proportion shall be based on the county population, less the population of city applicants within that county. Any funds available for grants under this subdivision and not awarded by the end of a calendar year shall be available for grants in the following year; and

(2) Not more than twenty percent of the funds available for grants under this section shall be provided to cities and counties outside of urbanized areas, as identified in 77 Federal Register 18652-18669, with populations greater than ten thousand inhabitants as determined by the most recent federal census update or recount certified by the United States Department of Commerce, Bureau of the Census, that apply for grants and meet the requirements of this section. Grants under this subdivision shall be distributed proportionately based on the population of applicants within this category as determined by the most recent federal census update or recount certified by the United States

Department of Commerce, Bureau of the Census. For the purpose of distributing grant funds to a county pursuant to this subdivision, the proportion shall be based on the county population, less the population of city applicants within that county. Any funds available for grants pursuant to this subdivision which have not been awarded at the end of each calendar year shall be available for awarding grants pursuant to subdivision (1) of this section.

Any city or county receiving a grant under subdivision (1) or (2) of this section shall contribute matching funds equal to twenty percent of the grant amount.

Source: Laws 2006, LB 1226, § 6; Laws 2007, LB530, § 1; Laws 2014, LB683, § 1.

(r) REPUBLICAN RIVER BASIN WATER SUSTAINABILITY TASK FORCE

46-2,140 Repealed. Laws 2015, LB 9, § 1.

46-2,141 Repealed. Laws 2015, LB 9, § 1.

ARTICLE 5

RECLAMATION DISTRICTS

Section

46-544. Special assessments; levy; limitation.

46-544 Special assessments; levy; limitation.

(1) If the board of a reclamation district determines in any year that there are certain lands within the district, not included within Classes B, C, and D, which receive special direct benefits from recharging of the ground water reservoirs by water originating from district works, the board shall in such year fix an amount to be levied upon the taxable value of the taxable property as a special assessment which in the opinion of the board will compensate the district for the special direct benefits accruing to such property by reason of recharged ground water reservoirs under such land by water originating from the district works. Such amount shall in no case exceed, together with all other amounts levied made under Class A on such land, the sum of fourteen cents on each one hundred dollars of the taxable value of the land. Such owner of lands specially assessed for special direct benefits shall have notice, hearing, and the right of appeal and shall be governed by section 46-554.

(2) The authority provided in this section may not be used if the district has obtained approval to levy fees or assessments pursuant to section 46-2,101.

Source: Laws 1947, c. 173, § 15(2), p. 540; Laws 1969, c. 145, § 38, p. 696; Laws 1979, LB 187, § 173; Laws 1983, LB 198, § 21; Laws 1992, LB 1063, § 40; Laws 1992, Second Spec. Sess., LB 1, § 40; Laws 2015, LB361, § 57.

Cross References

Budget Act, Nebraska, section included, see section 13-501.

ARTICLE 6
GROUND WATER

(b) GROUND WATER CONSERVATION DISTRICTS

Section

46-633. Repealed. Laws 2011, LB 2, § 8.

46-634.01. Repealed. Laws 2011, LB 2, § 8.

(c) PUMPING FOR IRRIGATION PURPOSES

46-637. Pumping for irrigation purposes; permit; application; approval by Director of Natural Resources.

(g) INDUSTRIAL GROUND WATER REGULATORY ACT

46-683.01. Permit; application to amend; procedures; limitation.

(i) REPUBLICAN RIVER BASIN

46-692. Repealed. Laws 2011, LB 1, § 1.

(b) GROUND WATER CONSERVATION DISTRICTS

46-633 Repealed. Laws 2011, LB 2, § 8.**46-634.01 Repealed. Laws 2011, LB 2, § 8.**

(c) PUMPING FOR IRRIGATION PURPOSES

46-637 Pumping for irrigation purposes; permit; application; approval by Director of Natural Resources.

The use of water described in section 46-636 may only be made after securing a permit from the Department of Natural Resources for such use. In approving or disapproving applications for such permits, the Director of Natural Resources shall take into account the effect that such pumping may have on the amount of water in the stream and its ability to meet the requirements of appropriators from the stream. This section does not apply to (1) water wells located within fifty feet of the bank of a channel of any natural stream which were in existence on July 1, 2000, and (2) replacement water wells as defined in section 46-602 that are located within fifty feet of the banks of a channel of a stream if the water wells being replaced were originally constructed prior to July 1, 2000, and were located within fifty feet of the bank of a channel of any natural stream.

Source: Laws 1963, c. 275, § 2, p. 828; Laws 1993, LB 131, § 17; Laws 1997, LB 30, § 3; Laws 1997, LB 752, § 121; Laws 2000, LB 900, § 176; Laws 2001, LB 667, § 8; Laws 2013, LB102, § 2.

Cross References

Exemption for reusing ground water from reuse pit, see section 46-287.

For additional definitions, see section 46-706.

(g) INDUSTRIAL GROUND WATER REGULATORY ACT

46-683.01 Permit; application to amend; procedures; limitation.

If during construction or operation a permitholder determines (1) that an additional amount of water is or will be required for the proposed use set forth in a permit issued pursuant to section 46-683 or (2) that there is a need to amend any condition set forth in the permit, the permitholder may file an

application to amend the permit. Following a hearing conducted in the manner prescribed by section 46-680, the director shall issue a written order containing specific findings of fact either granting or denying the proposed amendment in accordance with the public interest considerations enumerated in section 46-683. An application to amend a permit shall not be approved if the amendment would increase the daily peak withdrawal or the annual volume by more than twenty-five percent from the amounts approved in the original permit, except for an amendment to increase the maximum daily volumetric flow rate or annual volume to levels authorized under a permit issued by the Department of Environmental Quality pursuant to section 81-1504 and subsection (9) of section 81-1505.

Source: Laws 1986, LB 309, § 3; Laws 2012, LB498, § 1.

(i) REPUBLICAN RIVER BASIN

46-692 Repealed. Laws 2011, LB 1, § 1.

ARTICLE 7

NEBRASKA GROUND WATER MANAGEMENT AND PROTECTION ACT

Section

- 46-701. Act, how cited.
- 46-707. Natural resources district; powers; enumerated; fee.
- 46-708. Action to control or prevent runoff of water; natural resources district; rules and regulations; power to issue cease and desist orders; notice; hearing.
- 46-715. River basin, subbasin, or reach; integrated management plan; considerations; contents; amendment; technical analysis; forecast of water available from streamflow.
- 46-753. Water Resources Trust Fund; created; use; investment; matching funds required; when.
- 46-755. Basin-wide plan; development and adoption; extension; stated goals and objectives; plan contents; department and natural resources districts; duties; public meeting; report; public hearing.
- 46-756. Ground water augmentation project; public hearing; notice.

46-701 Act, how cited.

Sections 46-701 to 46-756 shall be known and may be cited as the Nebraska Ground Water Management and Protection Act.

Source: Laws 1975, LB 577, § 24; Laws 1981, LB 146, § 12; Laws 1982, LB 375, § 22; Laws 1984, LB 1071, § 15; Laws 1986, LB 894, § 31; Laws 1991, LB 51, § 8; Laws 1994, LB 480, § 27; R.S.Supp.,1994, § 46-674; Laws 1996, LB 108, § 7; Laws 2003, LB 619, § 9; R.S.Supp.,2003, § 46-656.01; Laws 2004, LB 962, § 41; Laws 2006, LB 1226, § 19; Laws 2009, LB477, § 3; Laws 2014, LB1098, § 13.

46-707 Natural resources district; powers; enumerated; fee.

(1) Regardless of whether or not any portion of a district has been designated as a management area, in order to administer and enforce the Nebraska Ground Water Management and Protection Act and to effectuate the policy of the state to conserve ground water resources, a district may:

(a) Adopt and promulgate rules and regulations necessary to discharge the administrative duties assigned in the act;

(b) Require such reports from ground water users as may be necessary;

(c) Require the reporting of water uses and irrigated acres by landowners and others with control over the water uses and irrigated acres for the purpose of certification by the district;

(d) Require meters to be placed on any water wells for the purpose of acquiring water use data;

(e) Require decommissioning of water wells that are not properly classified as active status water wells as defined in section 46-1204.02 or inactive status water wells as defined in section 46-1207.02;

(f) Conduct investigations and cooperate or contract with agencies of the United States, agencies or political subdivisions of this state, public or private corporations, or any association or individual on any matter relevant to the administration of the act;

(g) Report to and consult with the Department of Environmental Quality on all matters concerning the entry of contamination or contaminating materials into ground water supplies; and

(h) Issue cease and desist orders, following three days' notice to the person affected stating the contemplated action and in general the grounds for the action and following reasonable opportunity to be heard, to enforce any of the provisions of the act or of orders or permits issued pursuant to the act, to initiate suits to enforce the provisions of orders issued pursuant to the act, and to restrain the construction of illegal water wells or the withdrawal or use of water from illegal water wells.

Before any rule or regulation is adopted pursuant to this subsection, a public hearing shall be held within the district. Notice of the hearing shall be given as provided in section 46-743.

(2) In addition to the powers enumerated in subsection (1) of this section, a district may impose an immediate temporary stay for a period of one hundred eighty days on the construction of any new water well and on any increase in the number of acres historically irrigated, without prior notice or hearing, upon adoption of a resolution by the board finding that such temporary immediate stay is necessary. The district shall hold at least one public hearing on the matter within the district during such one hundred eighty days, with the notice of the hearing given as provided in section 46-743, prior to making a determination as to imposing a permanent stay or conditions in accordance with subsections (1) and (6) of section 46-739. Within forty-five days after a hearing pursuant to this subsection, the district shall decide whether to exempt from the immediate temporary stay the construction of water wells for which permits were issued prior to the date of the resolution commencing the stay but for which construction had not begun prior to such date. If construction of such water wells is allowed, all permits that were valid when the stay went into effect shall be extended by a time period equal to the length of the stay and such water wells shall otherwise be completed in accordance with section 46-738. Water wells listed in subsection (3) of section 46-714 and water wells of public water suppliers are exempt from this subsection.

(3) In addition to the powers enumerated in subsections (1) and (2) of this section, a district may assess a fee against a person requesting a variance to cover the administrative cost of consideration of the variance, including, but not limited to, costs of copying records and the cost of publishing a notice in a

legal newspaper of general circulation in the county or counties of the district, radio announcements, or other means of communication deemed necessary in the area where the property is located.

Source: Laws 1975, LB 577, § 8; Laws 1979, LB 26, § 2; Laws 1982, LB 375, § 18; Laws 1984, LB 1071, § 6; Laws 1986, LB 894, § 24; Laws 1993, LB 3, § 10; Laws 1993, LB 131, § 29; Laws 1995, LB 871, § 6; R.S.Supp.,1995, § 46-663; Laws 1996, LB 108, § 14; R.S.1943, (1998), § 46-656.08; Laws 2004, LB 962, § 47; Laws 2007, LB701, § 22; Laws 2009, LB477, § 5; Laws 2012, LB743, § 1; Laws 2014, LB513, § 1.

46-708 Action to control or prevent runoff of water; natural resources district; rules and regulations; power to issue cease and desist orders; notice; hearing.

(1) In order to conserve ground water supplies and to prevent the inefficient or improper runoff of such ground water, each person who uses ground water irrigation in the state shall take action to control or prevent the runoff of water used in such irrigation.

(2) Each district shall adopt, following public hearing, notice of which shall be given in the manner provided in section 46-743, rules and regulations necessary to control or prohibit surface runoff of water derived from ground water irrigation. Such rules and regulations shall prescribe (a) standards and criteria delineating what constitutes the inefficient or improper runoff of ground water used in irrigation, (b) procedures to prevent, control, and abate such runoff, (c) measures for the construction, modification, extension, or operation of remedial measures to prevent, control, or abate runoff of ground water used in irrigation, and (d) procedures for the enforcement of this section.

(3) Each district may, upon three days' notice to the person affected, stating the contemplated action and in general the grounds therefor, and upon reasonable opportunity to be heard, issue cease and desist orders to enforce any of the provisions of this section or rules and regulations issued pursuant to this section.

Source: Laws 1975, LB 577, § 9; Laws 1978, LB 217, § 1; R.S.1943, (1993), § 46-664; Laws 1996, LB 108, § 17; R.S.1943, (1998), § 46-656.11; Laws 2004, LB 962, § 48; Laws 2014, LB513, § 2.

46-715 River basin, subbasin, or reach; integrated management plan; considerations; contents; amendment; technical analysis; forecast of water available from streamflow.

(1)(a) Whenever the Department of Natural Resources has designated a river basin, subbasin, or reach as overappropriated or has made a final determination that a river basin, subbasin, or reach is fully appropriated, the natural resources districts encompassing such river basin, subbasin, or reach and the department shall jointly develop an integrated management plan for such river basin, subbasin, or reach. The plan shall be completed, adopted, and take effect within three years after such designation or final determination unless the department and the natural resources districts jointly agree to an extension of not more than two additional years.

(b) A natural resources district encompassing a river basin, subbasin, or reach that has not been designated as overappropriated or has not been finally

determined to be fully appropriated may, jointly with the department, develop an integrated management plan for such river basin, subbasin, or reach located within the district. The district shall notify the department of its intention to develop an integrated management plan which shall be developed and adopted according to sections 46-715 to 46-717 and subsections (1) and (2) of section 46-718. The objective of an integrated management plan under this subdivision is to manage such river basin, subbasin, or reach to achieve and sustain a balance between water uses and water supplies for the long term. If a district develops an integrated management plan under this subdivision and the department subsequently determines the affected river basin, subbasin, or reach to be fully appropriated, the department and the affected natural resources district may amend the integrated management plan.

(2) In developing an integrated management plan, the effects of existing and potential new water uses on existing surface water appropriators and ground water users shall be considered. An integrated management plan shall include the following: (a) Clear goals and objectives with a purpose of sustaining a balance between water uses and water supplies so that the economic viability, social and environmental health, safety, and welfare of the river basin, subbasin, or reach can be achieved and maintained for both the near term and the long term; (b) a map clearly delineating the geographic area subject to the integrated management plan; (c) one or more of the ground water controls authorized for adoption by natural resources districts pursuant to section 46-739; (d) one or more of the surface water controls authorized for adoption by the department pursuant to section 46-716; and (e) a plan to gather and evaluate data, information, and methodologies that could be used to implement sections 46-715 to 46-717, increase understanding of the surface water and hydrologically connected ground water system, and test the validity of the conclusions and information upon which the integrated management plan is based. The plan may also provide for utilization of any applicable incentive programs authorized by law. Nothing in the integrated management plan for a fully appropriated river basin, subbasin, or reach shall require a natural resources district to regulate ground water uses in place at the time of the department's preliminary determination that the river basin, subbasin, or reach is fully appropriated, unless such regulation is necessary to carry out the goals and objectives of a basin-wide plan pursuant to section 46-755, but a natural resources district may voluntarily adopt such regulations. The applicable natural resources district may decide to include all water users within the district boundary in an integrated management plan.

(3) In order to provide a process for economic development opportunities and economic sustainability within a river basin, subbasin, or reach, the integrated management plan shall include clear and transparent procedures to track depletions and gains to streamflows resulting from new, retired, or other changes to uses within the river basin, subbasin, or reach. The procedures shall:

(a) Utilize generally accepted methodologies based on the best available information, data, and science;

(b) Include a generally accepted methodology to be utilized to estimate depletions and gains to streamflows, which methodology includes location, amount, and time regarding gains to streamflows as offsets to new uses;

(c) Identify means to be utilized so that new uses will not have more than a de minimis effect upon existing surface water users or ground water users;

(d) Identify procedures the natural resources district and the department will use to report, consult, and otherwise share information on new uses, changes in uses, or other activities affecting water use in the river basin, subbasin, or reach;

(e) Identify, to the extent feasible, potential water available to mitigate new uses, including, but not limited to, water rights leases, interference agreements, augmentation projects, conjunctive use management, and use retirement;

(f) Develop, to the extent feasible, an outline of plans after consultation with and an opportunity to provide input from irrigation districts, public power and irrigation districts, reclamation districts, municipalities, other political subdivisions, and other water users to make water available for offset to enhance and encourage economic development opportunities and economic sustainability in the river basin, subbasin, or reach; and

(g) Clearly identify procedures that applicants for new uses shall take to apply for approval of a new water use and corresponding offset.

Nothing in this subsection shall require revision or amendment of an integrated management plan approved on or before August 30, 2009.

(4) The ground water and surface water controls proposed for adoption in the integrated management plan pursuant to subsection (1) of this section shall, when considered together and with any applicable incentive programs, (a) be consistent with the goals and objectives of the plan, (b) be sufficient to ensure that the state will remain in compliance with applicable state and federal laws and with any applicable interstate water compact or decree or other formal state contract or agreement pertaining to surface water or ground water use or supplies, and (c) protect the ground water users whose water wells are dependent on recharge from the river or stream involved and the surface water appropriators on such river or stream from streamflow depletion caused by surface water uses and ground water uses begun, in the case of a river basin, subbasin, or reach designated as overappropriated or preliminarily determined to be fully appropriated in accordance with section 46-713, after the date of such designation or preliminary determination.

(5)(a) In any river basin, subbasin, or reach that is designated as overappropriated, when the designated area lies within two or more natural resources districts, the department and the affected natural resources districts shall jointly develop a basin-wide plan for the area designated as overappropriated. Such plan shall be developed using the consultation and collaboration process described in subdivision (b) of this subsection, shall be developed concurrently with the development of the integrated management plan required pursuant to subsections (1) through (4) of this section, and shall be designed to achieve, in the incremental manner described in subdivision (d) of this subsection, the goals and objectives described in subsection (2) of this section. The basin-wide plan shall be adopted after hearings by the department and the affected natural resources districts.

(b) In any river basin, subbasin, or reach designated as overappropriated and subject to this subsection, the department and each natural resources district encompassing such river basin, subbasin, or reach shall jointly develop an integrated management plan for such river basin, subbasin, or reach pursuant to subsections (1) through (4) of this section. Each integrated management plan

for a river basin, subbasin, or reach subject to this subsection shall be consistent with any basin-wide plan developed pursuant to subdivision (a) of this subsection. Such integrated management plan shall be developed after consultation and collaboration with irrigation districts, reclamation districts, public power and irrigation districts, mutual irrigation companies, canal companies, and municipalities that rely on water from within the affected area and that, after being notified of the commencement of the plan development process, indicate in writing their desire to participate in such process. In addition, the department or the affected natural resources districts may include designated representatives of other stakeholders. If agreement is reached by all parties involved in such consultation and collaboration process, the department and each natural resources district shall adopt the agreed-upon integrated management plan. If agreement cannot be reached by all parties involved, the integrated management plan shall be developed and adopted by the department and the affected natural resources district pursuant to sections 46-715 to 46-718 or by the Interrelated Water Review Board pursuant to section 46-719.

(c) Any integrated management plan developed under this subsection shall identify the overall difference between the current and fully appropriated levels of development. Such determination shall take into account cyclical supply, including drought, identify the portion of the overall difference between the current and fully appropriated levels of development that is due to conservation measures, and identify the portions of the overall difference between the current and fully appropriated levels of development that are due to water use initiated prior to July 1, 1997, and to water use initiated on or after such date.

(d) Any integrated management plan developed under this subsection shall adopt an incremental approach to achieve the goals and objectives identified under subdivision (2)(a) of this section using the following steps:

(i) The first incremental goals shall be to address the impact of streamflow depletions to (A) surface water appropriations and (B) water wells constructed in aquifers dependent upon recharge from streamflow, to the extent those depletions are due to water use initiated after July 1, 1997, and, unless an interstate cooperative agreement for such river basin, subbasin, or reach is no longer in effect, to prevent streamflow depletions that would cause noncompliance by Nebraska with such interstate cooperative agreement. During the first increment, the department and the affected natural resources districts shall also pursue voluntary efforts, subject to the availability of funds, to offset any increase in streamflow depletive effects that occur after July 1, 1997, but are caused by ground water uses initiated prior to such date. The department and the affected natural resources districts may also use other appropriate and authorized measures for such purpose;

(ii) The department and the affected natural resources districts may amend an integrated management plan subject to this subsection (5) as necessary based on an annual review of the progress being made toward achieving the goals for that increment;

(iii) During the ten years following adoption of an integrated management plan developed under this subsection (5) or during the ten years after the adoption of any subsequent increment of the integrated management plan pursuant to subdivision (d)(iv) of this subsection, the department and the affected natural resources district shall conduct a technical analysis of the actions taken in such increment to determine the progress towards meeting the

goals and objectives adopted pursuant to subsection (2) of this section. The analysis shall include an examination of (A) available supplies and changes in long-term availability, (B) the effects of conservation practices and natural causes, including, but not limited to, drought, and (C) the effects of the plan on reducing the overall difference between the current and fully appropriated levels of development identified in subdivision (5)(c) of this section. The analysis shall determine whether a subsequent increment is necessary in the integrated management plan to meet the goals and objectives adopted pursuant to subsection (2) of this section and reduce the overall difference between the current and fully appropriated levels of development identified in subdivision (5)(c) of this section;

(iv) Based on the determination made in subdivision (d)(iii) of this subsection, the department and the affected natural resources districts, utilizing the consultative and collaborative process described in subdivision (b) of this subsection, shall if necessary identify goals for a subsequent increment of the integrated management plan. Subsequent increments shall be completed, adopted, and take effect not more than ten years after adoption of the previous increment; and

(v) If necessary, the steps described in subdivisions (d)(ii) through (iv) of this subsection shall be repeated until the department and the affected natural resources districts agree that the goals and objectives identified pursuant to subsection (2) of this section have been met and the overall difference between the current and fully appropriated levels of development identified in subdivision (5)(c) of this section has been addressed so that the river basin, subbasin, or reach has returned to a fully appropriated condition.

(6) In any river basin, subbasin, or reach that is designated as fully appropriated or overappropriated and whenever necessary to ensure that the state is in compliance with an interstate compact or decree or a formal state contract or agreement, the department, in consultation with the affected districts, shall forecast on an annual basis the maximum amount of water that may be available from streamflow for beneficial use in the short term and long term in order to comply with the requirement of subdivision (4)(b) of this section. This forecast shall be made by January 1, 2008, and each January 1 thereafter.

Source: Laws 2004, LB 962, § 55; Laws 2006, LB 1226, § 25; Laws 2007, LB701, § 23; Laws 2009, LB54, § 3; Laws 2010, LB764, § 1; Laws 2014, LB1098, § 14.

46-753 Water Resources Trust Fund; created; use; investment; matching funds required; when.

(1) The Water Resources Trust Fund is created. The State Treasurer shall credit to the fund such money as is specifically appropriated thereto by the Legislature, transfers authorized by the Legislature, and such funds, fees, donations, gifts, or bequests received by the Department of Natural Resources from any federal, state, public, or private source for expenditure for the purposes described in the Nebraska Ground Water Management and Protection Act. Money in the fund shall not be subject to any fiscal-year limitation or lapse provision of unexpended balance at the end of any fiscal year or biennium. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2) The fund shall be administered by the department. The department shall adopt and promulgate rules and regulations regarding the allocation and expenditure of money from the fund.

(3) Money in the fund may be expended by the department for costs incurred by the department, by natural resources districts, or by other political subdivisions in (a) determining whether river basins, subbasins, or reaches are fully appropriated in accordance with section 46-713, (b) developing or implementing integrated management plans for such fully appropriated river basins, subbasins, or reaches or for river basins, subbasins, or reaches designated as overappropriated in accordance with section 46-713, (c) developing or implementing integrated management plans in river basins, subbasins, or reaches which have not yet become either fully appropriated or overappropriated, or (d) attaining state compliance with an interstate water compact or decree or other formal state contract or agreement.

(4) Except for funds paid to a political subdivision for forgoing or reducing its own water use or for implementing projects or programs intended to aid the state in complying with an interstate water compact or decree or other formal state contract or agreement, a political subdivision that receives funds from the fund shall provide, or cause to be provided, matching funds in an amount at least equal to twenty percent of the amount received from the fund by that natural resources district or political subdivision. The department shall monitor programs and activities funded by the fund to ensure that the required match is being provided.

Source: Laws 2004, LB 962, § 93; Laws 2010, LB1057, § 4; Laws 2011, LB2, § 3.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

46-755 Basin-wide plan; development and adoption; extension; stated goals and objectives; plan contents; department and natural resources districts; duties; public meeting; report; public hearing.

This section shall apply notwithstanding any other provision of the Nebraska Ground Water Management and Protection Act.

(1) If a river basin as described in subdivision (2)(a) of section 2-1504 includes three or more natural resources districts that, pursuant to subdivision (1)(a) of section 46-715, have been or are required to develop an integrated management plan for all or substantially all (eighty-five percent) of the district, such natural resources districts shall, jointly with the department and the natural resources districts within the same basin, develop and adopt a basin-wide plan for the areas of a basin, subbasin, or reach determined by the department to have hydrologically connected water supplies, except that any natural resources district that has developed and implemented a basin-wide plan pursuant to subsection (5) of section 46-715 shall not be affected by this section. If deemed appropriate by the department and the affected natural resources districts, the basin-wide plan may combine two or more river basins.

(2) An integrated management plan developed under subdivision (1)(a) or (b) of section 46-715 shall ensure such integrated management plan is consistent with any basin-wide plan developed pursuant to this section. However, an integrated management plan may implement additional incentive programs or

controls pursuant to section 46-739 if the programs and controls are consistent with the basin-wide plan.

(3) A basin-wide plan shall be completed, adopted, and take effect within three years after April 17, 2014, unless the department and the natural resources districts jointly agree to an extension of not more than an additional two years.

(4) A basin-wide plan shall (a) have clear goals and objectives with a purpose of sustaining a balance between water uses and water supplies so that the economic viability, social and environmental health, safety, and welfare of the river basin, subbasin, or reach can be achieved and maintained for both the near term and the long term, (b) ensure that compliance with any interstate compact or decree or other formal state contract or agreement or applicable state or federal law is maintained, and (c) set forth a timeline to meet the goals and objectives as required under this subdivision, but in no case shall a timeline exceed thirty years after April 17, 2014.

(5)(a) A basin-wide plan developed under this section shall utilize the best generally-accepted methodologies and available information, data, and science to evaluate the effect of existing uses of hydrologically connected water on existing surface water and ground water users. The plan shall include a process to gather and evaluate data, information, and methodologies to increase understanding of the surface water and hydrologically connected ground water system within the basin, subbasin, or reach and test the validity of the conclusions, information, and assumptions upon which the plan is based.

(b) A basin-wide plan developed under this section shall include a schedule indicating the end date by which the stated goals and objectives are to be achieved and the management actions to be taken to achieve the goals and objectives. To ensure that reasonable progress is being made toward achieving the final goals and objectives of the plan, the schedule shall also include measurable hydrologic objectives and intermediate dates by which the objectives are expected to be met and monitoring plans to measure the extent to which the objectives are being achieved. Such intermediate objectives shall be established in a manner that, if achieved on schedule, will provide a reasonable expectation that the goals of the plan will be achieved by the established end date.

(c) A basin-wide plan shall be developed using a consultation and collaboration process involving representatives from irrigation districts, reclamation districts, public power and irrigation districts, mutual irrigation companies, canal companies, ground water users, range livestock owners, the Game and Parks Commission, and municipalities that rely on water from within the affected area and that, after being notified of the commencement of the plan development process, indicate in writing their desire to become an official participant in such process. The department and affected natural resources districts shall involve official participants in formulating, evaluating, and recommending plans and management actions and work to reach an agreement among all official participants involved in a basin-wide plan. In addition, the department or the affected natural resources districts may include designated representatives of other stakeholders. If agreement is reached by all parties involved in such consultation and collaboration process, the department and the affected natural resources districts shall adopt the agreed-upon basin-wide plan. If agreement cannot be reached by all parties involved, the basin-wide

plan shall be developed and adopted by the department and the affected natural resources districts or by the Interrelated Water Review Board pursuant to section 46-719.

(d) Within five years after the adoption of the basin-wide plan, and every five years thereafter, the department and affected natural resources districts shall conduct a technical analysis of the actions taken in a river basin to determine the progress towards meeting the goals and objectives of the plan. The analysis shall include an examination of (i) available supplies, current uses, and changes in long-term water availability, (ii) the effects of conservation practices and natural causes, including, but not limited to, drought, and (iii) the effects of the plan in meeting the goal of sustaining a balance between water uses and water supplies. The analysis shall determine if changes or modifications to the basin-wide plan are needed to meet the goals and objectives pursuant to subdivision (4)(a) of this section. The department and affected natural resources districts shall present the results of the analysis and any recommended modifications to the plan at a public meeting and shall provide for at least a thirty-day public comment period before holding a public hearing on the recommended modifications. The department shall submit a report to the Legislature of the results of this analysis and the progress made under the basin-wide plan. The report shall be submitted electronically. Any official participant or stakeholder may submit comments to the department and affected natural resources districts on the final basin-wide plan adopted by the department and affected natural resources districts, which shall be made a part of the report to the Legislature.

(e) Before adoption of a basin-wide plan, the department and affected natural resources districts shall schedule at least one public hearing to take testimony on the proposed plan. Any such hearings shall be held in reasonable proximity to the area affected by the plan. Notice of hearings shall be published as provided in section 46-743. All interested persons may appear at any hearings and present testimony or provide other evidence relevant to the issues under consideration. Within sixty days after the final hearing, the department and affected natural resources districts shall jointly determine whether to adopt the plan.

(f) The department and the affected natural resources districts may utilize, when necessary, the Interrelated Water Review Board process provided in section 46-719 for disputes arising from developing, implementing, and enforcing a basin-wide plan developed under this section.

Source: Laws 2014, LB1098, § 15.

46-756 Ground water augmentation project; public hearing; notice.

On and after April 17, 2014, a board shall not vote to enter into a ground water augmentation project without conducting a public hearing on the project, with notice of the hearing given as provided in section 46-743.

Source: Laws 2014, LB1098, § 16.

ARTICLE 11 CHEMIGATION

Section

- 46-1101. Act, how cited.
46-1103. Definitions, sections found.
46-1116.01. Working day, defined.

Section

- 46-1117. Permit required; exception; application.
 46-1118. Repealed. Laws 2011, LB 2, § 8.
 46-1119. Emergency permit; application; fee; violation; penalty.
 46-1121. Fees; Chemigation Costs Fund; created; investment; annual permits; renewal.
 46-1123. Districts; annual reports; contents.
 46-1125. Permit denial, suspension, revocation; grounds.
 46-1139. Engaging in chemigation without a permit; penalty; recovery of costs.
 46-1140. Engaging in chemigation with a suspended or revoked permit; penalty; recovery of costs.
 46-1141. Tampering with chemigation equipment; penalty; recovery of costs.
 46-1142. Failure to notify of accident; penalty; recovery of costs.
 46-1143. Other violations; penalty; recovery of costs.

46-1101 Act, how cited.

Sections 46-1101 to 46-1148 shall be known and may be cited as the Nebraska Chemigation Act.

Source: Laws 1986, LB 284, § 1; Laws 1988, LB 1046, § 1; Laws 2014, LB272, § 1.

46-1103 Definitions, sections found.

For purposes of the Nebraska Chemigation Act, unless the context otherwise requires, the definitions found in sections 46-1104 to 46-1116.01 shall apply.

Source: Laws 1986, LB 284, § 3; Laws 2014, LB272, § 2.

46-1116.01 Working day, defined.

Working day shall mean Monday through Friday but shall not include Saturday, Sunday, or a federal or state holiday. In computing two working days, the day of receipt of the permit is not included and the last day of the two working days is included.

Source: Laws 2014, LB272, § 3.

46-1117 Permit required; exception; application.

No person shall apply or authorize the application of chemicals to land or crops through the use of chemigation unless such person obtains a permit from the district in which the well or diversion is located, except that nothing in this section shall require a person to obtain a chemigation permit to pump or divert water to or through an open discharge system. Any person who intends to engage in chemigation shall, before commencing, file with the district an application for a chemigation permit for each injection location on forms provided by the department or by the district. Upon request, forms shall be made available by the department to each district office and at such other places as may be deemed appropriate. Except as provided in section 46-1119, the district shall review each application, conduct an inspection, and approve or deny the application within forty-five days after the application is filed. An application shall be approved and a permit issued by the district if the irrigation distribution system complies with the equipment requirements of section 46-1127 and the applicator has been certified as a chemigation applicator under sections 46-1128 and 46-1129. A copy of each approved application or the information contained in the application shall be maintained by the district and provided to the department upon request. This section shall not be

construed to prevent the use of portable chemigation equipment if such equipment meets the requirements of section 46-1127.

Source: Laws 1986, LB 284, § 17; Laws 2011, LB2, § 4; Laws 2011, LB28, § 1.

46-1118 Repealed. Laws 2011, LB 2, § 8.

46-1119 Emergency permit; application; fee; violation; penalty.

(1) A person may file an application with the district for an emergency permit on forms provided by the district. The district shall review each emergency application and approve or deny the application within two working days after the application is filed. An emergency application shall be approved and a permit issued by the district if the irrigation distribution system complies with the equipment requirements of section 46-1127 and the applicator has been certified under sections 46-1128 and 46-1129. If the district has not denied an emergency permit within two working days, it shall be deemed approved. Such permit shall be valid for a period of forty-five days from the date of issuance.

(2) The application for an emergency permit shall be accompanied by a fee as established in section 46-1121 not to exceed five hundred dollars payable to the district. For each permit, ten dollars shall be paid by the district to the department. The application shall contain the same information as required in section 46-1120.

(3) Any holder of an emergency permit or an applicator applying chemicals pursuant thereto who violates any of the provisions of this section shall have such permit automatically revoked without a hearing and shall be guilty of a Class II misdemeanor.

Source: Laws 1986, LB 284, § 19; Laws 2014, LB272, § 4.

46-1121 Fees; Chemigation Costs Fund; created; investment; annual permits; renewal.

(1) To aid in defraying the cost of administration of the Nebraska Chemigation Act, the district shall collect an initial application fee for a permit, a special permit fee, an annual renewal fee, and an emergency permit fee. The fees shall be established by the district and shall be sufficient to cover the ongoing administrative costs and the costs of annual inspection programs by the district and department. The fees collected pursuant to this section shall be established by the district in the amount necessary to pay reasonable costs of administering the permit program pursuant to the act. The fee for a permit and special permit shall not exceed one hundred fifty dollars. The fee for a renewal permit shall not exceed one hundred dollars. The fees for an emergency permit under section 46-1119 shall not exceed five hundred dollars. The district shall adopt and promulgate rules and regulations establishing a fee schedule to be paid to the district by a person or persons applying for a permit to operate a chemigation system.

(2) The fee for initial application for a permit or special permit shall be payable to the district. For each permit, five dollars shall be paid by the district to the department.

(3) The annual fee for renewal of a permit or special permit shall be payable to the district. For each permit, two dollars of the annual fee shall be paid by the district to the department.

(4) All fees shall be used by the district and the department to administer the Nebraska Chemigation Act. The department's fee shall be credited to the Chemigation Costs Fund which is hereby created. All fees collected by the department pursuant to the act shall be remitted to the State Treasurer for credit to the fund. Transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Chemigation Costs Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(5) All permits issued pursuant to sections 46-1117 and 46-1117.01 shall be annual permits and shall expire each year on June 1. A permit may be renewed each year upon payment of the annual renewal fee and completion of a form provided by the district which lists the names of all chemicals used in chemigation the previous year. Once a permit has expired, it shall not be reinstated without meeting all of the requirements for a new permit including an inspection and payment of the initial application fee.

Source: Laws 1986, LB 284, § 21; Laws 1987, LB 146, § 5; Laws 1988, LB 1046, § 3; Laws 1995, LB 7, § 43; Laws 2009, First Spec. Sess., LB3, § 21; Laws 2014, LB272, § 5.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

46-1123 Districts; annual reports; contents.

Annual reports shall be submitted to the department by the district personnel showing the actual number of applications received, the number of applications approved, the number of inspections made, and the name of all chemicals used in chemigation systems within the district during the previous year.

Source: Laws 1986, LB 284, § 23; Laws 2011, LB28, § 2.

46-1125 Permit denial, suspension, revocation; grounds.

The district shall deny, refuse renewal of, suspend, or revoke a permit applied for or issued pursuant to section 46-1117 on any of the following grounds:

- (1) Practice of fraud or deceit in obtaining a permit; or
- (2) Violation of any of the provisions of the Nebraska Chemigation Act or any standards or rules and regulations adopted and promulgated pursuant to such act.

Source: Laws 1986, LB 284, § 25; Laws 2011, LB2, § 5.

46-1139 Engaging in chemigation without a permit; penalty; recovery of costs.

Any person who engages in chemigation without first obtaining a chemigation permit shall be (1) subject to a civil penalty of one thousand dollars for each day at each site where a violation occurs for the first violation and not less than one thousand dollars and not more than five thousand dollars for each day at each site where a violation occurs for each subsequent violation or (2) guilty of a Class II misdemeanor. Each day of continued violation shall constitute a separate offense. The court may issue such injunctive orders as may be necessary to prohibit continued violations of the Nebraska Chemigation Act.

When the Attorney General, a county attorney, or a private attorney brings an action on behalf of a district to recover a civil penalty under this section, the district shall recover the costs of the action if a civil penalty is awarded.

Source: Laws 1986, LB 284, § 39; Laws 2015, LB207, § 1.

46-1140 Engaging in chemigation with a suspended or revoked permit; penalty; recovery of costs.

Any person who engages in chemigation with a suspended or revoked chemigation permit shall be (1) subject to a civil penalty of one thousand dollars for each day at each site where a violation occurs for the first violation and not less than one thousand dollars and not more than five thousand dollars for each day at each site where a violation occurs for each subsequent violation or (2) guilty of a Class II misdemeanor. Each day of continued violation shall constitute a separate offense. The court may issue such injunctive orders as may be necessary to prohibit continued violations of the Nebraska Chemigation Act. When the Attorney General, a county attorney, or a private attorney brings an action on behalf of a district to recover a civil penalty under this section, the district shall recover the costs of the action if a civil penalty is awarded.

Source: Laws 1986, LB 284, § 40; Laws 2015, LB207, § 2.

46-1141 Tampering with chemigation equipment; penalty; recovery of costs.

Any person who willfully tampers with or otherwise willfully damages in any way equipment meeting the requirements specified in section 46-1127 shall be (1) subject to a civil penalty of one thousand dollars for each day at each site where a violation occurs for the first violation and not less than one thousand dollars and not more than five thousand dollars for each day at each site where a violation occurs for each subsequent violation or (2) guilty of a Class I misdemeanor. Each day of continued violation shall constitute a separate offense. The court may issue such injunctive orders as may be necessary to prohibit continued violations of the Nebraska Chemigation Act. When the Attorney General, a county attorney, or a private attorney brings an action on behalf of a district to recover a civil penalty under this section, the district shall recover the costs of the action if a civil penalty is awarded.

Source: Laws 1986, LB 284, § 41; Laws 2015, LB207, § 3.

46-1142 Failure to notify of accident; penalty; recovery of costs.

Any permitholder who fails to notify the district and the department of any actual or suspected accident resulting from the use of chemigation shall be (1) subject to a civil penalty of one thousand dollars for each day at each site where a violation occurs for the first violation and not less than one thousand dollars and not more than five thousand dollars for each day at each site where a violation occurs for each subsequent violation or (2) guilty of a Class III misdemeanor. Each day of continued violation shall constitute a separate offense. The court may issue such injunctive orders as may be necessary to prohibit continued violations of the Nebraska Chemigation Act. When the Attorney General, a county attorney, or a private attorney brings an action on behalf of a district to recover a civil penalty under this section, the district shall recover the costs of the action if a civil penalty is awarded.

Source: Laws 1986, LB 284, § 42; Laws 2015, LB207, § 4.

46-1143 Other violations; penalty; recovery of costs.

Any person who violates any of the provisions of the Nebraska Chemigation Act for which a specific penalty is not provided shall be (1) subject to a civil penalty of one thousand dollars for each day at each site where a violation occurs for the first violation and not less than one thousand dollars and not more than five thousand dollars for each day at each site where a violation occurs for each subsequent violation or (2) guilty of a Class IV misdemeanor. Each day of continued violation shall constitute a separate offense. The court may issue such injunctive orders as may be necessary to prohibit continued violations of the Nebraska Chemigation Act. When the Attorney General, a county attorney, or a private attorney brings an action on behalf of a district to recover a civil penalty under this section, the district shall recover the costs of the action if a civil penalty is awarded.

Source: Laws 1986, LB 284, § 43; Laws 2015, LB207, § 5.

ARTICLE 12**WATER WELL STANDARDS AND CONTRACTORS' LICENSING**

Section

46-1224. Board; set fees; Water Well Standards and Contractors' Licensing Fund; created; use; investment.

46-1224 Board; set fees; Water Well Standards and Contractors' Licensing Fund; created; use; investment.

(1) Except as otherwise provided in subsections (2) through (4) of this section, the board shall set reasonable fees in an amount calculated to recover the costs incurred by the department and the board in administering and carrying out the purposes of the Water Well Standards and Contractors' Practice Act. Such fees shall be paid to the department and remitted to the State Treasurer for credit to the Water Well Standards and Contractors' Licensing Fund, which fund is hereby created. Such fund shall be used by the department and the board for the purpose of administering the Water Well Standards and Contractors' Practice Act. Additionally, such fund shall be used to pay any required fee to a contractor which provides the online services for registration of water wells. Any discount in the amount paid the state by a credit card, charge card, or debit card company or a third-party merchant bank for such registration fees shall be deducted from the portion of the registration fee collected pursuant to this section. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2) Fees for credentialing individuals under the Water Well Standards and Contractors' Practice Act shall be established and collected as provided in sections 38-151 to 38-157.

(3) The board shall set a fee of not less than twenty-five dollars and not more than forty dollars for each water well which is required to be registered and which is designed and constructed to pump fifty gallons per minute or less and each monitoring and observation well and a fee of not less than forty dollars and not more than eighty dollars for each water well which is required to be registered and which is designed and constructed to pump more than fifty gallons per minute. For water wells permitted pursuant to the Industrial Ground Water Regulatory Act, the fee set pursuant to this subsection shall be

collected for each of the first ten such water wells registered, and for each group of ten or fewer such water wells registered thereafter, the fee shall be collected as if only one water well was being registered. For a series of two or more water wells completed and pumped into a common carrier, as defined in section 46-601.01, as part of a single site plan for irrigation purposes, the fee set pursuant to this subsection shall be collected for each of the first two such water wells registered. For a series of water wells completed for purposes of installation of a ground heat exchanger for a structure for utilizing the geothermal properties of the ground, the fee set pursuant to this subsection shall be collected as if only one water well was being registered. For water wells constructed as part of a single site plan for monitoring ground water, obtaining hydrogeologic information, or extracting contaminants from the ground and for water wells constructed as part of remedial action approved by the Department of Environmental Quality pursuant to section 66-1525, 66-1529.02, or 81-15,124, the fee set pursuant to this subsection shall be collected for each of the first five such water wells registered, and for each group of five or fewer such water wells registered thereafter, the fee shall be collected as if only one water well was being registered. The fees shall be remitted to the Director of Natural Resources with the registration form required by section 46-602 and shall be in addition to the fee in section 46-606. The director shall remit the fee to the State Treasurer for credit to the Water Well Standards and Contractors' Licensing Fund.

(4) The board shall set an application fee for a declaratory ruling or variance of not less than fifty dollars and not more than one hundred dollars. The fee shall be remitted to the State Treasurer for credit to the Water Well Standards and Contractors' Licensing Fund.

Source: Laws 1986, LB 310, § 24; Laws 1993, LB 131, § 45; Laws 1994, LB 981, § 17; Laws 1994, LB 1066, § 34; Laws 1999, LB 92, § 4; Laws 2000, LB 900, § 236; Laws 2001, LB 667, § 18; Laws 2003, LB 242, § 8; Laws 2007, LB463, § 1161; Laws 2011, LB27, § 2.

Cross References

Industrial Ground Water Regulatory Act, see section 46-690.

Nebraska Capital Expansion Act, see section 72-1269.

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

ARTICLE 13

WATER QUALITY MONITORING

Section

46-1304. Report required; Department of Environmental Quality; duties.

46-1305. Report required; natural resources district; duties.

46-1304 Report required; Department of Environmental Quality; duties.

The Department of Environmental Quality shall prepare a report outlining the extent of ground water quality monitoring conducted by natural resources districts during the preceding calendar year. The department shall analyze the data collected for the purpose of determining whether or not ground water quality is degrading or improving and shall present the results electronically to the Natural Resources Committee of the Legislature beginning December 1, 2001, and each year thereafter. The districts shall submit in a timely manner all ground water quality monitoring data collected to the department or its

designee. The department shall use the data submitted by the districts in conjunction with all other readily available and compatible data for the purposes of the annual ground water quality trend analysis.

Source: Laws 2001, LB 329, § 11; Laws 2012, LB782, § 56.

46-1305 Report required; natural resources district; duties.

Each natural resources district shall submit electronically an annual report to the Natural Resources Committee of the Legislature detailing all water quality programs conducted by the district in the preceding calendar year. The report shall include the funds received and expended for water quality projects and a listing of any unfunded projects. The first report shall be submitted on or before December 1, 2001, and then each December 1 thereafter.

Source: Laws 2001, LB 329, § 12; Laws 2012, LB782, § 57.

ARTICLE 16

SAFETY OF DAMS AND RESERVOIRS ACT

Section

46-1654. Application approval; issuance; public hearing; notice to department; when.

46-1654 Application approval; issuance; public hearing; notice to department; when.

(1) Approval of applications for which approval under sections 46-233 to 46-242 is not required shall be issued within ninety days after receipt of the completed application plus any extensions of time required to resolve matters diligently pursued by the applicant. At the discretion of the department, one or more public hearings may be held on an application.

(2) Approval of applications under the Safety of Dams and Reservoirs Act, for which approval under sections 46-233 to 46-242 is required, shall not be issued until all pending matters before the department under the Safety of Dams and Reservoirs Act or such sections have been resolved and approved.

(3) Application approval shall be granted with terms, conditions, and limitations necessary to safeguard life and property.

(4) If actual construction, reconstruction, enlargement, alteration, breach, removal, or abandonment of the dam is not commenced within the time established by the department, the application approval becomes void, except that the department may, upon written application and for good cause shown, extend the time for commencing construction, reconstruction, enlargement, alteration, breach, removal, or abandonment. If approval under sections 46-233 to 46-242 is also required, the department may not extend the time for commencing construction without following the procedures and granting a similar extension under subsection (2) of section 46-238.

(5) Written notice shall be provided to the department at least ten days before construction, reconstruction, enlargement, alteration, breach, removal, or abandonment is to begin and such other notices shall be given to the department as it may require.

Source: Laws 2005, LB 335, § 54; Laws 2009, LB209, § 2; Laws 2011, LB32, § 1.

CHAPTER 47

JAILS AND CORRECTIONAL FACILITIES

Article.

4. Permission to Leave Jail; House Arrest. 47-401.
5. Sentence Reductions and Credits. 47-502.
6. Community Corrections. 47-621 to 47-639.
7. Medical Services. 47-703, 47-706.
9. Office of Inspector General of the Nebraska Correctional System Act. 47-901 to 47-919.

ARTICLE 4

PERMISSION TO LEAVE JAIL; HOUSE ARREST

Section

47-401. Person sentenced to or confined in a city or county jail; permission to leave; when; sentence served at other facility; house arrest.

47-401 Person sentenced to or confined in a city or county jail; permission to leave; when; sentence served at other facility; house arrest.

(1) Any person sentenced to or confined in a city or county jail upon conviction for a misdemeanor, a felony, contempt, or nonpayment of any fine or forfeiture or as the result of a custodial sanction imposed in response to a parole or probation violation may be granted the privilege of leaving the jail during necessary and reasonable hours for any of the following purposes:

- (a) Seeking employment;
- (b) Working at his or her employment;
- (c) Conducting such person's own business or other self-employed occupation, including housekeeping and attending to the needs of such person's family;
- (d) Attending any high school, college, university, or other educational or vocational training program or institution;
- (e) Serious illness or death of a member of such person's immediate family;
- (f) Medical treatment;
- (g) Outpatient or inpatient treatment for alcohol or substance abuse; or
- (h) Engaging in other rehabilitative activities, including, but not limited to, attending a program or service provided at a reporting center.

(2) Any person sentenced to or confined in a city or county jail upon conviction for a misdemeanor or nonpayment of any fine or forfeiture or as the result of a custodial sanction imposed in response to a parole or probation violation may be granted the privilege of serving the sentence or a part of the sentence at a house of correction, community residential center, work release center, halfway house, or other place of confinement properly designated as a jail facility in accordance with this section and sections 15-259, 47-117, 47-207, and 47-409.

(3) Any person sentenced to or confined in a city or county jail upon conviction for a misdemeanor, a felony, contempt, or nonpayment of any fine or forfeiture or as the result of a custodial sanction imposed in response to a parole or probation violation may be granted the privilege of serving all or part of the sentence under house arrest. For purposes of this subsection, house arrest means restricting an offender to a specific residence except for authorized periods of absence for employment or for medical, educational, or other reasons approved by the court. House arrest may be monitored by electronic surveillance devices or systems.

Source: Laws 1969, c. 208, § 1, p. 813; Laws 1975, LB 276, § 1; Laws 1979, LB 315, § 5; Laws 1990, LB 399, § 1; Laws 2003, LB 17, § 18; Laws 2016, LB1094, § 26.
Effective date April 20, 2016.

ARTICLE 5

SENTENCE REDUCTIONS AND CREDITS

Section

47-502. Person sentenced to or confined in jail; sentence or sanction reduction.

47-502 Person sentenced to or confined in jail; sentence or sanction reduction.

Any person sentenced to or confined in a city or county jail, including any person serving a custodial sanction imposed in response to a parole or probation violation, shall, after the fifteenth day of his or her confinement, have his or her remaining term reduced one day for each day of his or her sentence or sanction during which he or she has not committed any breach of discipline or other violation of jail regulations.

Source: Laws 1982, LB 231, § 2; R.S.Supp.,1982, § 23-2811; Laws 1983, LB 180, § 5; Laws 1993, LB 113, § 2; Laws 2010, LB712, § 40; Laws 2016, LB1094, § 27.
Effective date April 20, 2016.

ARTICLE 6

COMMUNITY CORRECTIONS

Section

- 47-621. Terms, defined.
47-622. Community Corrections Division; created.
47-623. Repealed. Laws 2011, LB 390, § 39.
47-624. Division; duties.
47-624.01. Division; plan for implementation and funding of reporting centers; duties.
47-625. Repealed. Laws 2011, LB 390, § 39.
47-627. Uniform crime data analysis system.
47-628. Community correctional programming; condition of probation.
47-629. Community correctional programming; paroled offenders.
47-630. Repealed. Laws 2011, LB 390, § 39.
47-631. Repealed. Laws 2011, LB 390, § 39.
47-632. Community Corrections Uniform Data Analysis Cash Fund; created; use; investment.
47-634. Receipt of funds by local entity; local advisory committee required; plan required.
47-635. Repealed. Laws 2011, LB 390, § 39.
47-636. Repealed. Laws 2011, LB 390, § 39.
47-637. Repealed. Laws 2011, LB 390, § 39.

Section

- 47-638. Repealed. Laws 2011, LB 390, § 39.
47-639. Repealed. Laws 2011, LB 390, § 39.

47-621 Terms, defined.

For purposes of the Community Corrections Act:

(1) Community correctional facility or program means a community-based or community-oriented facility or program which (a) is operated either by the state or by a contractor which may be a unit of local government or a nongovernmental agency, (b) may be designed to provide residential accommodations for adult offenders, (c) provides programs and services to aid adult offenders in obtaining and holding regular employment, enrolling in and maintaining participation in academic courses, participating in vocational training programs, utilizing the resources of the community to meet their personal and family needs, obtaining mental health, alcohol, and drug treatment, and participating in specialized programs that exist within the community, and (d) offers community supervision options, including, but not limited to, drug treatment, mental health programs, and day reporting centers;

(2) Director means the executive director of the Nebraska Commission on Law Enforcement and Criminal Justice;

(3) Division means the Community Corrections Division of the Nebraska Commission on Law Enforcement and Criminal Justice;

(4) Nongovernmental agency means any person, private nonprofit agency, corporation, association, labor organization, or entity other than the state or a political subdivision of the state; and

(5) Unit of local government means a county, city, village, or entity established pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act.

Source: Laws 2003, LB 46, § 33; Laws 2005, LB 538, § 12; Laws 2011, LB390, § 6.

Cross References

Interlocal Cooperation Act, see section 13-801.
Joint Public Agency Act, see section 13-2501.

47-622 Community Corrections Division; created.

The Legislature declares that the policy of the State of Nebraska is that there shall be a coordinated effort to (1) establish community correctional programs across the state in order to divert adult felony offenders from the prison system and (2) provide necessary supervision and services to adult felony offenders with the goal of reducing the probability of criminal behavior while maintaining public safety. To further such policy, the Community Corrections Division is created within the Nebraska Commission on Law Enforcement and Criminal Justice. The director shall appoint and remove employees of the division and delegate appropriate powers and duties to such employees.

Source: Laws 2003, LB 46, § 34; Laws 2005, LB 538, § 13; Laws 2011, LB390, § 7.

47-623 Repealed. Laws 2011, LB 390, § 39.**47-624 Division; duties.**

The division shall:

(1) Collaborate with the Office of Probation Administration, the Office of Parole Administration, and the Department of Correctional Services to develop and implement a plan to establish statewide operation and use of a continuum of community correctional facilities and programs;

(2) Develop, in consultation with the probation administrator and the Parole Administrator, standards for the use of community correctional facilities and programs by the Nebraska Probation System and the parole system;

(3) Collaborate with the Office of Probation Administration, the Office of Parole Administration, and the Department of Correctional Services on the development of additional reporting centers as set forth in section 47-624.01;

(4) Analyze and promote the consistent use of offender risk assessment tools;

(5) Educate the courts, the Board of Parole, criminal justice system stakeholders, and the general public about the availability, use, and benefits of community correctional facilities and programs;

(6) Enter into and administer contracts, if necessary, to carry out the purposes of the Community Corrections Act;

(7) In order to ensure adequate funding for substance abuse treatment programs, consult with the probation administrator and the Parole Administrator and develop or assist with the development of programs as provided in subdivision (14) of section 29-2252 and subdivision (8) of section 83-1,102;

(8) Study substance abuse and mental health treatment services in and related to the criminal justice system, recommend improvements, and evaluate the implementation of improvements;

(9) Research and evaluate existing community correctional facilities and programs, within the limits of available funding;

(10) Develop standardized definitions of outcome measures for community correctional facilities and programs, including, but not limited to, recidivism, employment, and substance abuse;

(11) Report annually to the Legislature and the Governor on the development and performance of community correctional facilities and programs. The report submitted to the Legislature shall be submitted electronically. The report shall include, but not be limited to, the following:

(a) A description of community correctional facilities and programs currently serving offenders in Nebraska, which includes the following information:

(i) The target population and geographic area served by each facility or program, eligibility requirements, and the total number of offenders utilizing the facility or program over the past year;

(ii) Services, programs, assessments, case management, supervision, and tools provided for offenders at the facility, in the program, or under the supervision of a governmental agency in any capacity;

(iii) The costs of operating the facility or program and the cost per offender; and

(iv) The funding sources for the facility or program;

(b) The progress made in expanding community correctional facilities and programs statewide and an analysis of the need for additional community corrections services;

(c) An analysis of the impact community correctional facilities and programs have on the number of offenders incarcerated within the Department of Correctional Services; and

(d) The recidivism rates and outcome data for probationers, parolees, and problem-solving-court clients participating in community corrections programs;

(12) Grant funds to entities including local governmental agencies, nonprofit organizations, and behavioral health services which will support the intent of the act;

(13) Manage all offender data acquired by the division in a confidential manner and develop procedures to ensure that identifiable information is not released;

(14) Establish and administer grants, projects, and programs for the operation of the division; and

(15) Perform such other duties as may be necessary to carry out the policy of the state established in the act.

Source: Laws 2003, LB 46, § 36; Laws 2005, LB 538, § 15; Laws 2006, LB 1113, § 47; Laws 2010, LB864, § 2; Laws 2011, LB390, § 8; Laws 2012, LB782, § 58; Laws 2012, LB817, § 3; Laws 2016, LB679, § 1.

Effective date July 21, 2016.

47-624.01 Division; plan for implementation and funding of reporting centers; duties.

(1) The division shall collaborate with the Office of Probation Administration, the Office of Parole Administration, and the Department of Correctional Services in developing a plan for the implementation and funding of reporting centers in Nebraska.

(2) The plan shall include recommended locations for at least one reporting center in each district court judicial district that currently lacks such a center and shall prioritize the recommendations for additional reporting centers based upon need.

(3) The plan shall also identify and prioritize the need for expansion of reporting centers in those district court judicial districts which currently have a reporting center but have an unmet need for additional reporting center services due to capacity, distance, or demographic factors.

Source: Laws 2010, LB864, § 3; Laws 2011, LB390, § 9.

47-625 Repealed. Laws 2011, LB 390, § 39.

47-627 Uniform crime data analysis system.

The director shall develop and maintain a uniform crime data analysis system in Nebraska which shall include, but need not be limited to, the number of offenses, arrests, charges, probation admissions, probation violations, probation discharges, participants in specialized community corrections programs, admissions to and discharges from problem-solving courts, admissions to and discharges from the Department of Correctional Services, parole reviews, parole hearings, releases on parole, parole violations, and parole discharges. The data shall be categorized by statutory crime. The data shall be collected

from the Board of Parole, the State Court Administrator, the Department of Correctional Services, the Office of Parole Administration, the Office of Probation Administration, the Nebraska State Patrol, counties, local law enforcement, and any other entity associated with criminal justice. The division and the Supreme Court shall have access to such data to implement the Community Corrections Act.

Source: Laws 2003, LB 46, § 39; Laws 2005, LB 538, § 17; Laws 2011, LB390, § 10; Laws 2012, LB817, § 4.

47-628 Community correctional programming; condition of probation.

(1) A sentencing judge may sentence an offender to probation conditioned upon community correctional programming.

(2) A sentence to a community correctional program or facility shall be imposed as a condition of probation pursuant to the Nebraska Probation Administration Act. The court may modify the sentence of an offender serving a sentence in a community correctional program in the same manner as if the offender had been placed on probation.

(3) The Office of Probation Administration shall utilize community correctional facilities and programs as appropriate.

Source: Laws 2003, LB 46, § 40; Laws 2011, LB390, § 11.

Cross References

Nebraska Probation Administration Act, see section 29-2269.

47-629 Community correctional programming; paroled offenders.

(1) The Board of Parole may parole an offender to a community correctional facility or program pursuant to guidelines developed by the division.

(2) The Department of Correctional Services and the Office of Parole Administration shall utilize community correctional facilities and programs as appropriate.

Source: Laws 2003, LB 46, § 41; Laws 2011, LB390, § 12.

47-630 Repealed. Laws 2011, LB 390, § 39.

47-631 Repealed. Laws 2011, LB 390, § 39.

47-632 Community Corrections Uniform Data Analysis Cash Fund; created; use; investment.

(1) The Community Corrections Uniform Data Analysis Cash Fund is created. Except as provided in subsections (2) and (3) of this section, the fund shall be within the Nebraska Commission on Law Enforcement and Criminal Justice, shall be administered by the division, and shall only be used to support operations costs and analysis relating to the implementation and coordination of the uniform analysis of crime data pursuant to the Community Corrections Act, including associated information technology projects. The fund shall consist of money collected pursuant to section 47-633.

(2) Transfers may be made from the fund to the General Fund at the direction of the Legislature.

(3) The State Treasurer shall transfer the following amounts from the Community Corrections Uniform Data Analysis Cash Fund to the Violence Prevention Cash Fund:

(a) Two hundred thousand dollars on July 1, 2011, or as soon thereafter as administratively possible; and

(b) Two hundred thousand dollars on July 1, 2012, or as soon thereafter as administratively possible.

(4) Any money in the Community Corrections Uniform Data Analysis 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 2003, LB 46, § 44; Laws 2005, LB 426, § 11; Laws 2005, LB 538, § 19; Laws 2007, LB322, § 6; Laws 2009, LB63, § 31; Laws 2009, First Spec. Sess., LB3, § 23; Laws 2011, LB378, § 21; Laws 2011, LB390, § 13.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

47-634 Receipt of funds by local entity; local advisory committee required; plan required.

For a local entity to receive funds under the Community Corrections Act, the division shall ensure there is a local advisory committee made up of a broad base of community members concerned with the justice system. Submission of a detailed plan including a budget, program standards, and policies as developed by the local advisory committee shall be required as set forth by the division. Such funds shall be used for the implementation of the recommendations of the division, the expansion of sentencing options, the education of the public, the provision of supplemental community-based corrections programs, and the promotion of coordination between state and county community-based corrections programs.

Source: Laws 2006, LB 1113, § 48; Laws 2011, LB390, § 14.

47-635 Repealed. Laws 2011, LB 390, § 39.

47-636 Repealed. Laws 2011, LB 390, § 39.

47-637 Repealed. Laws 2011, LB 390, § 39.

47-638 Repealed. Laws 2011, LB 390, § 39.

47-639 Repealed. Laws 2011, LB 390, § 39.

ARTICLE 7 MEDICAL SERVICES

Section

47-703. Payment by governmental agency; when; notice to provider.

47-706. Medical assistance; federal financial participation; legislative intent; Department of Health and Human Services; Department of Correctional Services; duties.

47-703 Payment by governmental agency; when; notice to provider.

(1) Upon a showing that reimbursement from the sources enumerated in section 47-702 is not available, in whole or in part, the costs of medical services shall be paid by the appropriate governmental agency. Such payment shall be made within ninety days after such showing. For purposes of this section, a showing shall be deemed sufficient if a provider of medical services signs an affidavit stating that (a) in the case of an insurer, health maintenance organization, preferred provider organization, or other similar source, a written denial of payment has been issued or (b) in all other cases, efforts have been made to identify sources and to collect from those sources and more than one hundred eighty days have passed or the normal collection efforts are exhausted since the medical services were rendered but full payment has not been received. Such affidavit shall be forwarded to the appropriate governmental agency. In no event shall the provider of medical services be required to file a suit in a court of law or retain the services of a collection agency to satisfy the requirement of showing that reimbursement is not available pursuant to this section.

(2) In the case of medical services necessitated by injuries or wounds suffered during the course of apprehension or arrest, the appropriate governmental agency chargeable for the costs of medical services shall be the apprehending or arresting agency and not the agency responsible for operation of the institution or facility in which the recipient of the services is lodged. In all other cases, the appropriate governmental agency shall be the agency responsible for operation of the institution or facility in which the recipient of the services is lodged, except that when the agency is holding the individual solely for another jurisdiction, the agency may, by contract or otherwise, seek reimbursement from the other jurisdiction for the costs of the medical services provided to the individual being held for that jurisdiction.

(3) Except as provided in section 47-705, a governmental agency shall not be responsible for paying the costs of any medical services provided to an individual if such services are provided after he or she is released from the legal custody of the governmental agency or when the individual is released on parole.

(4) Any governmental agency requesting medical services for an individual who is arrested, detained, taken into custody, or incarcerated shall notify the provider of such services of (a) all information possessed by the agency concerning potential sources of payment and (b) the name of the appropriate governmental agency pursuant to subsection (2) of this section.

Source: Laws 1999, LB 112, § 3; Laws 2012, LB881, § 1.

47-706 Medical assistance; federal financial participation; legislative intent; Department of Health and Human Services; Department of Correctional Services; duties.

(1) It is the intent of the Legislature to ensure that human services agencies, correctional facilities, and detention facilities recognize that:

(a) Federal law generally does not authorize federal financial participation for medicaid when a person is an inmate of a public institution as defined in federal law but that federal financial participation is available after an inmate is released from incarceration; and

(b) The fact that an applicant is currently an inmate does not, in and of itself, preclude the Department of Health and Human Services from processing an application submitted to it by, or on behalf of, the inmate.

(2)(a) Medical assistance under the medical assistance program shall be suspended, rather than canceled or terminated, for a person who is an inmate of a public institution if:

(i) The Department of Health and Human Services is notified of the person's entry into the public institution;

(ii) On the date of entry, the person was enrolled in the medical assistance program; and

(iii) The person is eligible for the medical assistance program except for institutional status.

(b) A suspension under subdivision (2)(a) of this section shall end on the date the person is no longer an inmate of a public institution.

(c) Upon release from incarceration, such person shall continue to be eligible for receipt of medical assistance until such time as the person is otherwise determined to no longer be eligible for the medical assistance program.

(3)(a) The Department of Correctional Services shall notify the Department of Health and Human Services:

(i) Within twenty days after receiving information that a person receiving medical assistance under the medical assistance program is or will be an inmate of a public institution; and

(ii) Within forty-five days prior to the release of a person who qualified for suspension under subdivision (2)(a) of this section.

(b) Local correctional facilities, juvenile detention facilities, and other temporary detention centers shall notify the Department of Health and Human Services within ten days after receiving information that a person receiving medical assistance under the medical assistance program is or will be an inmate of a public institution.

(4) Nothing in this section shall create a state-funded benefit or program.

(5) For purposes of this section, medical assistance program means the medical assistance program under the Medical Assistance Act and the State Children's Health Insurance Program.

(6) This section shall be implemented only if, and to the extent, allowed by federal law. This section shall be implemented only to the extent that any necessary federal approval of state plan amendments or other federal approvals are obtained. The Department of Health and Human Services shall seek such approval if required.

(7) Local correctional facilities, the Nebraska Commission on Law Enforcement and Criminal Justice, and the Office of Probation Administration shall cooperate with the Department of Health and Human Services and the Department of Correctional Services for purposes of facilitating information sharing to achieve the purposes of this section.

(8)(a) The Department of Correctional Services shall adopt and promulgate rules and regulations, in consultation with the Department of Health and Human Services and local correctional facilities, to carry out this section.

(b) The Department of Health and Human Services shall adopt and promulgate rules and regulations, in consultation with the Department of Correctional Services and local correctional facilities, to carry out this section.

Source: Laws 2015, LB605, § 108.

Cross References

Medical Assistance Act, see section 68-901.

ARTICLE 9

**OFFICE OF INSPECTOR GENERAL OF THE NEBRASKA
CORRECTIONAL SYSTEM ACT**

Section

- 47-901. Act, how cited.
- 47-902. Legislative intent.
- 47-903. Terms, defined.
- 47-904. Office of Inspector General of the Nebraska Correctional System; created; Inspector General; appointment; term; qualifications; employees; removal.
- 47-905. Office; duties; law enforcement agencies and prosecuting attorneys; cooperation; confidentiality.
- 47-906. Office; access to information and personnel; investigation.
- 47-907. Complaints to office; form; full investigation; when; notice.
- 47-908. Cooperation with office; when required.
- 47-909. Failure to cooperate; effect.
- 47-910. Inspector General; powers; rights of person required to provide information.
- 47-911. Office; access to records; subpoena; records; statement of record integrity and security; contents; treatment of records.
- 47-912. Reports of investigations; distribution; redact confidential information; powers of office.
- 47-913. Department; provide direct computer access.
- 47-914. Inspector General's report of investigation; contents; distribution.
- 47-915. Report; director; accept, reject, or request modification; when final; written response; corrected report; appended material.
- 47-916. Report or work product; no court review.
- 47-917. Inspector General; investigation of complaints; priority and selection.
- 47-918. Summary of reports and investigations; contents.
- 47-919. Office of Parole Administration; provide access to records, reports, and documents.

47-901 Act, how cited.

Sections 47-901 to 47-919 shall be known and may be cited as the Office of Inspector General of the Nebraska Correctional System Act.

Source: Laws 2015, LB598, § 1; Laws 2016, LB1094, § 28.
Effective date April 20, 2016.

47-902 Legislative intent.

(1) It is the intent of the Legislature to:

(a) Establish a full-time program of investigation and performance review to provide increased accountability and oversight of the Nebraska correctional system;

(b) Assist in improving operations of the department and the Nebraska correctional system;

(c) Provide an independent form of inquiry for concerns regarding the actions of individuals and agencies responsible for the supervision and release

of persons in the Nebraska correctional system. A lack of responsibility and accountability between individuals and private agencies in the current system make it difficult to monitor and oversee the Nebraska correctional system; and

(d) Provide a process for investigation and review in order to improve policies and procedures of the correctional system.

(2) It is not the intent of the Legislature in enacting the Office of Inspector General of the Nebraska Correctional System Act to interfere with the duties of the Legislative Auditor or the Legislative Fiscal Analyst or to interfere with the statutorily defined investigative responsibilities or prerogatives of any officer, agency, board, bureau, commission, association, society, or institution of the executive branch of state government, except that the act does not preclude an inquiry on the sole basis that another agency has the same responsibility. The act shall not be construed to interfere with or supplant the responsibilities or prerogatives of the Governor to investigate, monitor, and report on the activities of the agencies, boards, bureaus, commissions, associations, societies, and institutions of the executive branch under his or her administrative direction.

Source: Laws 2015, LB598, § 2.

47-903 Terms, defined.

For purposes of the Office of Inspector General of the Nebraska Correctional System Act, the following definitions apply:

(1) Administrator means a person charged with administration of a program, an office, or a division of the department or administration of a private agency;

(2) Department means the Department of Correctional Services;

(3) Director means the Director of Correctional Services;

(4) Inspector General means the Inspector General of the Nebraska Correctional System appointed under section 47-904;

(5) Malfeasance means a wrongful act that the actor has no legal right to do or any wrongful conduct that affects, interrupts, or interferes with performance of an official duty;

(6) Management means supervision of subordinate employees;

(7) Misfeasance means the improper performance of some act that a person may lawfully do;

(8) Obstruction means hindering an investigation, preventing an investigation from progressing, stopping or delaying the progress of an investigation, or making the progress of an investigation difficult or slow;

(9) Office means the office of Inspector General of the Nebraska Correctional System and includes the Inspector General and other employees of the office;

(10) Office of Parole Administration means the office created pursuant to section 83-1,100;

(11) Private agency means an entity that contracts with the department or contracts to provide services to another entity that contracts with the department; and

(12) Record means any recording in written, audio, electronic transmission, or computer storage form, including, but not limited to, a draft, memorandum, note, report, computer printout, notation, or message, and includes, but is not

limited to, medical records, mental health records, case files, clinical records, financial records, and administrative records.

Source: Laws 2015, LB598, § 3; Laws 2016, LB1094, § 29.
Effective date April 20, 2016.

47-904 Office of Inspector General of the Nebraska Correctional System; created; Inspector General; appointment; term; qualifications; employees; removal.

(1) The office of Inspector General of the Nebraska Correctional System is created within the office of Public Counsel for the purpose of conducting investigations, audits, inspections, and other reviews of the Nebraska correctional system. The Inspector General shall be appointed by the Public Counsel with approval from the chairperson of the Executive Board of the Legislative Council and the chairperson of the Judiciary Committee of the Legislature.

(2) The Inspector General shall be appointed for a term of five years and may be reappointed. The Inspector General shall be selected without regard to political affiliation and on the basis of integrity, capability for strong leadership, and demonstrated ability in accounting, auditing, financial analysis, law, management, public administration, investigation, or criminal justice administration or other closely related fields. No former or current executive or manager of the department shall be appointed Inspector General within five years after such former or current executive's or manager's period of service with the department. Not later than two years after the date of appointment, the Inspector General shall obtain certification as a Certified Inspector General by the Association of Inspectors General, its successor, or another nationally recognized organization that provides and sponsors educational programs and establishes professional qualifications, certifications, and licensing for inspectors general. During his or her employment, the Inspector General shall not be actively involved in partisan affairs.

(3) The Inspector General shall employ such investigators and support staff as he or she deems necessary to carry out the duties of the office within the amount available by appropriation through the office of Public Counsel for the office of Inspector General of the Nebraska Correctional System. The Inspector General shall be subject to the control and supervision of the Public Counsel, except that removal of the Inspector General shall require approval of the chairperson of the Executive Board of the Legislative Council and the chairperson of the Judiciary Committee of the Legislature.

Source: Laws 2015, LB598, § 4.

47-905 Office; duties; law enforcement agencies and prosecuting attorneys; cooperation; confidentiality.

(1) The office shall investigate:

(a) Allegations or incidents of possible misconduct, misfeasance, malfeasance, or violations of statutes or of rules or regulations of the department by an employee of or a person under contract with the department or a private agency; and

(b) Death or serious injury in private agencies, department correctional facilities, and other programs and facilities licensed by or under contract with the department. The department shall report all cases of death or serious injury

of a person in a private agency, department correctional facility or program, or other program or facility licensed by the department to the Inspector General as soon as reasonably possible after the department learns of such death or serious injury. For purposes of this subdivision, serious injury means an injury or illness caused by malfeasance or misfeasance which leaves a person in critical or serious condition.

(2) Any investigation conducted by the Inspector General shall be independent of and separate from an investigation pursuant to sections 23-1821 to 23-1823.

(3) Notwithstanding the fact that a criminal investigation, a criminal prosecution, or both are in progress, all law enforcement agencies and prosecuting attorneys shall cooperate with any investigation conducted by the Inspector General and shall, immediately upon request by the Inspector General, provide the Inspector General with copies of all law enforcement reports which are relevant to the Inspector General's investigation. All law enforcement reports which have been provided to the Inspector General pursuant to this section are not public records for purposes of sections 84-712 to 84-712.09 and shall not be subject to discovery by any other person or entity. Except to the extent that disclosure of information is otherwise provided for in the Office of Inspector General of the Nebraska Correctional System Act, the Inspector General shall maintain the confidentiality of all law enforcement reports received pursuant to its request under this section. Law enforcement agencies and prosecuting attorneys shall, when requested by the Inspector General, collaborate with the Inspector General regarding all other information relevant to the Inspector General's investigation. If the Inspector General in conjunction with the Public Counsel determines it appropriate, the Inspector General may, when requested to do so by a law enforcement agency or prosecuting attorney, suspend an investigation by the office until a criminal investigation or prosecution is completed or has proceeded to a point that, in the judgment of the Inspector General, reinstatement of the Inspector General's investigation will not impede or infringe upon the criminal investigation or prosecution. Under no circumstance shall the Inspector General interview any person who has already been interviewed by a law enforcement agency in connection with a relevant ongoing investigation of a law enforcement agency.

Source: Laws 2015, LB598, § 5.

47-906 Office; access to information and personnel; investigation.

(1) The office shall have access to all information and personnel necessary to perform the duties of the office.

(2) A full investigation conducted by the office shall consist of retrieval of relevant records through subpoena, request, or voluntary production, review of all relevant records, and interviews of all relevant persons.

Source: Laws 2015, LB598, § 6.

47-907 Complaints to office; form; full investigation; when; notice.

(1) Complaints to the office may be made in writing. A complaint shall be evaluated to determine if it alleges possible misconduct, misfeasance, malfeasance, or violation of a statute or of rules and regulations of the department by an employee of or a person under contract with the department or a private

agency. All complaints shall be evaluated to determine whether a full investigation is warranted.

(2) The office shall not conduct a full investigation of a complaint unless:

(a) The complaint alleges misconduct, misfeasance, malfeasance, or violation of a statute or of rules and regulations of the department;

(b) The complaint is against a person within the jurisdiction of the office; and

(c) The allegations can be independently verified through investigation.

(3) The Inspector General shall determine within fourteen days after receipt of a complaint whether the office will conduct a full investigation.

(4) When a full investigation is opened on a private agency that contracts with the department, the Inspector General shall give notice of such investigation to the department.

Source: Laws 2015, LB598, § 7.

47-908 Cooperation with office; when required.

All employees of the department, all employees of the Office of Parole Administration, and all owners, operators, managers, supervisors, and employees of private agencies shall cooperate with the office. Cooperation includes, but is not limited to, the following:

(1) Provision of full access to and production of records and information. Providing access to and producing records and information for the office is not a violation of confidentiality provisions under any statute, rule, or regulation if done in good faith for purposes of an investigation under the Office of Inspector General of the Nebraska Correctional System Act;

(2) Fair and honest disclosure of records and information reasonably requested by the office in the course of an investigation under the act;

(3) Encouraging employees to fully comply with reasonable requests of the office in the course of an investigation under the act;

(4) Prohibition of retaliation by owners, operators, or managers against employees for providing records or information or filing or otherwise making a complaint to the office;

(5) Not requiring employees to gain supervisory approval prior to filing a complaint with or providing records or information to the office;

(6) Provision of complete and truthful answers to questions posed by the office in the course of an investigation; and

(7) Not willfully interfering with or obstructing the investigation.

Source: Laws 2015, LB598, § 8; Laws 2016, LB1094, § 30.

Effective date April 20, 2016.

47-909 Failure to cooperate; effect.

Failure to cooperate with an investigation by the office may result in discipline or other sanctions.

Source: Laws 2015, LB598, § 9.

47-910 Inspector General; powers; rights of person required to provide information.

The Inspector General may issue a subpoena, enforceable by action in an appropriate court, to compel any person to appear, give sworn testimony, or produce documentary or other evidence deemed relevant to a matter under his or her inquiry. A person thus required to provide information shall be paid the same fees and travel allowances and shall be accorded the same privileges and immunities as are extended to witnesses in the district courts of this state and shall also be entitled to have counsel present while being questioned.

Source: Laws 2015, LB598, § 10.

47-911 Office; access to records; subpoena; records; statement of record integrity and security; contents; treatment of records.

(1) In conducting investigations, the office shall access all relevant records through subpoena, compliance with a request by the office, and voluntary production. The office may request or subpoena any record necessary for the investigation from the department or a private agency that is pertinent to an investigation. All case files, licensing files, medical records, financial and administrative records, and records required to be maintained pursuant to applicable licensing rules shall be produced for review by the office in the course of an investigation.

(2) Compliance with a request of the office includes:

- (a) Production of all records requested;
- (b) A diligent search to ensure that all appropriate records are included; and
- (c) A continuing obligation to immediately forward to the office any relevant records received, located, or generated after the date of the request.

(3) The office shall seek access in a manner that respects the dignity and human rights of all persons involved, maintains the integrity of the investigation, and does not unnecessarily disrupt department programs or services. When advance notice to an administrator or his or her designee is not provided, the office investigator shall, upon arrival at the departmental office, bureau, or division or private agency, request that an onsite employee notify the administrator or his or her designee of the investigator's arrival.

(4) When circumstances of an investigation require, the office may make an unannounced visit to a departmental office, bureau, or division, a department correctional facility, or a private agency to request records relevant to an investigation.

(5) A responsible individual or an administrator may be asked to sign a statement of record integrity and security when a record is secured by request as the result of a visit by the office, stating:

(a) That the responsible individual or the administrator has made a diligent search of the office, bureau, division, private agency, or department correctional facility to determine that all appropriate records in existence at the time of the request were produced;

(b) That the responsible individual or the administrator agrees to immediately forward to the office any relevant records received, located, or generated after the visit;

(c) The persons who have had access to the records since they were secured; and

(d) Whether, to the best of the knowledge of the responsible individual or the administrator, any records were removed from or added to the record since it was secured.

(6) The office shall permit a responsible individual, an administrator, or an employee of a departmental office, bureau, or division, a private agency, or a department correctional facility to make photocopies of the original records within a reasonable time in the presence of the office for purposes of creating a working record in a manner that assures confidentiality.

(7) The office shall present to the responsible individual or the administrator or other employee of the departmental office, bureau, or division, private agency, or department correctional facility a copy of the request, stating the date and the titles of the records received.

(8) If an original record is provided during an investigation, the office shall return the original record as soon as practical but no later than ten working days after the date of the compliance request.

(9) All investigations conducted by the office shall be conducted in a manner designed to ensure the preservation of evidence for possible use in a criminal prosecution.

Source: Laws 2015, LB598, § 11.

47-912 Reports of investigations; distribution; redact confidential information; powers of office.

(1) Reports of investigations conducted by the office shall not be distributed beyond the entity that is the subject of the report without the consent of the Inspector General.

(2) The office shall redact confidential information before distributing a report of an investigation. The office may disclose confidential information to the chairperson of the Judiciary Committee of the Legislature when such disclosure is, in the judgment of the Public Counsel, desirable to keep the chairperson informed of important events, issues, and developments in the Nebraska correctional system.

(3) Records and documents, regardless of physical form, that are obtained or produced by the office in the course of an investigation are not public records for purposes of sections 84-712 to 84-712.09. Reports of investigations conducted by the office are not public records for purposes of sections 84-712 to 84-712.09.

(4) The office may withhold the identity of sources of information to protect from retaliation any person who files a complaint or provides information in good faith pursuant to the Office of Inspector General of the Nebraska Correctional System Act.

Source: Laws 2015, LB598, § 12.

47-913 Department; provide direct computer access.

The department shall provide the Public Counsel and the Inspector General with direct computer access to all computerized records, reports, and documents maintained by the department in connection with administration of the Nebraska correctional system, except that the Public Counsel's and Inspector

General's access to an inmate's medical or mental health records shall be subject to the inmate's consent.

Source: Laws 2015, LB598, § 13.

47-914 Inspector General's report of investigation; contents; distribution.

(1) The Inspector General's report of an investigation shall be in writing to the Public Counsel and shall contain recommendations. The report may recommend systemic reform or case-specific action, including a recommendation for discharge or discipline of employees or for sanctions against a private agency. All recommendations to pursue discipline shall be in writing and signed by the Inspector General. A report of an investigation shall be presented to the director within fifteen days after the report is presented to the Public Counsel.

(2) Any person receiving a report under this section shall not further distribute the report or any confidential information contained in the report. The report shall not be distributed beyond the parties except through the appropriate court procedures to the judge.

(3) A report that identifies misconduct, misfeasance, malfeasance, violation of statute, or violation of rules and regulations by an employee of the department or a private agency that is relevant to providing appropriate supervision of an employee may be shared with the employer of such employee. The employer may not further distribute the report or any confidential information contained in the report.

Source: Laws 2015, LB598, § 14.

47-915 Report; director; accept, reject, or request modification; when final; written response; corrected report; appended material.

(1) Within fifteen days after a report is presented to the director under section 47-914, he or she shall determine whether to accept, reject, or request in writing modification of the recommendations contained in the report. The Inspector General, with input from the Public Counsel, may consider the director's request for modifications but is not obligated to accept such request. Such report shall become final upon the decision of the director to accept or reject the recommendations in the report or, if the director requests modifications, within fifteen days after such request or after the Inspector General incorporates such modifications, whichever occurs earlier.

(2) Within fifteen days after the report is presented to the director, the report shall be presented to the private agency or other provider of correctional services that is the subject of the report and to persons involved in the implementation of the recommendations in the report. Within forty-five days after receipt of the report, the private agency or other provider may submit a written response to the office to correct any factual errors in the report. The Inspector General, with input from the Public Counsel, shall consider all materials submitted under this subsection to determine whether a corrected report shall be issued. If the Inspector General determines that a corrected report is necessary, the corrected report shall be issued within fifteen days after receipt of the written response.

(3) If the Inspector General does not issue a corrected report pursuant to subsection (2) of this section or if the corrected report does not address all issues raised in the written response, the private agency or other provider may

request that its written response, or portions of the response, be appended to the report or corrected report.

Source: Laws 2015, LB598, § 15.

47-916 Report or work product; no court review.

No report or other work product of an investigation by the Inspector General shall be reviewable in any court. Neither the Inspector General nor any member of his or her staff shall be required to testify or produce evidence in any judicial or administrative proceeding concerning matters within his or her official cognizance except in a proceeding brought to enforce the Office of Inspector General of the Nebraska Correctional System Act.

Source: Laws 2015, LB598, § 16.

47-917 Inspector General; investigation of complaints; priority and selection.

The Office of Inspector General of the Nebraska Correctional System Act does not require the Inspector General to investigate all complaints. The Inspector General, with input from the Public Counsel, shall prioritize and select investigations and inquiries that further the intent of the act and assist in legislative oversight of the Nebraska correctional system. If the Inspector General determines that he or she will not investigate a complaint, the Inspector General may recommend to the parties alternative means of resolution of the issues in the complaint.

Source: Laws 2015, LB598, § 17.

47-918 Summary of reports and investigations; contents.

On or before September 15 of each year, the Inspector General shall provide to each member of the Judiciary Committee of the Legislature, the Governor, and the Clerk of the Legislature a summary of reports and investigations made under the Office of Inspector General of the Nebraska Correctional System Act for the preceding year. The summary provided to the Clerk of the Legislature shall be provided electronically. The summaries shall include recommendations and an update on the status of recommendations made in prior summaries, if any. The recommendations may address issues discovered through investigations, audits, inspections, and reviews by the office that will (1) increase accountability and legislative oversight of the Nebraska correctional system, (2) improve operations of the department and the Nebraska correctional system, (3) deter and identify fraud, abuse, and illegal acts, and (4) identify inconsistencies between statutory requirements and requirements for accreditation. The summaries shall not contain any confidential or identifying information concerning the subjects of the reports and investigations.

Source: Laws 2015, LB598, § 18.

47-919 Office of Parole Administration; provide access to records, reports, and documents.

The Office of Parole Administration shall provide the Public Counsel and the Inspector General with direct computer access to all computerized records, reports, and documents maintained by the office in connection with administration of the Nebraska parole system, except that access for the Public Counsel

and the Inspector General to a parolee's medical or mental health records shall be subject to the parolee's consent.

Source: Laws 2016, LB1094, § 31.
Effective date April 20, 2016.